



Stipulated Price

Subcontract

Project: xxxxxxxx

Subcontract Work: xxxxxxxx

Subcontractor: xxxxxxxx

Subcontract No: xxxxxxxx

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AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

THIS SUBCONTRACT AGREEMENT made on the **xx** day of _____ in the year **201x**, by and between the parties

Eiffage Innovative Canada Inc.

name of Contractor

hereinafter referred to as the "*Contractor*"

-and -

XXXXXXXX

name of Subcontractor

hereinafter referred to as the "*Subcontractor*"

WHEREAS the Contractor has entered into an agreement hereinafter called the "*Prime Contract*" on the **XXXXXXXX** (**xx**) day of _____ in the year **201x** with

XXXXXXXX

Name of Owner

hereinafter referred to as the "*Owner*" for the construction of

XXXXXXXX

Name of Project

hereinafter referred to as the "*Project*"

AND WHEREAS the Subcontractor has agreed with the Contractor to perform the Subcontract Work and supply all of the labour, Products, tools, construction machinery and equipment necessary therefore as hereinafter set forth;

AND WHEREAS the Contractor and Subcontractor for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained;

NOW THEREFORE THE SUBCONTRACT AGREEMENT WITNESSETH as follows:

ARTICLE 1 – WORK TO BE PERFORMED

- 1.1 The Subcontractor shall furnish the Products and perform the Subcontract Work in a proper and workmanlike manner all in accordance with Subcontract Documents pertaining to: (*All work as detailed in Appendix #1*)
- 1.2 The Subcontractor shall perform the Subcontract Work as required by the Subcontract Documents.

ARTICLE 2 – CONFLICT BETWEEN THE PRIME CONTRACT AND SUBCONTRACT

- 2.1 The requirements, terms and conditions of the Prime Contract as far as they are applicable to this Subcontract, shall be binding upon the Contractor and the Subcontractor as if the word "owner" appearing therein had been changed to "Contractor" and the word "*contractor*" appearing therein has been changed to "Subcontractor". In the event of any conflict between the terms of this Subcontract and the Prime Contract, the Prime Contract shall govern.
- 2.2 Paragraphs 10.2.4 and 10.2.5 of SCC 10.2 – LAWS, NOTICES, PERMITS, AND FEES and SCC 12.1 - INDEMNIFICATION shall be individually inoperative and considered as deleted from this contract in the event that conditions of identical wording or effect as they relate to each of these articles are not set out in the Prime Contract.

ARTICLE 3 – SUBCONTRACT DOCUMENTS

The following are the Subcontract Documents referred to in **Article 1** of this Subcontract Agreement - WORK TO BE PERFORMED

- Prime Contract Agreement between Owner and Contractor
- Definitions of the Prime Contract
- The General Conditions of the Prime Contract
- Subcontract Agreement between Contractor and Subcontractor

ARTICLE 4 – SCHEDULE

4.1 The Subcontractor shall perform the Subcontract Work:

1. in accordance with a Schedule provided by the Contractor at the time of signing this Subcontract and as the same may be revised from time to time during the course of the work by the *Contractor*, in its sole discretion; or
2. in accordance with a Schedule mutually agreed if provided by the *Contractor* after the signing of this *Subcontract*; or
3. as per a master schedule available for viewing in the *Contractor's* field office.

The Contractor may reasonably adjust any schedule or specified timing during the course of the Subcontract Work.

4.2 The *Subcontractor Work* shall be deemed to be substantially performed or completed when approved by the *Contractor* and certified as such by the *Consultant*.

ARTICLE 5 – SUBCONTRACT PRICE

5.1 The Subcontract Price, in accordance with Appendix 1, which excludes Value Added Taxes, is:

xxxxxxx dollars_ xx /100 dollars (\$xxxxxxx)

5.2 Value Added Taxes of (xx%) payable by the Contractor to the Subcontractor are:

xxxxxxx dollars_ xx/100 dollars (\$xxxxxxx)

5.3 Total amount payable by the Contractor to the Subcontractor for the construction of the Subcontract Work is:

xxxxxxx dollars_ xx/100 dollars (\$xxxxxxx)

5.4 These amounts shall be subject to adjustments as provided in the Subcontract Documents.

5.5 All amounts are in Canadian funds.

ARTICLE 6 – PAYMENT

6.1 Subject to the provisions of the Subcontract Documents, and in accordance with legislation and statutory regulations respecting holdback percentages the Contractor shall make progress payments to the Subcontractor on account of the Subcontract Price in accordance with paragraph 6.2 of this Article. The amounts of such payments shall be as certified by the Consultant and/or Owner together with such Value Added Taxes as may be applicable to such payment.

- 6.2 On receipt of a progress, substantial or final completion certificate from the owner, the Contractor will issue a corresponding certificate to the Subcontractor showing the value of work performed to date and the deductions for holdback and previous work performed.

A signed copy of the certificate shall be returned to the contractor together with a current WCB Clearance Certificate and Statutory Declaration. Payments to the Subcontractor will be withheld if the WCB certificate, Insurance Certificate, or Statutory Declaration are not current. For release of final holdback, in addition to the aforementioned documents a Waiver and Release Form must be completed and returned.

The Contractor may withhold payments from the Subcontractor as maybe required to protect the Contractor from charges due to liens which have been filed or for which notice has been given, or labour, equipment rental, sub-subcontractors and material suppliers who have not been paid in the ordinary course.

Payments made by the Contractor to the Subcontractor shall not be mean acceptance of the work by the owner or the Contractor.

The *Contractor* shall pay the *Subcontractor*, no later than 20 calendar days after the receipt of corresponding funds (as defined in Appendix #1) from the *Owner* or within 60 days of the *Owner* or the *Consultant* approving the *Contractor's* application for payment, whichever is later. If there is a dispute between the owner and the Contractor, not involving the labour and materials provided by the subcontractor, and the consultant so certifies that any amounts held back by the owner from the contractor do not involve the subcontractor's involvement in the dispute between the owner and the contractor, then the contractor shall pay to the subcontractor the certified amount within 70 days of such certification by the consultant, notwithstanding the lack of payment by the owner.

- 6.3 If no claims exist against the *Subcontract Work* and the *Subcontractor* has submitted to the *Contractor* a sworn statement that all accounts for labour, sub-subcontracts, *Products, Construction Equipment*, and other indebtedness which may have been incurred by the *Subcontractor* in the performance of the *Subcontract Work* and or which the *Contractor* might in any way be held responsible have been paid in full, except for holdback amounts to be payable out of the funds to be paid to the *Subcontractor* pursuant to this paragraph 6.3 or as an identified amount in dispute, the amount withheld from progress payments made pursuant to paragraph 6.1 of this Article and which is payable pursuant to paragraph 6.2 of this Article is due and payable:

- .1 In the event that any lien is filed under the *Prime Contract*, then no further payment shall be made by the *Contractor* to the *Subcontractor* until the lien is removed.

6.4 Interest

- .1 Interest will be payable by the *Contractor* to the *Subcontractor* in accordance with the same provisions for interest payable by the *Owner* to the *Contractor* under the *Prime Contract*.

ARTICLE 7 – RECEIPT OF AND ADDRESSES FOR NOTICE IN WRITING

- 7.1 Notices in Writing will be addressed to the recipient at the address set out below. The delivery of a Notice in Writing will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. A Notice in writing delivered by one party in accordance with this Subcontract will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received 5 calendar days after the date on which it was mailed, provided that if either such day is not a Working Day, then the Notice in Writing shall be deemed to have been received on the Working Day next following such day. A Notice in Writing sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a Working Day or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first Working Day next following the transmission thereof. An address for a party may be changed by Notice in Writing to the other party setting out the new address in accordance with this Article.

CONTRACTOR:

Eiffage Innovative Canada Inc.

name of Contractor

1703 8 Street Nisku, AB T9E 7S8

address

780.986.1986

phone number

PM's email

email address

780.666.9738

facsimile number

SUBCONTRACTOR:

XXXXXXXX

name of Subcontractor

XXXXXXXX

address

XXXXXXXX

phone number

email address

XXXXXXXX

facsimile number

Contact Person

* If it is intended that the notice must be received by a specific individual, that individual's name shall be indicated.

THE PARTIES HERETO have executed this *Subcontract* by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

WITNESS:

Witness Signature

Laurie Manuel, Construction Estimating Administrator
Name and title of witness

WITNESS:

Signature

Name and title of witness

Signature

Name and title of witness

CONTRACTOR:

Eiffage Innovative Canada Inc.
Name of Contractor

Per: _____
I have the Authority to bind the Corporation

Gary Van Norden, VP of Estimating
Name and title of signing authority

SUBCONTRACTOR:

XXXXXXX

Name of Subcontractor

Signed on behalf of the Subcontractor by a duly
authorised representative, this

_____ day of _____, 20____

Per: _____
I have the authority to bind the Corporation

Name and title of signing authority

Per: _____
I have the authority to bind the Corporation

Name and title of signing authority

DEFINITIONS

The following definitions shall apply to all Subcontract Documents.

1. **Change Directive**

A Change Directive is a written instruction signed by the Contractor directing the Subcontractor to proceed with a change in the Subcontract Work within the general scope of the Subcontract Documents prior to the Contractor and the Subcontractor agreeing upon adjustments in the Subcontract Price and the Subcontract Time.

2. **Change Order**

A Change Order is a written amendment to this Subcontract signed by the Contractor and the Subcontractor stating their agreement upon:

- a change in the Subcontract Work;
- the method of adjustment or the amount of the adjustment in the Subcontract Price, if any; and - the extent of the adjustment in the Subcontract Time, if any.

3. **Construction Equipment**

Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the Subcontract Work but is not incorporated into the Subcontract Work.

4. **Contract Documents**

The Contract Documents are those documents comprising the Prime Contract between the Owner and the Contractor and defined therein.

5. **Drawings**

The Drawings are the graphic and pictorial portions of the Subcontract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Subcontract Work, generally including plans, elevations, sections, details, and diagrams.

6. **Notice in Writing**

A Notice in Writing, where identified in the Subcontract Documents, is a written communication between the parties that is transmitted in accordance with the provisions of Article 7 of the Subcontract Agreement - RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

7. **Owner, Consultant, Contractor, Subcontractor**

The Owner, Consultant, Contractor, and Subcontractor are the persons or entities identified as such in this Subcontract Agreement and include their authorized representatives.

8. **Place of the Work**

The Place of the Work is the designated site or location of the Work identified in the Contract Documents.

9. **Prime Contract**

The Prime Contract is the undertaking by the Owner and the Contractor to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between the Owner and the Contractor.

10. **Product**

Product or Products means material, machinery, equipment, and fixtures forming the Subcontract Work, but does not include Construction Equipment.

11. **Project**

The Project means the total construction contemplated of which the Work may be the whole or a part.

12. Provide

Provide means to supply and install.

13. Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, Product data, and other data which the Subcontractor provides to illustrate details of portions of the Subcontract Work.

14. Specifications

The Specifications are that portion of the Subcontract Documents, wherever located and whenever issued, consisting of the written requirements and standards for Products, systems, workmanship, quality, and the services necessary for the performance of the Subcontract Work.

15. Subcontract

The Subcontract is the undertaking by the Contractor and the Subcontractor to perform their respective duties, responsibilities, and obligations as prescribed in the Subcontract Documents and represents the entire agreement between the Contractor and the Subcontractor.

16. Subcontract Documents

The Subcontract Documents consist of those documents as listed in Article 3 of the Subcontract Agreement - SUBCONTRACT DOCUMENTS, and any other amendments or provisions agreed upon between the Contractor and Subcontractor.

17. Subcontract Price

The Subcontract Price is the amount stipulated in Article 5 of the Subcontract Agreement - SUBCONTRACT PRICE.

18. Subcontract Time

The Subcontract Time is the time stipulated in Article 4 of the Subcontract Agreement - SCHEDULE within which the Subcontract Work is to be performed.

19. Subcontract Work

The Subcontract Work means the construction and related services required by the Subcontract Documents.

20. Substantial Performance of the Subcontract Work

Substantial Performance of the Subcontract Work is as defined in the lien legislation applicable to the Place of the Work. If such legislation is not in force or does not contain such definition, or if the Subcontract Work is governed by the Civil Code of Quebec, Substantial Performance of the Subcontract Work shall have been reached when the Subcontract Work is ready for use or is being used for the purpose intended and is so certified by the Consultant if the conditions of the Prime Contract require the Consultant to issue such a certificate.

21. Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the Place of the Work. If such legislation is not in force or does not contain such definition, or if the Work is governed by the Civil Code of Quebec, Substantial Performance of the Work shall have been reached when the Work is ready for use or is being used for the purpose intended and is so certified by the Consultant in consultation with the Contractor if the Consultant is required by the terms of the Prime Contract to issue such a certificate.

22. Sub-Subcontractor

A Sub-Subcontractor is a person or entity having a direct contract with the Subcontractor to perform a part or parts of the Subcontract Work.

23. Supplemental Instruction

A Supplemental Instruction is an instruction, not involving adjustment in the Subcontract Price or Subcontract Time, in the form of Specifications, Drawings, schedules, samples, models or written instructions, consistent with the intent of the Subcontract Documents. It is to be issued by the Contractor to supplement the Subcontract Documents as required for the performance of the Subcontract Work.

24. Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding Construction Equipment, required for the execution of the Subcontract Work but not incorporated into the Subcontract Work.

25. Value Added Taxes

Value Added Taxes means such sum as shall be levied upon the Subcontract Price by the Federal or any Provincial or Territorial Government and is computed as a percentage of the Subcontract Price and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the Subcontractor by the tax legislation.

26. Work

The Work means the total construction and related services required by the Contract Documents.

27. Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the Place of the Work.

SUBCONTRACT CONDITIONS

PART 1 GENERAL PROVISIONS

SCC 1.1 DOCUMENTS

- 1.1.1 The intent of the Subcontract Documents is to include the labour, Products and services necessary for the performance of the Subcontract Work by the Subcontractor in accordance with these documents. It is not intended, however, that the Subcontractor shall supply products or perform work not consistent with, not covered by, or not properly inferable from the Subcontract Documents.
- 1.1.2 Nothing contained in the Subcontract Documents shall create any contractual relationship between the Contractor and a Sub-Subcontractor or the Sub-Subcontractor's agent, employee, or other person performing any portion of the Subcontract Work.
- 1.1.3 The Subcontract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words or abbreviations which have well known technical or trade meanings are used in the Subcontract Documents in accordance with such recognized meanings.
- 1.1.5 References in the Subcontract Documents to the singular shall be considered to include the plural as the context requires.
- 1.1.6 Neither the organization of the Specifications nor the arrangement of Drawings shall control the Subcontractor in dividing the work among Sub-Subcontractors.
- 1.1.7 If there is a conflict within *Subcontract Documents*:
- .1 The order of priority of documents listed in Article 3 of the Subcontract Agreement – SUBCONTRACT DOCUMENTS, from highest to lowest, shall be:
 - the Contract Form of the *Prime Contract*
 - the documents of the *Prime Contract* of a later date
 - the Supplementary General Conditions of the *Prime Contract*
 - the General Conditions of the *Prime Contract*
 - the Special Provisions of the *Prime Contract*
 - the Specifications of the *Prime Contract*
 - the drawings of the *Prime Contract*
 - the drawings of the *Prime Contract* of larger scale shall govern over those of smaller scale dimensions
 - the Agreement of the *Subcontract*,
 - The Definitions of the *Subcontract*,
 - The Supplementary Conditions of the *Subcontract*,
 - The Subcontract Conditions of the *Subcontract*,
 - Division 1 of the *Specifications*,
 - technical *Specifications*,
 - material and finishing schedules,
 - the *Drawings*.

- .2 drawings of larger scale shall govern over those of smaller scale of the same date.
 - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
 - .4 later dated documents shall govern over earlier documents of the same type.
- 1.1.8 The Contractor shall provide the Subcontractor, without charge, sufficient copies of the Subcontract Documents to perform the Subcontract Work.

SCC 1.2 ASSIGNMENT

- 1.2.1 Neither party to the Subcontract shall assign the Subcontract or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

PART 2 ADMINISTRATION OF THE SUBCONTRACT

SCC 2.1 SUPPLEMENTAL INSTRUCTIONS

- 2.1.1 During the progress of the Subcontract Work the Contractor will furnish Supplemental Instructions to the Subcontractor with reasonable promptness or in accordance with a schedule for such instructions agreed to by the Contractor and the Subcontractor.

SCC 2.2 REVIEW AND INSPECTION OF THE WORK

- 2.2.1 The Owner, the Consultant and the Contractor shall have access to the Subcontract Work for inspection whenever it is in preparation or progress. The Subcontractor shall cooperate to provide reasonable facilities for such access.
- 2.2.2 If special tests, inspections or approvals are required by the Subcontract Documents, or by the Consultant's instructions, or by the laws or ordinances of the Place of the Work, the Subcontractor shall give the Contractor timely notice requesting inspection. Inspection by the Consultant and the Contractor shall be made promptly.
- 2.2.3 The Subcontractor shall furnish promptly to the Contractor two copies of certificates and inspection reports relating to the Subcontract Work.
- 2.2.4 If the Subcontractor covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the Subcontractor shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the Subcontractor's expense.
- 2.2.5 The Contractor may order any portion or portions of the Subcontract Work to be examined to confirm that such work is in accordance with the requirements of the Subcontract Documents. If the work is not in accordance with the requirements of the Subcontract Documents, the Subcontractor shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the Subcontract Documents, the Contractor shall pay the cost of examination and restoration.
- 2.2.6 The Subcontractor shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the Subcontract Documents to be performed by the Subcontractor or is designated by the laws or ordinances of the Place of the Work.
- 2.2.7 The Subcontractor shall pay the cost of samples required for any test or inspection to be performed by the Consultant, the Owner or the Contractor if such test or inspection is designated in the Subcontract Documents.

SCC 2.3 DEFECTIVE WORK

- 2.3.1 The Subcontractor shall promptly correct defective work that has been rejected by the Contractor as failing to conform to the Subcontract Documents whether or not the defective work has been incorporated in the Subcontract Work and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Subcontractor.
- 2.3.2 The Subcontractor shall make good promptly other work destroyed or damaged by such corrections at the Subcontractor's expense.
- 2.3.3 If in the opinion of the Contractor it is not expedient to correct defective work or work not performed as provided in the Subcontract Documents, the Contractor, having obtained concurrence of such opinion from the Consultant, may deduct from the amount otherwise due to the Subcontractor the difference in value between the work as performed and that called for by the Subcontract Documents. If the Subcontractor does not agree with the difference in value, the disagreement shall be settled in accordance with Part 8 of the Subcontract Conditions - DISPUTE RESOLUTION.

PART 3 EXECUTION OF THE WORK

SCC 3.1 CONSTRUCTION BY CONTRACTOR OR OTHER SUBCONTRACTORS

- 3.1.1 The Contractor reserves the right to award separate subcontracts in connection with other parts of the Work to other subcontractors and to perform work with own forces.
- 3.1.2 When separate subcontracts are awarded for other parts of the Work, or when work is performed by the Contractor's own forces, the Contractor shall:
- .1 provide for the co-ordination of the activities and work of other subcontractors and Contractor's own forces with the Subcontract Work;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the Place of the Work;
 - .3 enter into separate subcontracts with other subcontractors under conditions of contract which are compatible with the conditions of the Subcontract;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in SCC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the Subcontractor as it affects the Subcontract Work; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the Work arising from the work of other subcontractors or the Contractor's own forces.
- 3.1.3 When separate subcontracts are awarded for other parts of the Work, or when work is performed by the Contractor's own forces, the Subcontractor shall:
- .1 afford the Contractor and other subcontractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other subcontractors and the Contractor in reviewing their construction schedules; and
 - .3 promptly report to the Contractor in writing any apparent deficiencies in the work of other subcontractors or of the Contractor's own forces, where such work affects the proper execution of any portion of the Subcontract Work, prior to proceeding with that portion of the Subcontract Work.
- 3.1.4 Where the Subcontract Documents identify the work to be performed by other subcontractors or the Contractor's own forces, the Subcontractor shall co-ordinate and schedule the Subcontract Work with the work of other subcontractors and the Contractor's own forces as specified in the Subcontract Documents.

- 3.1.5 When a change in the Subcontract Work is required as a result of the co-ordination and integration of the work of other subcontractors or Contractor's own forces with the Subcontract Work, the changes shall be authorized and valued as provided in SCC 6.1 - CONTRACTOR'S RIGHT TO MAKE CHANGES, SCC 6.2 - CHANGE ORDER, and SCC 6.3 - CHANGE DIRECTIVE.
- 3.1.6 Disputes and other matters in question between the Subcontractor and other subcontractors shall be dealt with as provided in Part 8 of the Subcontract Conditions - DISPUTE RESOLUTION provided the other subcontractors have reciprocal obligations. The Subcontractor shall be deemed to have consented to arbitration of any such dispute with any other subcontractor whose contract with the Contractor contains a similar agreement to arbitrate.

SCC 3.2 TEMPORARY SERVICES

- 3.2.1 Unless otherwise stipulated in the Subcontract Documents, the Contractor will provide and pay for all temporary power and heat, and general purpose lighting but excluding those temporary services required for the Subcontractor's site office.

SCC 3.3 SUPERVISION

- 3.3.1 The Subcontractor shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the Place of the Work while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.3.2 The appointed representative shall represent the Subcontractor at the Place of the Work. Information and instructions provided to the Subcontractor's appointed representative shall be deemed to have been received by the Subcontractor, except with respect to Article 7 of the Subcontract Agreement - RECEIPT OF AND ADDRESSES FOR NOTICE IN WRITING.

SCC 3.4 SUB-SUBCONTRACTORS

- 3.4.1 The Subcontractor shall preserve and protect the rights of the parties under the Subcontract with respect to Subcontract Work to be performed under sub-subcontract, and shall:
- .1 enter into contracts or written agreements with Sub-Subcontractors to require them to perform their work as provided in the Subcontract Documents;
 - .2 incorporate the terms and conditions of the Subcontract Documents into all contracts or written agreements with Sub-Subcontractors; and
 - .3 be as fully responsible to the Contractor for acts and omissions of Sub-Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Subcontractor.
- 3.4.2 The Subcontractor shall indicate in writing, if requested by the Contractor, those Sub-Subcontractors whose bids have been received by the Subcontractor which the Subcontractor would be prepared to accept for the performance of a portion of the Subcontract Work. Should the Contractor not object before signing the Subcontract, the Subcontractor shall employ those Sub-Subcontractors that comply with the requirements of the Subcontract Documents and so identified by the Subcontractor in writing for the performance of that portion of the Subcontract Work to which their bid applies.
- 3.4.3 The Contractor may, for reasonable cause, at any time before the Contractor has signed the Subcontract, object to the use of a proposed Sub-Subcontractor and require the Subcontractor to employ one of the other sub-subcontract bidders.
- 3.4.4 If the Contractor requires the Subcontractor to change a proposed Sub-Subcontractor, the Subcontract Price and Subcontract Time shall be adjusted by the differences occasioned by such required change.

- 3.4.5 The Subcontractor shall not be required to employ as a Sub-Subcontractor, a person or firm to which the Subcontractor may reasonably object.
- 3.4.6 The Contractor may provide to a Sub-Subcontractor information as to the percentage of the Sub-Subcontractor's work which has been certified for payment.

SCC 3.5 SHOP DRAWINGS

- 3.5.1 The Subcontractor shall provide Shop Drawings as required in the Subcontract Documents.
- 3.5.2 The Subcontractor shall provide Shop Drawings to the Contractor to review in orderly sequence and sufficiently in advance so as to cause no delay in the Subcontract Work or in the work of other contractors.
- 3.5.3 Upon request of the Contractor, they shall jointly prepare a schedule of the dates for provision, review and return of Shop Drawings.
- 3.5.4 The Subcontractor shall provide Shop Drawings in the form specified, or if not specified, as directed by the Contractor.
- 3.5.5 Shop Drawings provided by the Subcontractor to the Contractor shall indicate by stamp, date and signature of the person responsible for the review that the Subcontractor has reviewed each one of them.
- 3.5.6 Shop Drawings which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the Subcontractor for approval.
- 3.5.7 The Subcontractor shall review all Shop Drawings before providing them to the Contractor. The Subcontractor represents by this review that:
 - .1 the Subcontractor has determined and verified all applicable field measurements, field construction conditions, Product requirements, catalogue numbers and similar data, or will do so, and
 - .2 the Subcontractor has checked and co-ordinated each Shop Drawing with the requirements of the Subcontract Work and of the Subcontract Documents.
- 3.5.8 At the time of providing Shop Drawings, the Subcontractor shall expressly advise the Contractor in writing of any deviations in a Shop Drawing from the requirements of the Subcontract Documents. The Contractor shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.5.9 The Contractor's review shall not relieve the Subcontractor of responsibility for errors or omissions in the Shop Drawings or for meeting all requirements of the Subcontract Documents.
- 3.5.10 The Subcontractor shall provide revised Shop Drawings to correct those which the Contractor rejects as inconsistent with the Subcontract Documents, unless otherwise directed by the Contractor. The Subcontractor shall advise the Contractor in writing of any revisions to the Shop Drawings other than those requested by the Contractor.
- 3.5.11 The Contractor will review and return Shop Drawings in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the Subcontract Work.

SCC 3.6 USE OF THE WORK

- 3.6.1 The Subcontractor shall confine Construction Equipment, Temporary Work, storage of Products, waste products and debris, and operations of employees to limits indicated by laws, ordinances, permits, the Subcontract Documents, or by direction of the Contractor and shall not unreasonably encumber the Place of the Work.
- 3.6.2 The Subcontractor shall not load or permit to be loaded any part of the Work with a weight or force that will endanger the safety of the Work.

- 3.6.3 The Subcontractor shall comply with the Contractor's instructions regarding signs, advertisements, fires, and smoking.

SCC 3.7 CUTTING AND REMEDIAL WORK

- 3.7.1 The Subcontractor shall do the cutting and remedial work required to make the affected parts of the Subcontract Work come together properly.
- 3.7.2 The Subcontractor shall coordinate the Subcontract Work to ensure that the cutting and remedial work is kept to a minimum.
- 3.7.3 The Subcontractor shall not cut, dig, box, or sleeve any structural member so as to endanger existing work nor alter the work of any others without the Contractor's written consent.
- 3.7.4 Should the Owner, the Contractor or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in SCC 6.1 - CONTRACTOR'S RIGHT TO MAKE CHANGES, SCC 6.2 - CHANGE ORDER and SCC 6.3 - CHANGE DIRECTIVE.
- 3.7.5 Cutting and remedial work shall be performed by specialists familiar with the Products affected and shall be performed in a manner to neither damage nor endanger the Work.

SCC 3.8 CLEANUP

- 3.8.1 The Subcontractor shall maintain the Subcontract Work in a safe and tidy condition and free from the accumulation of waste products and debris caused by the Subcontract Work daily. If the *Subcontractors* fails to do so the Contractor shall have the right to have the work performed by whatever means may be expedient and the *Subcontractor* agrees to pay all reasonable costs of such clean-up.
- 3.8.2 Before applying for Substantial Performance of the Subcontract Work, the Subcontractor shall remove waste products and debris caused by the Subcontract Work to the satisfaction of the Contractor. If the Contractor instructs the Subcontractor to perform these housekeeping requirements and the Subcontractor fails to do so within a reasonable time, the Contractor shall have the right to have the work performed by whatever means may be expedient and the Subcontractor agrees to pay all reasonable costs of such clean-up and removal of waste products and debris.
- 3.8.3 Prior to application for Substantial Performance of the Subcontract Work, the Subcontractor shall remove any remaining products, tools, Construction Machinery, Temporary Work, and waste products and debris resulting from the Subcontractor's work.

SCC 3.9 PAYMENT OF ACCOUNTS

- 3.9.1 The Subcontractor shall promptly and satisfactorily settle and pay for all accounts, claims or liens with respect to the Subcontract Work. If, after having received 2 Working Days' Notice in Writing from the Contractor to settle and pay such accounts, claims or liens, the Subcontractor fails or refuses to settle or pay same, the Contractor shall have the right to settle or pay such accounts, claims or liens for the account of the Subcontractor and the receipt issued to the Contractor with respect to such accounts, claims or liens shall be conclusive evidence as to such payments and the amount thereof. Notwithstanding the foregoing provision, the Subcontractor shall not be required to pay any such accounts, claims or liens if it has reasonable grounds for disputing same and the Contractor in these circumstances will only have the right to pay or settle such accounts, claims or liens in such manner as in its opinion, will not prejudice the Subcontractor's right to dispute same.

PART 4 ALLOWANCES

SCC 4.1 CASH ALLOWANCES

- 4.1.1 The Subcontract Price includes the cash allowances, if any, stated in the Subcontract Documents. The scope of work or costs included in such cash allowance shall be as described in the Subcontract Documents.
- 4.1.2 The Subcontract Price, and not the cash allowances, includes the Subcontractor's overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the Contractor.
- 4.1.4 Where the actual cost of the Subcontract Work under any cash allowance exceeds the amount of the allowance, the Subcontractor shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the Subcontract Documents. Where the actual cost of the Subcontract Work under any cash allowance is less than the amount of the allowance, the Contractor shall be credited for the unexpended portion of the cash allowance, but not for the Subcontractor's overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The Subcontract Price shall be adjusted by Change Order to provide for any difference between the amounts of each cash allowance and the actual cost of the Subcontract Work under that cash allowance.

PART 5 PAYMENT

SCC 5.1 APPLICATIONS FOR PAYMENT

- 5.1.1 Applications for payment on account as provided in Article 6 of the Subcontract Agreement - PAYMENT may be made monthly as the Subcontract Work progresses.
- 5.1.2 The Subcontractor shall submit to the Contractor, at least 20 calendar days before the first application for payment, a schedule of values for the parts of the Subcontract Work, aggregating the total amount of the Subcontract Price, so as to facilitate evaluation of applications for payment.
- 5.1.3 The schedule of values shall be made out in such form and supported by such evidence as the Contractor may reasonably direct and when accepted by the Contractor, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.1.4 The Subcontractor shall include a statement based on the schedule of values with each application for payment.
- 5.1.5 Applications for payment for Products delivered to the Place of the work but not yet incorporated into the Subcontract Work shall be supported by such evidence as the Contractor may reasonably require to establish the value and delivery of the Products as provided for by the *Prime Contract*.
- 5.1.6 Applications for payment shall include all the documentation required under this Subcontract, including, without limitation, the safety documentation and records specified in Appendix 3. Contractor may withhold payment until such documentation is submitted by Subcontractor.

SCC 5.2 WITHHOLDING OF PAYMENT

- 5.2.1 If because of climatic or other conditions reasonably beyond the control of the Subcontractor, there are items of Subcontract Work that cannot be performed, payment in full for that portion of the Subcontract Work which has been performed as certified by the Consultant shall not be withheld or delayed by the Contractor on account thereof, but the Contractor may withhold, until the remaining portion of the Subcontract Work is finished, only such an amount that the Contractor determines is sufficient and reasonable to cover the cost of performing such remaining Subcontract Work.

- 5.2.2 The provisions of SCC. 5.2 - WITHHOLDING OF PAYMENT shall be effective only when the applicable lien legislation permits the release of any portion of the Subcontract Price which has been withheld by way of holdback under the conditions contemplated herein.

SCC 5.3 NON-CONFORMING WORK

- 5.3.1 No payment by the Contractor under this Subcontract nor partial or entire use or occupancy of the Work by the Owner shall constitute an acceptance of any portion of the Subcontract Work or Products which are not in accordance with the requirements of the Subcontract Documents.

PART 6 CHANGES IN THE WORK

SCC 6.1 CONTRACTOR'S RIGHT TO MAKE CHANGES

- 6.1.1 The Contractor, without invalidating the Subcontract, may make:
- .1 changes in the Subcontract Work consisting of additions, deletions or other revisions to the Subcontract Work by Change Order or Change Directive, and
 - .2 changes to the Subcontract Time for the Subcontract Work, or at any part thereof, by Change Order.
- 6.1.2 The Subcontractor shall not perform a change in the Subcontract Work without a Change Order or a Change Directive.

SCC 6.2 CHANGE ORDER

- 6.2.1 When a change in the Subcontract Work is proposed or required, the Contractor shall provide the Subcontractor with a written description of the proposed change in the Subcontract Work. The Subcontractor shall promptly present, in a form acceptable to the Contractor, a method of adjustment or an amount of adjustment for the Subcontract Price, if any, and the adjustment in the Subcontract Time, if any, for the proposed change in the Subcontract Work.
- 6.2.2 When the Contractor and the Subcontractor agree to the adjustments in the Subcontract Price and Subcontract Time or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a Change Order. The value of the Subcontract Work performed as the result of a Change Order shall be included in the application for progress payment.

SCC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the Contractor requires the Subcontractor to proceed with a change in the Subcontract Work prior to the Contractor and the Subcontractor agreeing upon the corresponding adjustment in Subcontract Price and Subcontract Time, the Contractor shall issue a Change Directive.
- 6.3.2 A Change Directive shall only be used to direct a change in the Subcontract Work which is within the general scope of the Subcontract Documents.
- 6.3.3 A Change Directive shall not be used to direct a change in the Subcontract Time only.
- 6.3.4 Upon receipt of a Change Directive, the Subcontractor shall proceed promptly with the change in the Subcontract Work.
- 6.3.5 For the purpose of valuing Change Directives, changes in the Subcontract Work that are not substitutions or otherwise related to each other shall not be grouped together in the same Change Directive.

- 6.3.6 The adjustment in the Subcontract Price for a change carried out by way of a Change Directive shall be determined on the basis of the cost of the Subcontractor's actual expenditures and savings attributable to the Change Directive, valued in accordance with paragraph 6.3.7 and as follows:
- .1 If the change results in a net increase in the Subcontractor's cost, the Subcontract Price shall be increased by the amount of the net increase in the Subcontractor's cost, plus the Subcontractor's percentage fee on such net increase.
 - .2 If the change results in a net decrease in the Subcontractor's cost, the Subcontract Price shall be decreased by the amount of the net decrease in the Subcontractor's cost, without adjustment for the Subcontractor's percentage fee.
 - .3 The Subcontractor's fee shall be as specified in the Subcontract Documents or as otherwise agreed by the parties.
- 6.3.7 The cost of performing the Subcontract Work attributable to the Change Directive shall be limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the Subcontractor under a salary or wage schedule agreed upon by the Contractor and the Subcontractor, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the Subcontractor, for personnel
 - (1) stationed at the Subcontractor's field office, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of Shop Drawings, fabrication drawings and coordination drawings; or
 - (4) engaged in the processing of changes in the Subcontract Work.
 - .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Subcontractor and included in the cost of the Subcontract Work as provided in paragraph 6.3.7.1;
 - .3 travel and subsistence expenses of the Subcontractor's personnel described in paragraph 6.3.7.1;
 - .4 all Products including cost of transportation thereof;
 - .5 materials, supplies, Construction Equipment, Temporary Work, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the Subcontract Work; and cost less salvage value on such items used but not consumed, which remain the property of the Subcontractor;
 - .6 all tools and Construction Equipment, exclusive of hand tools used in the performance of the Subcontract Work, whether rented from or provided by the Subcontractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - .7 equipment and services required for the Subcontractor's field office;
 - .8 deposits lost;
 - .9 the amounts of all sub-subcontracts;
 - .10 quality assurance such as independent inspection and testing services;
 - .11 charges levied by authorities having jurisdiction at the Place of the Work;

- .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the Subcontractor's obligations to indemnify the Contractor as provided in paragraph 10.3.1 of SCC 10.3 - PATENT FEES;
 - .13 any adjustment in premiums for all bonds and insurance which the Subcontractor is required, by the Subcontract Documents, to purchase and maintain;
 - .14 any adjustment in taxes, other than Value Added Taxes, and duties for which the Subcontractor is liable;
 - .15 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the Subcontract Work;
 - .16 removal and disposal of waste products and debris; and .17 safety measures and requirements.
- 6.3.8 Notwithstanding any other provisions contained in this Subcontract, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the Change Directive other than those which are the result of or occasioned by any failure on the part of the Subcontractor to exercise reasonable care and diligence in the Subcontractor's attention to the Subcontract Work. Any cost due to failure on the part of the Subcontractor to exercise reasonable care and diligence in the Subcontractor's attention to the Subcontract Work shall be borne by the Subcontractor.
- 6.3.9 The Subcontractor shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the Subcontract Work attributable to the Change Directive and shall provide the Contractor with copies thereof when requested.
- 6.3.10 For the purpose of valuing Change Directives, the Contractor shall be afforded reasonable access to all of the Subcontractor's pertinent documents related to the cost of performing the Subcontract Work attributable to the Change Directive, and for this purpose the Subcontractor shall preserve such records for a period of one year from the date of Substantial Performance of the Work or as specified in the Subcontract Documents.
- 6.3.11 Pending determination of the final amount of a Change Directive, the undisputed value of the Subcontract Work performed as the result of a Change Directive is eligible to be included in progress payments.
- 6.3.12 If the Contractor and Subcontractor do not agree on the proposed adjustment in the Subcontract Time attributable to the change in the Subcontract Work, or the method of determining it, the disagreement shall be referred to Part 8 of the Subcontract Conditions - DISPUTE RESOLUTION.
- 6.3.13 When the Contractor and the Subcontractor reach agreement on the adjustment to the Subcontract Price and to the Subcontract Time, this agreement shall be recorded in a Change Order.

SCC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the Contractor or the Subcontractor discover conditions at the Place of the Work which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the Subcontract Work which differ materially from those indicated in the Subcontract Documents; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Subcontract Documents*; then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 3 *Working Days* after first observance of the conditions.
- 6.4.2 The *Contractor* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Subcontractor's* cost or time to perform the *Subcontract Work*, the *Contractor* shall issue appropriate instructions for a change in the *Subcontract Work* as provided in SCC 6.2 – CHANGE ORDER or SCC 6.3 – CHANGE DIRECTIVE.

- 6.4.3 If the *Contractor* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Subcontract Price* or the *Subcontract Time* is justified, the *Contractor* shall report the reasons for this finding to the *Subcontractor* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of SCC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, SCC 9.3 – ARTIFACTS AND FOSSILS and SCC 9.5 – MOULD.

SCC 6.5 DELAYS

- 6.5.1 If the *Subcontractor* is delayed in the performance of the *Subcontract Work* by an action or omission of the *Owner*, *Consultant*, *Contractor*, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Subcontract Documents*, then the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and *Subcontractor* shall agree that the *Subcontract Work* was delayed. The *Subcontractor* shall be reimbursed by the *Contractor* for reasonable costs incurred by the *Subcontractor* as a result of such delay.
- 6.5.2 If the *Subcontractor* is delayed in the performance of the *Subcontract Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Subcontractor* or any person employed or engaged by the *Subcontractor* directly or indirectly, then the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and *Subcontractor* shall agree that the *Subcontract Work* was delayed. The *Subcontractor* shall be reimbursed by the *Contractor* for reasonable costs incurred by the *Subcontractor* as a result of such delay.
- 6.5.3 If the *Subcontractor* is delayed in the performance of the *Subcontract Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Subcontractor* is a member or to which the *Subcontractor* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions (as intended in the Prime Contract), or
 - .4 any cause beyond the *Subcontractor's* control other than one resulting from a default or breach of *Subcontract* by the *Subcontractor*, then the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and *Subcontractor* shall agree that the *Subcontract Work* was delayed. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Subcontractor* agrees to a shorter extension,

The *Subcontractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, *Consultant*, *Contractor*, or anyone employed or engaged by them directly or indirectly.

- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Contractor* not later than 3 *Working Days* after commencement of delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under SCC 2.1 – SUPPLEMENTAL INSTRUCTIONS, then no request for extension shall be made because of failure of the *Contractor* to furnish instructions until 14 *Working Days* after demand for such instructions has been made.

SCC 6.6 CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE

- 6.6.1 If the *Subcontractor* intends to make a claim for an increase to the *Subcontract Price*, the *Subcontractor* shall, *within 3 working days of the first occurrence*, give *Notice in Writing* of intent to claim.
- 6.6.2 Upon commencement of the event or series of events giving rise to the claim, the party intending to make a claim shall:

- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.
- 6.6.3 Subcontractor shall submit within a reasonable time to Contractor a detailed account of the amount claimed and the grounds upon which the claim is based. In no event shall Contractor be liable to Subcontractor for any consequential, special, indirect or incidental damages whatsoever (including, without limitation, loss of profit, loss of revenue, loss of opportunity, loss of use, claims of customers, cost of capital) whether based on tort, gross negligence, contract, strict liability or otherwise.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the other party may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. Subcontractor shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 Contractor shall reply by *Notice in Writing* within 10 *Working Days* after receipt of the claim, or within such other time period as may be agreed by the parties.
- 6.6.6 If such reply is not acceptable to the party making the claim, the claim shall be settled in accordance with Part 8 of the Subcontract Conditions - DISPUTE RESOLUTION.

PART 7 DEFAULT NOTICE

SCC 7.1 CONTRACTOR'S RIGHT TO PERFORM THE SUBCONTRACT WORK, TERMINATE THE SUBCONTRACTOR'S RIGHT TO CONTINUE WITH THE SUBCONTRACT WORK OR TERMINATE THE SUBCONTRACT

- 7.1.1 If the *Subcontractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Subcontractor's* insolvency, or if a receiver is appointed because of the *Subcontractor's* insolvency, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Subcontractor's* right to continue with the *Subcontract Work*, by giving the *Subcontractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Subcontractor* neglects to prosecute the *Subcontract Work* properly or otherwise fails to comply with the requirements of the *Subcontract* to a substantial degree, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, give the *Subcontractor* *Notice in Writing* that the *Subcontractor* is in default of the *Subcontractor's* contractual obligations and instruct the *Subcontractor* to correct the default in 3 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.1.3 If the default cannot be corrected in the 3 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Subcontractor* shall be in compliance with the *Contractor's* instructions if the *Subcontractor*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Contractor* within the 3 *Working Days* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Subcontract* terms and with such schedule.
- 7.1.4 If the *Subcontractor* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Contractor* may have, the *Contractor* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Subcontractor*, or

- .2 terminate the *Subcontractor's* right to continue with the *Subcontract Work* in whole or in part or terminate the *Subcontract*.
- 7.1.5 If the *Contractor* terminates the *Subcontractor's* right to continue with the *Subcontract Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Contractor* shall be entitled to:
- .1 take possession of the *Subcontract Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Subcontract Work* by whatever method the *Contractor* may consider expedient, but without undue delay or expense; and
 - .2 withhold further payment to the *Subcontractor* until a final certificate for payment is issued; and
 - .3 charge the *Subcontractor* the amount by which the full cost of finishing the *Subcontract Work* and a reasonable allowance to cover the cost of corrections to work performed by the *Subcontractor* that may be required under SCC 12.3 – WARRANTY, exceeds the unpaid balance of the *Subcontract Price*; however, if such cost of finishing the *Subcontract Work* is less than the unpaid balance of the *Subcontract Price*, the *Contractor* shall pay the *Subcontractor* the difference; and
 - .4 on expiry of the warranty period, charge the *Subcontractor* the amount by which the cost of corrections to the *Subcontractor's* work under SCC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Subcontractor* the difference.
- 7.1.6 The *Subcontractor's* obligation under the *Subcontract* as to quality, correction and warranty of the work performed by the *Subcontractor* up to the time of termination shall continue after such termination of the *Subcontract*.

SCC 7.2 SUBCONTRACTOR'S RIGHT TO SUSPEND THE SUBCONTRACT WORK OR TERMINATE THE SUBCONTRACT

- 7.2.1 If the *Contractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Contractor's* insolvency, or if a receiver is appointed because of the *Contractor's* insolvency, the *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, terminate the *Subcontract* by giving the *Contractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* should be suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Subcontractor* or of anyone directly or indirectly employed or engaged by the *Subcontractor*, the *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, terminate the *Subcontract* by giving the *Contractor* *Notice in Writing* to that effect.
- 7.2.3 The *Subcontractor* may give *Notice in Writing* to the *Contractor* that the *Contractor* is in default of the *Contractor's* contractual obligations if the *Contractor* fails to pay the *Subcontractor* in accordance with the time for payment stated in Article 6 of the *Subcontract Agreement – PAYMENT*.
- 7.2.4 The *Subcontractor's* *Notice in Writing* to the *Contractor* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, suspend the *Subcontract Work* or terminate the *Subcontract*.
- 7.2.5 If the *Subcontractor* terminates the *Subcontract* under the conditions set out above, the *Subcontractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Subcontractor* may have sustained as a result of the termination of the *Subcontract*.
- 7.2.6 If the *Prime Contract* is terminated for any reason, either the *Contractor* or the *Subcontractor* may terminate this *Subcontract* upon *Notice in Writing* to the other party. Thereafter the respective rights of the parties shall be as if the *Subcontractor* had terminated under any of the above conditions.

PART 8 DISPUTE RESOLUTION

SCC 8.1 INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR

- 8.1.1 The *Contractor*, in the first instance, shall decide on questions arising under the *Subcontract* and interpret the requirements therein. Such decisions shall be given in writing. The *Contractor* shall use the *Contractor's* powers under the *Subcontract* to enforce its faithful performance by both parties hereto.
- 8.1.2 Differences between the parties to the *Subcontract* as to the interpretation, application or administration of the *Subcontract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by decisions of the *Contractor* as provided in paragraph 8.1.1, shall be settled in accordance with the requirements of Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION.
- 8.1.3 If a dispute is not resolved promptly, the *Contractor* shall give instructions for the proper performance of the *Subcontract Work* and to prevent delays pending settlement of the dispute. The *Subcontractor* shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Subcontract Documents*, the *Contractor* shall pay the *Subcontractor* costs incurred by the *Subcontractor* in carrying out such instructions which the *Subcontractor* was required to do beyond what the *Subcontract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Subcontract Work*.

SCC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 The *Subcontractor* shall be conclusively deemed to have accepted a decision of the *Contractor* under paragraph 8.1.1 of SCC 8.1 – INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR and to have expressly waived and released the *Contractor* from any claims in respect of the particular matter dealt with in that decision unless, within 7 *Working Days* after receipt of that decision, the *Subcontractor* sends a *Notice in Writing* of dispute to the *Contractor*, which contains the particulars of the matter in dispute and the relevant provisions of the *Subcontract Documents*. The *Contractor* shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Subcontract Documents*.
- 8.2.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.3 After a period of 10 *Working Days* following receipt of a *Contractor's Notice in Writing* of reply under paragraph 8.2.1 The parties shall request the Project Mediator of the *Work* to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect of the time of bid closing with the following amendment:
- .1 the word "Contract" appearing in the rules shall read "Subcontract";
 - .2 delete clauses 5.1 to 5.4 and replace them with the following:
"5.1 The Project Mediator shall be the Project Mediator of the Work appointed by the parties to the *Prime Contract*"; and
 - .3 in clause 11.1, delete "GC 8.2.5" and substitute "SCC 8.2.4".
- 8.2.4 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.3 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to both parties.
- 8.2.5 By giving a *Notice in Writing* to the other party, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.4, either party may refer the dispute to be finally resolved by arbitration

under the Rules of Arbitration of Construction Disputes as provided in CCDC 40 in effect of the time of bid closing with the following amendment:

- .1 the word "Contract" appearing in the rules shall read "Subcontract"; and
- .2 delete clause 7.1 (b) and replace it with the following:

"7.1 (b) the date the Work has been completed or the Subcontract has been terminated."

The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.

- 8.2.6 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.5 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.5 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.2.7 Should the dispute be as between the *Contractor* and *Subcontractor* only, arbitration proceedings shall not take place, unless otherwise agreed by the parties, until after the performance or alleged performance of the *Subcontract Work* except:
 - .1 when the dispute concerns a payment alleged by the *Subcontractor* to be due; or
 - .2 when either party can show that the matter in dispute requires immediate consideration while evidence which would otherwise be lost is available.
- 8.2.8 In all other instances, the resolution of the dispute by arbitration shall be held in abeyance until the *Work* has been completed or the *Subcontract* has been terminated, whichever is earlier.
- 8.2.9 Except to the extent that any dispute between the *Contractor* and *Subcontractor* is a part of or relates to a dispute between the *Owner* and the *Contractor*, all disputes between the *Contractor* and *Subcontractor* shall be consolidated into a single arbitration.
- 8.2.10 Should any dispute or portion of any dispute between the *Contractor* and *Subcontractor* relate to a dispute between the *Owner* and the *Contractor*, such dispute or portion thereof as between the *Contractor* and *Subcontractor* shall be disposed of at the same time in the same proceedings and by the same Arbitration Board as is appointed to resolve the dispute between the *Owner* and the *Contractor*.
- 8.2.11 Should no Project Mediator have been appointed by the parties to the *Prime Contract*, and if no mediator is agreed to between the parties within 5 days of a mediator being required under 8.2.3, the provisions of paragraphs 8.2.3 and shall be inapplicable and the notice required under 8.2.5 shall be given within 10 *Working Days* after the receipt of the *Contractor's Notice in Writing* of reply under paragraph 8.2.1.

SCC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notices in Writing* required under Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of SCC 8.1 – INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR.
- 8.3.2 Nothing in Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.5 of SCC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

PART 9 PROTECTION OF PERSONS AND PROPERTY

SCC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Subcontractor* shall protect the *Subcontract Work* and shall take all reasonable precautions to protect the *Work* and property of others during the performance of the *Subcontract Work*.
- 9.1.2 Before commencing any work, the *Subcontractor* shall determine the location of all underground utilities and structures indicated in the *Subcontract Documents* or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 The *Contractor* shall be responsible for the overall protection of the *Work*. If the *Subcontract Work* or others' work is damaged, the *Contractor* shall assess the responsibility for, extent of and value of such damage and the affected parties shall accept such assessment or process it as a dispute in accordance with Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION.

SCC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 If the *Subcontractor*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible and which were not disclosed in the *Subcontract Documents* or which were disclosed but have not been dealt with by the *Contractor* or *Owner* in accordance with applicable legislation related to toxic and hazardous substances, the *Subcontractor* shall
 - .3 take all reasonable steps, including stopping the *Subcontract Work*, to ensure that no person's exposure to any toxic or hazardous substance exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
 - .4 immediately report the circumstances to the *Contractor* in writing.
- 9.2.2 If the *Contractor* and *Subcontractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible, the *Contractor* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Contractor* and the *Subcontractor*.
- 9.2.3 If the *Contractor* and *Subcontractor* agree or if the expert referred to paragraph 9.2.2 determines that the toxic or hazardous substances were not brought onto the *Place of the Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible, the *Contractor* shall promptly at no cost to the *Subcontractor*:
- .1 take all reasonable and necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work*;
 - .2 reimburse the *Subcontractor* for the costs of all steps taken pursuant to paragraph 9.2.1;
 - .3 extend the *Subcontract Time* for such reasonable time in consultation with the *Subcontractor* and the expert referred to in 9.2.2 and reimburse the *Subcontractor* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Subcontractor* as required by paragraph SCC 12.1 – INDEMNIFICATION.
- 9.2.4 If the *Contractor* and *Subcontractor* agree or if the expert referred to in paragraph 9.2.2 determines that the toxic or hazardous substances were brought onto the place of the *Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible, the *Subcontractor* shall promptly at the *Subcontractor's* own expense:

- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances;
 - .2 make good any damage to the *Subcontract Work*;
 - .3 reimburse the *Contractor* for reasonable costs incurred in making good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of SCC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .4 reimburse the *Contractor* for reasonable costs incurred under paragraph 9.2.2; and
 - .5 indemnify the *Contractor* as required by SCC 12.1 - INDEMNIFICATION.
- 9.2.5 If either party does not accept the expert's findings under paragraph 9.2.2, the disagreement shall be settled in accordance with Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.3 or 9.2.4 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by SCC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Contractor* and the *Subcontractor*, be deemed to be the absolute property of the *Contractor*.
- 9.3.2 The *Subcontractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Contractor* upon discovery of such items.
- 9.3.3 The *Contractor* shall investigate the impact on the *Subcontract Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Subcontractor's* cost or time to perform the *Subcontract Work*, the *Contractor* shall issue appropriate instructions for a change in the *Subcontract Work* as provided in SCC 6.2 - CHANGE ORDER or SCC 6.3 CHANGE DIRECTIVE.

SCC 9.4 CONSTRUCTION SAFETY

- 9.4.1 The *Subcontractor* shall respect and comply with:
- .1 the rules, regulations and practices required by the applicable construction health and safety legislation, and
 - .2 all safety precautions and programs of the *Contractor*.

SCC 9.5 MOULD

- 9.5.1 If the *Contractor* or *Subcontractor* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Subcontract Work*,
- .1 the observing party shall promptly report the circumstances to the other party in writing, and
 - .2 the *Contractor* and the *Subcontractor* shall promptly take all reasonable steps, including stopping the *Subcontract Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
 - .3 if the *Contractor* and *Subcontractor* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Contractor* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Contractor* and *Subcontractor*.

- 9.5.2 If the *Contractor* and *Subcontractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Subcontractor's* operations under the *Subcontract*, the *Contractor* shall promptly, at no cost to the *Subcontractor*:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 reimburse the *Subcontractor* for the cost of taking the steps under paragraph 9.5.1.2, and
 - .3 extend the *Subcontract Time* for such reasonable time in consultation with the *Subcontractor* and the expert referred to in 9.5.1.3 and reimburse the *Subcontractor* for reasonable costs incurred as a result of the delay, and
 - .4 indemnify the *Subcontractor* as required by SCC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Contractor* and *Subcontractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Subcontractor's* operations under the *Subcontract*, the *Subcontractor* shall promptly, at the *Subcontractor's* own expense:
- .1 take all reasonable and necessary steps to safely remove the mould, and
 - .2 make good any damage to the *Subcontract Work*;
 - .3 reimburse the *Contractor* for reasonable costs incurred in making good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of SCC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .4 reimburse the *Contractor* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .5 indemnify the *Contractor* as required by SCC 12.1 – INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the Subcontract Conditions - DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by SCC 9.5 – MOULD.

PART 10 GOVERNING REGULATIONS

SCC 10.1 TAXES AND DUTIES

- 10.1.1 The *Subcontract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Contractor* to the *Subcontractor* as stipulated in Article 5 of the Subcontract Agreement – SUBCONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Subcontractor* due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Subcontract Price* accordingly.

SCC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Subcontract Work*.
- 10.2.2 The *Owner* or the *Contractor* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Subcontract Documents* specify as the responsibility of the *Subcontractor*.
- 10.2.3 The *Subcontractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Subcontract Work* and customarily obtained by subcontractors in the

jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Subcontract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.

- 10.2.4 The *Subcontractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Subcontract Work* and which relate to the *Subcontract Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Subcontractor* shall not be responsible for verifying that the *Subcontract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Subcontract Work*. If the *Subcontract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Subcontract Documents*, the *Subcontractor* shall advise the *Contractor* in writing requesting direction immediately upon such variance or change becoming known. The *Contractor* will make the changes required to the *Subcontract Documents* as provided in SCC 6.1 – CONTRACTOR’S RIGHT TO MAKE CHANGES, SCC 6.2 – CHANGE ORDER, and SCC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Subcontractor* fails to advise the *Contractor* in writing; and fails to obtain direction as required in paragraph
- 10.2.5 and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the *Subcontractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses, and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Subcontract Work*, either party may submit a claim in accordance with the requirements of SCC 6.6 – CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE.

SCC 10.3 PATENT FEES

- 10.3.1 The *Subcontractor* shall pay the royalties and patent licence fees required for the performance of the *Subcontract*. The *Subcontractor* shall hold the *Contractor* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Subcontractor's* performance of the *Subcontract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Subcontractor* or anyone for whose acts the *Subcontractor* may be liable.
- 10.3.2 The *Contractor* shall hold the *Subcontractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Subcontractor's* performance of the *Subcontract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Subcontract*, the model, plan or design of which was supplied to the *Subcontractor* as part of the *Subcontract Documents*.

SCC 10.4 WORKERS' COMPENSATION

- 10.4.1 At any time during the term of the *Subcontract*, when requested by the *Contractor*, the *Subcontractor* shall provide such evidence of compliance by the *Subcontractor* and *Sub-Subcontractors* with workers' compensation legislation, including payments due thereunder.

PART 11 INSURANCE AND CONTRACT SECURITY

SCC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of SCC 12.1 – INDEMNIFICATION, the *Subcontractor* shall provide, maintain and pay for insurance coverages as detailed in the prime contract.
- 11.1.2 Prior to commencement of the *Subcontract Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Subcontractor* shall promptly provide the *Contractor* with confirmation of

coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Subcontract Work*.

- 11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Subcontract*.
- 11.1.4 If the *Subcontractor* fails to provide or maintain insurance as required by the *Subcontract Documents*, then the *Contractor* shall have the right to provide and maintain such insurance and give evidence to the *Subcontractor*. The *Subcontractor* shall pay the cost thereof to the *Contractor* on demand or the *Contractor* may deduct the cost from the amount which is due or may become due to the *Subcontractor*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 The *Subcontractor* shall agree to provide such additional insurance as may be required of the *Contractor* under the terms of the *Prime Contract*.
- 11.1.7 The *Subcontractor* shall provide a Certificate of Insurance in an acceptable form to the *Contractor* naming the *Contractor*, *Consultant*, and *Owner* as additional insured under the policy before commencing any work under the *Contract* and shall, upon request, furnish the *Contractor* with a certified copy of the insurance policies.

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

SCC 12.1 INDEMNIFICATION

12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Contractor* and the *Subcontractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Subcontract*, provided such claims are:

- .1 caused by:
 - (a) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (b) a failure of the party to the *Subcontract* from whom indemnification is sought to fulfil its terms or conditions; and
- .2 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 the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Subcontract*.

12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Contractor* and the *Subcontractor* for which insurance is to be provided by either party pursuant to SCC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of bid closing.
- .2 In respect to losses suffered by the *Contractor* and the *Subcontractor* for which insurance is not required to be provided by either party in accordance with SCC 11.1 – INSURANCE, the greater of the *Prime Contract* price or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
- .3 In respect to claims by third party for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other

claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2. shall apply.

- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Contractor* and the *Subcontractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in SCC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Contractor* shall indemnify and hold harmless the *Subcontractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
 - .1 as described in paragraph 10.3.2 of SCC 10.3 – PATENT FEES, and
 - .2 arising out of the *Subcontractor's* performance of the *Subcontract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Contractor* or the *Subcontractor*:
 - .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
 - .2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgement or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

SCC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Work*, as of the 10th calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Subcontractor* waives and releases the *Contractor* from all claims which the *Subcontractor* has or reasonably ought to have knowledge of that could be advanced by the *Subcontractor* against the *Contractor* arising from the *Subcontractor's* involvement in the *Subcontract Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
 - .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Contractor* from the *Subcontractor* no later than the 11th calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Subcontractor* by third parties for which a right of indemnification may be asserted by the *Subcontractor* against the *Contractor* pursuant to the provisions of this *Subcontract*;
 - .3 claims for which a right of indemnity could be asserted by the *Subcontractor* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of SCC 12.1 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.2 The *Subcontractor* waives and releases the *Contractor* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Contractor* from the *Subcontractor* within 390 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Work*, as of the 10th calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Contractor* waives and releases

the *Subcontractor* from all claims which the *Contractor* has or reasonably ought to have knowledge of that could be advanced by the *Contractor* against the *Subcontractor* arising from the *Contractor's* involvement in the *Subcontract Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:

- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Subcontractor* from the *Contractor* no later than the 11th calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Contractor* by third parties for which a right of indemnification may be asserted by the *Contractor* against the *Subcontractor* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Contractor* against the *Subcontractor* pursuant to the provisions of paragraph 12.1.4 of SCC 12.1 - INDEMNIFICATION;
 - .4 damages arising from the *Subcontractor's* actions which result in substantial defects or deficiencies in the *Subcontract Work*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Subcontract Work* which affect the *Subcontract Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - .5 claims arising pursuant to SCC 12.3 - WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.4 The *Contractor* waives and releases the *Subcontractor* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Subcontractor* from the *Contractor* within a period of 6 years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
 - .2 if the *Place of the Work* is the Province of Quebec, then Article 2118 of the Civil Code of Quebec.
- 12.2.5 The *Contractor* waives and releases the *Subcontractor* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under SCC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Subcontractor* from the *Contractor* within 390 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.6 "Notice in Writing of claim" as provided for in SCC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of SCC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
 - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 12.2.7 The party giving "Notice in Writing of claim" as provided for in SCC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.

- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the twelfth or eleventh calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.
- 12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the twelve or eleventh calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

SCC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under this *Subcontract* is in accordance with the warranty provisions of the *Prime Contract*.
- 12.3.2 The *Subcontractor* shall be responsible for the proper performance of the *Subcontract Work* to the extent that the design and *Subcontract Documents* permit such performance.
- 12.3.3 The *Contractor* shall promptly give the *Subcontractor Notice in Writing* of observed defects and deficiencies which occur during the warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Subcontractor* shall correct promptly, at the *Subcontractor's* expense, defects or deficiencies in the *Subcontract Work* which appear prior to and during the warranty period.
- 12.3.5 The *Subcontractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 Any extended warranties required beyond the warranty period as described in paragraph 12.3.1, shall be as specified in the *Subcontract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Subcontractor's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

APPENDIX 1

SUBCONTRACT WORK TO BE PERFORMED

ITEM NO.	DESCRIPTION	UNIT	QTY.	UNIT PRICE	TOTAL
				TOTAL	

Notes:

- All work to be performed in accordance with Prime Contract including but not limited to contract drawings and specifications. Any deviation from Prime Contract requirements and specifications must be submitted for approval by the Consultant.
- All quantities and associated work will be reviewed and approved by the Consultant
- the schedule of values above include all costs for mobilization and demobilization for the performance of the Subcontract of the Work
- Subcontractor to mobilize on or before _____
- Subcontract Work to be completed on or before _____
- All work to be completed as per the attached critical path schedule and its subsequent updates, which will be available for viewing at project site office
- **HST/GST Extra (XX%)**
- Included:
- Excluded:

APPENDIX 2

SUPPLEMENTAL CONDITIONS

Notwithstanding any provision of the Subcontract to which this supplement is attached, the following provisions apply to the Subcontract Agreement. These provisions are to be read as part of the Subcontract Agreement. To the extent any provision below is inconsistent with any provisions of the Subcontract Agreement, the provisions below shall govern.

1. The subcontractor shall provide all labour, equipment, materials including all incidental requirements and their costs in order to complete the works described in this subcontract.
2. This is a unit price contract. The contract items, units of measure and price per unit are detailed in Appendix 1 and the stipulated price of Article 5-SUBCONTRACT PRICE of this agreement represents a price extension of the unit prices at the estimated quantities provided. The quantities of each may vary at the discretion of the contractor or owner without price adjustment except as provided for in the prime contract.
3. Total payment to the subcontractor will be based on actual Contract item quantities paid by owner, at the unit prices detailed in Appendix 1 of this subcontract.
4. The Contractor has the right to set-off against any amounts owing to the Subcontractor under this Subcontract or under any other Subcontract the Contractor may have with the Subcontractor, all charges arising from the Subcontractor's breach of any term of this Subcontractor.
5. Holdback 10% or as stipulated in the Prime Contract.
6. Subcontractor acknowledges that any failure to perform the Subcontract Work in accordance with the Schedule defined in Article 4 of the Subcontract Agreement or with any other key date set forth in the Subcontract Documents is likely to cause Contractor and Owner to suffer and incur costs, losses, expenses and/or damages. Subcontractor agrees that Contractor will be entitled to recover from Subcontractor all such costs, losses, expenses and/or damages from Subcontractor. In particular, if the Prime Contract Documents provide for liquidated damages for delay beyond the completion dates set forth in the Prime Contract Documents, and such liquidated damages are so assessed, then the Contractor may assess the same against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay. The amount of liquidated damages assessed shall not exceed the amount assessed against the Contractor. Liquidated damages, as assessed against Contractor for Subcontractor's fault, may be but one item of the actual damages that may be incurred by Contractor, and which the Contractor may assess against Subcontractor. The proportionate assessment of liquidated damages shall not limit Contractor's right to collect from Subcontractor all actual damages incurred by Contractor as a result of Subcontractor's delay or default.
7. Code of Ethics and Business Conduct. Subcontractor has read, understood, agreed to comply with and agreed to cause its employees and sub-subcontractors to comply with, Contractors Code of Ethics and Business Conduct, which is publicly available online at www.ic2i.ca. Subcontractor, its employees and sub-subcontractors, have access to Contractors Violation and Ethics Reporting System (Whistleblowing System) detailed in said Code of Ethics and Business Conduct.

APPENDIX 3

SAFETY REQUIREMENTS

Appendix #3 consists of the ICCI Health and Safety Program. A full copy of the ICCI Health and Safety Program is available for viewing through the Contractor's on-site project manager or upon request to the Head Office.

Health and Safety Policy for Subcontractors

1. Specific duties, as outlined in the Act under Duties for Employers, Supervisors and Workers, shall be strictly observed and adhered to by the Subcontractor for the duration of their work on this project.
2. The Subcontractor shall take every precaution reasonable to protect all workers from injury and illness. This shall include the provision of guardrails, barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, signalmen, traffic flagging, flagman, safety vests, safety helmets, clothing and removal of obstructions. Subcontractor shall complete daily hazard assessments and provide such assessments to Contractor's site representative.
3. The Subcontractor shall have a sufficient number of personnel trained in Standard Level First Aid and these individuals shall be on site at all times.
4. The Subcontractor shall have a competent supervisor on site at all times to supervise the work of their employees and any subcontractors under their control or employed by them.
5. The Subcontractor shall ensure that all workers have the required training in WHMIS and any other specific training required by the Act. Proof of training is required and a copy of training will be submitted to the Contractor.
6. The Subcontractor shall ensure that any worker who is a certified trade worker will maintain and carry a copy of their certification at all times on the construction site. Proof of this training will also be submitted to the Contractor.
7. The Subcontractor shall provide the Contractor with a copy of all MSDS information prior to working the project.
8. All motorized equipment and power tool equipment shall be in good and safe repair and all workers operating the equipment shall be fully trained and qualified to do so in a safe manner. Additionally, all operated equipment shall have with it all appropriate logbooks, manufacturers' instruction booklet and a record of training for those qualified to operate the machine or device.
9. Any and all incidents or accidents shall be reported to the Contractor's Project Supervisor immediately and the Subcontractor's accident investigation report shall be completed and submitted to the Contractor within 24 hours of the accident. Failure to do so will result in the Contractor's Health and Safety team being called on to conduct the investigation.
10. Copies of all written investigation reports and submission to outside agencies, as they pertain to an accident on this project, **shall be submitted via fax to the Contractor's Office (905-637-2934) within 24 hours to the attention of the Contractor's Safety Officer.**
11. Copies of the Subcontractor's weekly toolbox meeting and their Supervisor's weekly equipment inspection checklist shall be submitted to the site office weekly.
12. Any workers that arrive without the required Personal Protection Equipment or refuse to comply with the Contractor's safety policy or procedures will be refused entry to the contracted premises and/or jobsite and will be refused all future entry until they receive written authorization from our senior management.
13. Repeated violations of our safety policy and/or procedures by the Subcontractor may result in their removal from the job with all associated costs for this action to be the responsibility of the Subcontractor.

14. Any Subcontractor who will be involved in work that is above 8 feet will be required to submit a Fall Protection and Rescue Procedure to the Contractor for review prior to commencing work.

Hazard Assessments

1. Hazard Assessments required by OH & S shall be completed and submitted to the Contractor prior to commencing the work.

Environmental

1. All work shall be carried out in accordance with the current edition of the Environmental Construction Operations Plan (ECO Plan). The ECO Plan forms part of this contract and is available for viewing at our Head Office or Site Office during regular business hours. Upon written request the Contractor will provide the Subcontractor with a copy of the ECO Plan at no additional costs. During the course of the Contract this document may be modified.

Compliance Signature

As an authorized signing officer of the above named Subcontracting Company, I have reviewed and understand the above conditions and agree to supply the Contractor with the above mentioned documentation.

Name (Print)

Signature of Signing Authority

Date