

CONSTRUCTION CONTRACT

SUPPLEMENTARY TERMS AND CONDITIONS

For use with CCDC2 2008

(November 23, 2012 Update)

These Supplementary Terms and Conditions modify and amend the Standard Construction Document CCDC-2 – 2008 and form a part of this Contract.

Each use of the term “provision” or “section” referenced herein references and/or modifies the corresponding provision of the CCDC-2 – 2008. All italicized terms refer to definitions as provided for in the CCDC-2 – 2008.

Article A-5 Payment

1. Provision 5.3.1 shall be deleted in its entirety and replaced with the following:
“.1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
(1) 1.5% per annum above the prime rate.
Such interest shall be compounded on an annual basis. The prime rate shall be the rate of interest quoted by The Canadian Imperial Bank of Commerce for prime business loans as it may change from time to time.”
.2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the Contract, had it not been in dispute, until the date it is paid.”

Article A-6 Receipt of and Addresses for notice in Writing

2. The first paragraph Provision 6.1 shall be deleted in its entirety and replaced with the following:
“6.1 *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 or by courier. A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier. 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.”

Definitions

3. Provision 6 shall be amended so that immediately before the word “amendments” the word “written” shall be inserted.
4. Provision 8 shall include a second sentence which states: “Time shall be of the essence in all circumstances with respect to the completion of the *Work* and adherence to the construction schedule.”
5. Provision 11 shall be amended to add “, as amended by these Supplementary Terms and Conditions.”

6. Provision 20 shall be amended to add after the first sentence. "Notwithstanding any other provision in this agreement, in no event will any party certify that there is *Substantial Performance of the Work* unless and until the *Owner* is able to use the site and the building for its intended purpose and an occupancy permit has been issued."

General Conditions of the Stipulated Price Contract

Part 1 General Provisions

7. Provision 1.1.7.1 shall be deleted in its entirety and replaced with:

“.1 the order of priority of documents, from highest to lowest, shall be

- the Instructions to Bidders (if applicable)
- these Supplementary Terms and Conditions
- the Agreement between *Owner* and the *Contractor* (CCDC-2 2008)
- the *Drawings*
- the Definitions
- technical *Specifications*
- Division 1 of the *Specifications*
- material and finishing schedules”

Part 2 Administration of the Contract

8. Added to provision 2.2.4 shall be the following: “*Contractor* agrees to forward a copy of any progress application directly to the *Owner* on the same date as provided to the *Consultant*.”
9. Deleted from provision 2.2.7 shall be the words “Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER”.
10. Added to provision 2.2.11 shall be the following: “If a request is made by the *Contractor* for a Claims For a Change in Contract Price in accordance with GC 6.6 and it is the finding of the *Consultant* that such charge is not justified, then any additional costs of the *Consultant* in review of the Change in Contract Price shall be borne and paid for by the *Contractor*.”
11. Added to provision 2.2.16 shall be the following: “In no event will a building be certified substantially complete if the *Owner* is unable to use the building and/or the site for its intended purpose and unless and until an occupancy permit can be applied for.”
12. The first sentence of 2.3.2 shall be deleted and replaced with the following:
“2.3.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant*’s instructions, or by the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* and the *Owner* reasonable notification of when the work will be ready for review and inspection.”
13. The following shall be added to end of provision 2.3.3, “and with one copy of said certificates and inspection reports to the *Owner*. “

Part 3 Execution of the Work

14. The following shall be inserted as provision 3.1.3 “3.1.3. The *Contractor* agrees to use its best efforts to deploy the most cost effect methods in conformity with the standards provided in the

Contract Documents in execution of the *Work*, which obligation applies cash allowances, change orders and any other costs or services provided by the *Contractor* which are either explicitly or implicitly included in the *Contract Documents* and/or *Work*.”

15. Added to end of provision 3.2.3.3 shall be the following: “Failure by the *Contractor* to so report shall invalidate any claims against the *Owner* by reason of the deficiencies in the work of other contractors or *Owner’s* own forces except those deficiencies not then reasonably discoverable.”
16. Provision 3.4.1 shall be deleted and replaced with the following:

“The *Contractor* shall review the *Contract Documents* and shall promptly report to the *Owner’s* Project Manager any error, inconsistency or omission discovered. In making such review, the *Contractor* shall exercise the skill and care as would a reasonable and prudent *Contractor* in the circumstances. The *Contractor* shall not be liable for damages or costs resulting from such errors, inconsistencies or omissions discovered but shall not proceed with the *Work* affected until receipt of corrected or missing information from the *Consultant*. If the *Contractor* proceeds with knowledge of any error, inconsistency or omission, then the *Contractor* shall be liable for all damages related thereto.”
17. The following shall be added as 3.5.2:

“3.5.2. The *Contractor* will perform the *Work* in compliance with the construction schedule/*Contract Time*. If, for any reason, the *Work* falls behind the construction schedule/*Contract Time* for the *Work*, set forth in the construction schedule/*Contract Documents*, the *Contractor* shall as a part of the *Work* either:

 - .1 if in accordance with the *Contract Documents* the delay entitles the *Contractor* to a time extension, then the *Contractor* shall forthwith prepare and deliver to the *Consultant* and *Owner’s Project Manager* a revised construction schedule/*Contract Time* to the reasonable satisfaction of both the *Consultant* and *Owner’s Project Manager* and the *Owner* indicating the revised dates for the remaining activities of the *Work*; or
 - .2 if in accordance with the *Contract Documents* the delay does not entitle the *Contractor* to a time extension or the delay is caused by the acts or omissions of the *Contractor*, then the *Contractor* shall take such steps as required (including without limitation working overtime or hiring additional subcontractors) to bring the *Work* back into conformity with the construction schedule, at the *Contractor’s* sole cost.

Failure to comply with the requirements of this section shall be deemed to be a default under the Contract and shall entitle the *Owner* the right to hire additional trades to complete the *Work*, at the *Contractors* cost, to bring the construction schedule/*Contract Time* into conformity.
18. Add to provision 3.7.2 the following:

“The *Contractor* shall not employ any *Subcontractor*, or change *Subcontractor*, without the written approval of the *Owner*, which approval will not be unreasonably withheld.”
19. Provision 3.7.4 shall be deleted in its entirety.
20. The following shall be added as provision 3.8.4:

“3.8.4 Immediately upon receiving from either the *Consultant*, *Owner’s Project Manager’s* or the *Owner* a written notice stating the *Consultant’s*, *Owner’s Project Manager’s* or the *Owner’s* reasonable objection (as the case may be) to the work or conduct of any superintendent, foreman or work on the *Project* site, the *Contractor* will remove such persons from the *Project* site within 48 hours.”
21. In GC 3.9.1, following the words “Contract Documents”, in the first line, insert “reviewed shop drawings”.

22. Added to the end of provision 3.10.1 shall be the following: “or as reasonably requested by the *Consultant* and/or *Owner*.”
23. Add to the end of provision 3.10.5 the following: “The shop drawings provided by the *Contractor* will be complete and show the entire extent of the relevant portion of the *Work*.”
24. The following shall be added as provision 3.10.13:
“Upon *Substantial Performance of the Work*, the *Contractor* will submit all reviewed and revised shop drawings to the *Owner* as a permanent record of the *Work*. As of the date of issuance of the final certificate for payment, the shop drawings will be retained by the *Owner* as the *Owner’s* property.”

Part 4 Allowances

25. Added to the end of the second sentence in provision 4.1.1 shall be the following: “or shall be expended as the *Owner* directs through the *Consultant* or *Owner’s Project Manager*.”
26. The following shall be added after the first sentence in provision 4.1.2:
“Cash allowances cover the net cost to the *Contractor* of services, *Products*, construction machinery and equipment, freight, unloading, handling, installation and other authorized expenses incurred in performing the work stipulated under the cash allowances.”

Part 5 Payment

27. Provisions 5.1.1 and 5.1.2 shall be deleted in their entirety and both parties agree that the *Contractor* shall not be entitled to any financial information regarding the *Owner* except what information is publicly available.
28. Provision 5.2.7 shall be deleted in its entirety and replaced with the following:
“No claim shall be made for any *Product* which is delivered to the *Place of the Work* until it is incorporated into the *Work* and any claim for *Products* which are incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to estimate the value of such *Products*. The *Contractor* agrees to provide such evidence as the *Owner* may reasonably require to establish that the *Contractor* has paid all subcontractors and suppliers for all *Work* performed up to the date of the previous applications for payments”
29. In provision 5.3.1.2 the reference to the number “10” shall be deleted and replaced with the number “15”.
30. Provision 5.3.1.3 shall be deleted in its entirety and replaced with the following:
“.3 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 30 calendar days after the receipt by the *Owner* of the application for payment or the last day of the monthly payment period for which the application for payment is made.”
31. Added to the end of provision 5.4.3 shall be the following: “All parties agree that time shall be of the essence in completion of the *Work* and where possible all *Work* shall be completed within 30 days of *Substantial Performance*. If the *Contractor* fails to complete the *Work*, including all deficiencies within said period of 30 days, then the *Owner* shall have the right to complete the *Work* and to set-off the costs it incurs from any amount owing to the *Contractor* including deducting such amounts from any deficiency holdback.”

32. The following shall be added as provision 5.4.4:
“5.4.4 The *Owner* may set off from payments owing to the *Contractor* costs, expenses and damages that the *Owner* incurs or suffers as a result of the *Contractor*’s wrongful or negligent acts or omissions or the *Contractor*’s delays or for which the *Owner* incurs on the *Contractor*’s behalf.”
33. The following shall be added as provision 5.4.5:
“5.4.5 The *Owner* may, in addition to other holdbacks as provided by the *Contract Documents*, hold back an amount equal to any lien which has been filed with respect to the *Work*, plus 25% as security for costs. The *Owner* may, at its option, after five days written notice to the *Contractor*, pay such amount into court to discharge the lien. If the lien is discharged without payment of the holdback into court, then the *Owner* shall pay such holdback to the *Contractor*, without interest.”
34. The following shall be added as provision 5.4.6:
“5.4.6 In addition to the builders lien holdbacks, the *Owner* may retain holdbacks to cover deficiencies in the *Work*, in an amount equal to twice the amount the *Consultant or Owner’s Project Manager* estimates as the total cost to complete the deficiencies until such time as the deficiencies are complete.”
35. 5.5.3 shall be deleted in its entirety.
36. In provision 5.7.4 the reference to the number “5” shall be deleted and replaced with the number “30”.
37. The following shall be added as provision 5.7.5:
“5.7.5 The *Consultant or Owner’s Project Manager* will not issue the final certificate for payment until the *Contractor* has submitted a release from the applicable Workers Compensation Board covering work of the *Contract* for completion, plus inspections and approval certificates for all authorities with jurisdiction.”
38. The following shall be added as provision 5.7.6:
“5.7.6 The issuance of a final certificate for payment in no way relieves the *Contractor* from correcting defects or deficiencies, at it’s sole cost, not apparent at the time the certificate is issued.”

Part 6 Changes in the Work

39. Provision 6.3.7.3 shall be deleted in its entirety and is not an expense paid by the *Owner*.
40. The first sentence of 6.3.7 shall be deleted in its entirety and replaced with “The cost of performing the work attributable to the *Change Directive* shall be limited to the actual direct costs attributable to such work at the *Project* site and without any duplication shall be as follows:”
41. Provisions 6.3.7.3, 6.3.7.6 and 6.3.7.8 shall be deleted.
42. Provision 6.3.7.5 shall be deleted and replaced with “materials, supplies, *Temporary Work*.”
43. In provision 6.4.1.2 the reference to the number “5” shall be deleted and replaced with the number “2”.
44. Added to the end of provision 6.4.3 shall be the following: “and under such circumstances the *Contractor* agrees to be responsible for the costs of the *Consultant’s* investigation and review.”

45. Provision 6.5.1 shall be deleted and replaced with the following:
“6.5.1. If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Owner*, *Consultant*, other contractor or anyone employed or hired by them, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended by such reasonable time as the *Owner’s* Project Manager may decide in consultation with the *Contractor*.”
46. The following words shall be deleted from the end of provision 6.5.2:
“The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as a result of such delay.”
47. Provision 6.5.3 .1 shall be deleted in its entirety and replaced with the following:
“.1 Intentionally Deleted.”
48. The following words shall be deleted from the second to last sentence in provision 6.5.3:
“unless such delays result from actions by the *Owner*, *Consultant*, or anyone employed or engaged by them directly or indirectly.”
49. Provision 6.5.4 shall be deleted in its entirety and replaced with the following:
“6.5.4 No extension shall be made for delay unless written notice of claim is given to the *Consultant* and the *Owner’s* Project Manager within forty-eight hours (48) of its commencement, providing that in the case of a continuing cause of delay only one claim shall be necessary. The notice of claim with respect to any delay, shall indicate the reasons for such delay, and the best estimate of the *Contractor* as to its likely duration and its likely effect on the time to complete the work. Upon termination of the circumstances giving rise to the delay, the *Contractor* shall give to the *Owner’s* Project Manager within forty eight (48) hours written notice of the termination of the delay.”
50. Provision 6.5.5 shall be deleted in its entirety.
51. Intentionally Deleted.
52. The following provision shall be added as 6.5.6:
“6.5.6 In the event of delay in performance of any portion or the *Work*, the *Contractor* shall use its best efforts to rearrange and reschedule the *Work* and any other work so as to minimize any ultimate delay in completion of the *Work*.”
53. The following provision shall be added as 6.5.7:
“6.5.7 The *Contractor* shall be responsible for the care, maintenance and protection of the *Work* at all times during the *Project* including in the event of any shutdown or stoppage.”
54. The following provision shall be added as 6.5.8:
“The *Owner* may, at any time, give written direction to the *Contractor* for the *Contractor* to accelerate the *Work*, in which event the *Contractor* shall use reasonable best efforts to proceed with the *Work* more quickly, which may include hiring additional labour and equipment and/or working additional hours or shifts. If at the time of such direction by the *Owner*, the *Contractor* is behind the approved construction schedule due to a cause within the control of the *Contractor*, then the cost of such acceleration shall be borne by the *Contractor*. If at such time the *Contractor* is not behind the construction schedule, or is not behind due to a cause within the *Contractor’s* control, then the cost of such acceleration shall be for the account of the *Owner*.”

Default Notice

55. Provision 7.1.2 is deleted in its entirety and replaced with the following:
“7.1.2 If the *Contractor* should neglect to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract*, the *Owner’s* Project Manager may notify the *Contractor* in writing that of default of their contractual obligations and instruct the *Contractor* to correct the default within five (5) working days immediately following the receipt of such notice.”
56. The word “or” at the end of provision 7.1.4.1 is deleted and the word “and” is substituted therefore.”

Contractor’s Right to Suspend the Work or Terminate the Contract

57. Provision 7.2.2 is deleted in its entirety and replaces with the following:
“7.2.2 If the *Work* should be stopped or otherwise be delayed for a period of thirty (30) days or more under an order or a court of other public authority and providing that such order was not issued as a result of any act, omission or fault of the *Contractor* or anyone directly or indirectly employed or engaged by the *Contractor*, the *Contract Time* shall be extended for such reasonable time as the *Work* was delayed.”
58. Provision 7.2.3.1 is deleted in its entirety.

Part 8 Dispute Resolution

59. It shall be added to provision 8.1.1 the following: “in giving its opinion or providing any certificate under the terms of this agreement, the *Consultant* shall use the skill, care and knowledge as would a prudent architect or engineer as the case may be in the circumstances.
60. Provision 8.1.2 shall be deleted and replaced with the following:
“If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out provisions 8 shall apply.”
61. Those provisions provided for in 8.2 (provisions 8.2.1 through to and including 8.2.8) shall be deleted in their entirety. In their place shall be the following:
“8.2 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.
- 8.2.1 In the case of any *bona fide* dispute or difference arising between the parties hereto, the parties agree to attempt to resolve such dispute or difference forthwith and in good faith. In the event that the parties are unable to so resolve such *bona fide* dispute or difference, subject to the respective rights of the parties under this agreement, such dispute or difference shall be determined by arbitration as provided for in the *Arbitration Act, 1991* (Ontario) as amended from time to time. Arbitration proceedings hereunder shall be commenced by the party desiring arbitration (“**Initiating Party**”) delivering to the other party (the “**Responding Party**”) a notice referring such dispute or difference to arbitration and the following provisions shall apply to such arbitration:
- 8.2.2 Upon notice from the Initiating Party to the Responding Party, the *Owner* and the *Contractor* shall meet in the *Place of the Work* and attempt to appoint a single arbitrator. In such an event, said single arbitrator shall constitute the Board of Arbitration for the purposes of this Section. If the parties are unable to agree upon a single arbitrator then, upon notice given by either party requiring the appointment of a panel of arbitrators, the *Owner* and the *Contractor*

shall each appoint one person to a Board of Arbitration and both such persons shall be appointed within fifteen (15) days of the date of a notice of such required determination being given by one of the *Owner* and/or the *Contractor* to the other;

8.2.3 Unless there is only a single arbitrator, the two persons so appointed shall, within fifteen (15) days of the date of the appointment of the last appointed person, agree upon and appoint a third person. The three persons so appointed shall constitute the Board of Arbitration with the third person appointed being the chairperson.

8.2.4 The Board of Arbitration shall, within fifteen (15) days following its constitution, or such further time as the *Owner* and the *Contractor*, each party acting reasonably will without delay, determine is required, convene a hearing affording the *Owner* and the *Contractor* the opportunity to be heard and within two (2) months of the completion of the hearing (subject to extension due to unforeseen circumstances) shall make a determination with respect to the dispute;

8.2.5 The decision of the Board of Arbitration shall be based on the provisions of the Instruction to Bidders, the applicable drawings, this CCDC2-2008 as amended by these Supplementary Terms and Conditions as well as other relevant information and on the evidence adduced at the hearing referred to in Subsection. The conclusions of the Board of Arbitration shall be supported by written reasons. The record shall include all exhibits filed with the Board of Arbitration. Forthwith after it is made, the decision of the Board of Arbitration shall be given to the *Owner* and the *Contractor*;

8.2.6 The decision of the single arbitrator or the majority of the arbitrators comprising the Board of Arbitration, as the case may be, shall be final and binding upon the *Owner* and the *Contractor*, except to the extent it may be made the subject of an application to set it aside in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), as amended from time to time, or in accordance with common law;

8.2.7 The arbitrator or arbitrators appointed to act as arbitrators must be qualified by education and training to pass upon the particular question in dispute or difference arising between the Landlord and the Tenant. Furthermore, no person shall be appointed to the Board of Arbitration who is then employed by the *Owner* or the *Contractor* or their affiliates.

8.2.8 The Landlord and the Tenant shall ensure that the Board of Arbitration will have access to such records of the parties as are reasonably necessary;

63. Provision 8.3.1 shall be deleted in its entirety and replaced with the following:

"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 notice of its intention to arbitrate the matter in accordance with provision 8 herein."

64. Provision 8.3.2 shall be deleted in its entirety and replaced with the following:

"Nothing in Part 8 of the General 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 the party may have under paragraphs 8.2 herein to proceed by way of arbitration to adjudicate the merits of the claim upon which such lien is based."

Part 9 Protection of Persons and Property

- 65. Add to the end of provision 9.1.1.1 the following “for which the *Consultant* is unaware.”
- 66. Delete from provision 9.1.1.2 the words “other contractors”.
- 67. Add to the end of provision 9.2.1 “The parties agree that the *Contractor* shall be responsible for securing the site when commencing the *Work* in order to prevent any damage or contamination to the *Place of the Work*.”

Toxic Substances

- 68. Provisions 9.2.2, 9.2.3 and 9.2.4 shall be deleted in their entirety.
- 69. In provision 9.2.5 the words “and which were not disclosed by the *Owner* or which were disclosed by have not been dealt with as required under paragraph 9.2.4,” shall be deleted.
- 70. Provision 9.5.3.4 shall be deleted in its entirety.

Part 10 Governing Regulations

- 71. At the discretion of the Owner's Project Manager, both parties agree that the *Contractor* and not the *Owner* (as stated in provision 10.2.2.) shall be responsible to have secured and applied for all building permits required to complete the work.
- 72. The words “and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit.” shall be deleted from provision 10.2.3.
- 73. Provision 10.2.7 shall be deleted in its entirety.

Worker's Compensation

- 74. The following shall be added as provision 10.4.3
“10.4.3 The *Contractor* agrees that it shall at its own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is subject to this *Contract*. The *Contractor* agrees that the *Owner* has the unfettered right to set off the amount of unpaid premiums and assessments for such Workers' Compensation Board Coverage against any monies owing by the *Owner* to the *Contractor*. The *Owner* shall have the right to withhold payment under this contract until such premiums, assessments or penalties in respect of work done or serviced performed in fulfilling this contract have been paid in full. The *Contractor* is responsible for ensuring that there any applicable safety program, notice of works, and all safety rules and regulations are strictly observed during the performance of this *Contract* by the *Contractor* and by all its employees, workers, material men, subcontractors and other engaged in the performance of this *Contract*. The *Contractor* shall provide the *Owner* with registrations numbers and letters confirming that the *Contractor* is registered and in good standing and that all assessment have been paid to date thereof prior to the *Owner* having to may any payment under the *Contract*. The *Contractor* shall indemnify the *Owner* and hold harmless the *Owner* from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related a breach of this clause.”

Part 11 Insurance and Contract Security

75. Provisions 11.1.1, 11.1.1.1 and 11.1.1.2 are deleted and replaced with the following:

“11.1.1 Without restricting the generality of GC 12.1 INDEMNIFICATION, the *Contractor* shall provide, maintain and pay for the following insurance coverages:

.1 General Liability insurance covering hazards not covered by the *Owner*-arranged Wrap Up General Liability and “All Risks” Builder’s Risk insurance policies, which is acceptable to the *Owners* and shall be in the joint names of the *Contractor*, the *Owner* and the *Consultant* with limits of not less than two million dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, with a deductible amount not in excess of one thousand dollars (\$1,000.00). The insurance shall preclude subrogation claims by the insurer against anyone insured thereunder, and shall contain a cross liability and severability of interests endorsement. The insurance shall include coverage for:

- (a) off-site work, premises and operations liability.
- (b) Products and completed operation liability.
- (c) Blanket written contractual liability.
- (d) Cross liability.
- (e) Vertical transportation liability including elevators, machine hoists, mobile cranes and
- (f) climbing cranes.
- (g) Contingent employer’s liability.
- (h) Personal injury liability arising out of false arrest, detention or imprisonment or malicious prosecution, libel, slander or defamation of character, invasion of privacy, wrongful eviction or wrongful entry.
- (i) Liability with respect to non-owned licensed vehicles.

All such insurance shall be maintained continuously from commencement of the work until twelve (12) months following the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, or the Certificate of Total Performance (if applicable) of the *Work* is issued, whichever is later and with respect to completed operations, coverage for a period of *Work* as set out in the Certificate of Total Performance of the *Work*, and thereafter to be maintained for a further period of four (4) years.

.2 Automobile Liability Insurance and Contractor’s Equipment Insurance:

Automobile Liability Insurance acceptable to the *Owner* in respect of licensed vehicles will have limits of not less than one million dollars (\$1,000,000.00) inclusive per occurrence for bodily injury, death and damage to property and Contractor’s Equipment Insurance will have a limit of not less than one million dollars (\$1,000,000.00). Such insurance shall provide the *Owner* with not less than fifteen (15) days written notice in advance of any proposed cancellation, change or amendment restricting coverage and shall be subject to a waiver of subrogation by the insurer against the *Owner*.”

76. The following sentence shall be added to 11.1.1.3 “Such insurance shall be in the joint names of the *Contractor*, the *Owner* and the *Consultant* where they have an interest in the use and operation of such aircraft or watercraft. The insurance shall preclude subrogation claims by the insurer against anyone insured thereunder.”

77. Provision 11.1.1.4 shall be deleted and replaced with the following:

“.4 Property and Boiler Insurance: All Risks Property Insurance which is acceptable to the *Owner* shall be in the joint names of the *Contractor*, the *Owner* and the *Consultant* insuring not less than the sum of the amount of the contract price and the full replacement value of the

products that are specified to be provided by the Owner for incorporation into the work. Such insurance shall preclude subrogation claims by the insurer against anyone insured thereunder. The deductible amount under such insurance shall not exceed one thousand dollars (\$1,000.00) per occurrence.

Boiler Insurance acceptable to the Owner which shall insure the interests of the Contractor, the Owner, and the Consultant who shall be named insured, for not less than the replacement value of all boilers and pressure vessels forming part of the work. Such insurance shall preclude subrogation claims by the insurer against anyone insured thereunder. The deductible amount under such insurance shall not exceed one thousand dollars (\$1,000.00) per occurrence.

The policies shall provide that, in the event of a loss or damage, payment shall be made to the Owner and the Contractor as their respective interests may appear. The Contractor shall act on behalf of the Owner and itself for the purpose of adjusting the amount of such loss or damage is determined, the Contractor shall proceed to restore the work. The Contractor shall be entitled to receive from the Owner in addition to the amount due under the Contract, the amount at which the Owner's interest in restoration of the work has been appraised, such amount to be paid as the restoration of the work proceeds and in accordance with the requirements of GC 5

APPLICATIONS FOR PAYMENT."

1. The following is added as 11.1.9

"The *Contractor* shall also be responsible:

- i) to ensure, unless specified otherwise, that the duration of each insurance policy shall be from the date of commencement of the work until forty-eight (48) months after the date of Total Performance of the Work unless otherwise approved by the *Owner*;
- ii) for all deductible amounts under the required insurance coverage;
- iii) to impose upon each sub-contractor the same responsibilities and obligations imposed upon the Contractor under these requirements;
- iv) to ensure each sub-contractor is current with W.S.I.B;
- v) to ensure the *Contractor* has a Health & Safety Construction Policy/Program in place.;
- vi) for payment of all deductibles under the *Owner's* Wrap Up General Liability and "All Risks" Builder's Risk insurance policies, each of which has a maximum deductible of \$10,000.00;
- vii) to ensure all policies required to be maintained by the *Contractor* shall contain an endorsement to provide all named insureds and McDonald's Restaurants of Canada Limited with at least thirty (30) days prior written notice of any proposed change of coverage or cancellation."

Part 12 Indemnification, Waiver of Claims and Warranty

79. Provision 12.1.1 shall be deleted in its entirety and replaced with the following:

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

.1 caused by:

- (1) the negligent acts or omissions of the *Contractor* or anyone from whom at law the *Contractor* is responsible; or
- (2) a failure of the *Contractor* to fulfill its terms and conditions; and

.2 made by *Notice in Writing* within a period of 6 years from the date *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 limitations statute of the province or territory of the *Place of Work*.

The *Owner* does not hereby waive any other right it may have for claims.”

80. Provision 12.1.2 shall be deleted in its entirety and replaced with the following: “The obligation to indemnify provided for herein is without limit.”
81. Provision 12.2.3, 12.2.4 and 12.2.5 shall be deleted in their entirety and the *Owner* retains all rights to claim as against the *Contractor*. All other references to these sections in this document and the *Contract Documents* shall be so interpreted so as to take effect to these deletions.
82. Provision 12.3.6 shall be deleted and replaced with the following: “12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents* or in any other manner whatsoever as agreed to by the parties. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. *Contractor’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.”

I accept these terms:

Contractor Signature

Date

Print Name & Title