

**SUPPLEMENTARY CONDITIONS**

CCA Document 1 Stipulated Price Subcontract – 2021 “Agreement between Contractor and Subcontractor”, “Definitions”, and “Subcontract Conditions” are supplemented, modified and amended as set out in these Supplementary Conditions. These Supplementary Conditions form part of the *Subcontract Documents*.

**1.1 AMENDMENTS TO THE AGREEMENT**

.1 **ARTICLE 1A – WORK TO BE PERFORMED**, amend to add the following as paragraph 1.3:

“1.3 Time is of the essence in performance of the *Subcontract Work* required by the *Subcontract Documents*.”

.2 **ARTICLE 2A – CONFLICT BETWEEN THE PRIME CONTRACT AND SUBCONTRACT**, amend to delete:

- Supplementary Conditions of the *Subcontract*, if any

.3 **ARTICLE 2A – CONFLICT BETWEEN THE PRIME CONTRACT AND SUBCONTRACT**, amend to add:

- the payment provisions contained in Article 6 – PAYMENT of the *Subcontract*

.4 **ARTICLE 3A – SUBCONTRACT DOCUMENTS**, amend to add the following as Subcontract Documents:

- the Supplementary General Conditions of the *Prime Contract*, if any
- the Supplementary Conditions of the *Subcontract*

.5 Delete **ARTICLES 1B, 2B and 3B** in their entirety.

.6 **ARTICLE 4 – SCHEDULE**, delete paragraph 4.1 in its entirety and replace it with the following:

“4.1 The *Subcontractor* shall perform the *Subcontract Work* in accordance with a Schedule provided by the *Contractor* on or before the time of signing of this *Subcontract*. The *Contractor* may reasonably adjust any Schedule or specified timing during the course of the *Subcontract Work* after consulting with the *Subcontractor*.”

.7 **ARTICLE 4 – SCHEDULE**, add new paragraph 4.2 as follows:

“4.2 If the *Contractor* determines, and provides the *Subcontractor* with *Notice in Writing*, that the rate of progress of the *Subcontract Work* is insufficient to enable the *Subcontract Work* to be performed within the *Subcontract Time*, the *Subcontractor* shall promptly accelerate the performance of the *Subcontract Work* to ensure that the *Subcontract Work* shall be performed and completed within the *Subcontract Time*.”

.8 **ARTICLE 5 – SUBCONTRACT PRICE**, amend to add the following as paragraph 5.6:

“5.6 The *Subcontract Price* includes all of the *Subcontractor's* profit and the *Subcontractor's* general

office overhead.”

.9 **ARTICLE 6 – PAYMENT**, delete paragraph 6.2 in its entirety and replace it with the following:

“6.2 The *Subcontractor* shall make applications for payment together with supporting sworn statements and other documents that are required by the *Subcontract Documents* on or before the 20th day of each month (herein called the Submission Date) to the *Contractor* for approval and due processing. The amount claimed shall be for the value, proportionate to the amount of the *Subcontract*, of *Subcontract Work* performed and *Products* delivered to the *Place of Work* up to the last day of the month. The *Contractor* shall pay the *Subcontractor*, no later than (i) 30 calendar days after the Submission Date or (ii) 10 calendar days after the date of the *Consultant’s* certificate for payment or (iii) the date provided for in paragraph 6.3.2, whichever is later, or as required by *Payment Legislation*, 90% of the amount applied for or such other amount as the *Contractor* or the *Consultant* determines to be properly due. Where the *Contractor* or the *Consultant* makes any changes to the amount of the applications for payment as submitted by the *Subcontractor*, the *Subcontractor* shall be advised promptly in writing by the *Contractor* of changes and given the opportunity to defend the *Subcontractor’s* submission without delay.”

.10 **ARTICLE 6 – PAYMENT**, delete paragraph 6.3 in its entirety and replace it with the following:

“6.3 In the event that the *Consultant* fails to issue any certificate upon which payment shall become payable to the *Contractor* or the *Owner* fails to make a payment within the times prescribed in the *Prime Contract*:

.1 The *Contractor* shall immediately inform the *Owner* of the *Owner’s* default as provided for by the terms of the *Prime Contract*, concurrently and no later than within two *Working Days* advise the *Subcontractor* in writing of such default and provide to the *Subcontractor* a copy of any and all notices of default delivered by the *Contractor* to the *Owner*.

.2 In the event that the *Contractor* has complied with the provisions of paragraph 6.3.1, the time for payment provided for in paragraph 6.2 of this Article shall be extended from the date otherwise provided for in paragraph 6.2 of this Article until 10 calendar days after the date that the *Contractor* receives payment from the *Owner*, or as required by the *Payment Legislation*.”

.11 **ARTICLE 6 - PAYMENT**, delete paragraph 6.4 in its entirety and replace with the following:

“6.4 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 *Subcontractor Work* and for which the *Contractor* or the *Owner* might in any way be held responsible have been paid in full, except for the holdback amounts to be payable out of the funds to be paid to the *Subcontractor* pursuant to this paragraph 6.4 or as an identified amount in dispute, the amount withheld from progress payments made pursuant to paragraph 6.1.1 of this Article and which is payable pursuant to paragraph 6.1.2 of this Article is due and payable, subject to the requirements of any *Payment Legislation*, no later than (i) 10 *Working Days* following the expiration of the holdback period stipulated in the *Builders Lien Act*, or (ii) 10 *Working Days* after the *Contractor* has received

payment of such amount from the *Owner*, whichever is later. The *Contractor* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Subcontract Work*

or, if permitted under the *Builders Lien Act*, other third party monetary claims against the *Subcontractor* which are enforceable against the *Contractor* or the *Owner*.”

.12 **ARTICLE 6 - PAYMENT**, delete paragraph 6.5 in its entirety and replace it with the following:

“6.5 Interest

- .1 Should either party fail to make payments as they become due under the terms of this *Subcontract* or in an award by arbitration or court, interest on such unpaid amounts at 2% per annum above the prime rate shall also become due and payable until payment. The prime rate shall be the rate of interest quoted by Royal Bank of Canada for prime business loans as it may change from time to time.
- .2 On the settlement of any claim in dispute that is resolved either pursuant to Part 8 of the Subcontract Conditions - DISPUTE RESOLUTION or otherwise, interest, if any, shall be paid in accordance with the terms of the settlement or other resolution of the claim.”

.13 **ARTICLE 6 – PAYMENT**, add new paragraph 6.6 as follows:

“6.6 Upon providing *Notice in Writing* to the *Subcontractor*, the *Contractor* may withhold all or any portion of any payment to the extent necessary to protect the *Contractor* or the *Owner* from any actual or cost, damage, expense or loss arising from:

- .1 the unsatisfactory progress of the *Subcontractor* in performing the *Subcontract Work* as determined by the *Consultant* acting reasonably and in good faith;
- .2 any defects, deficiencies or uncompleted *Subcontract Work*, in the amount of twice the estimated cost of correcting such defects, deficiencies or uncompleted *Subcontract Work*;
- .3 any liens against the Project or any amounts in respect of which the *Contractor* or the *Owner* has received notice of a trust claim under the *Builders Lien Act* or reasonable evidence of the filing of a lien relating to the *Subcontract Work* or any claims of which the *Contractor* is aware for which the *Contractor* or the *Owner* may become responsible, in the aggregate amount required to discharge such liens or claims, provided such liens do not result from a breach of the *Contractor*’s payment obligations under the *Subcontract*;
- .4 the failure of the *Subcontractor* to pay any amounts properly due and payable by the *Subcontractor* to third parties in connection with the performance of the *Subcontract Work*;
- .5 unsatisfied and undisputed claims for costs, damages, expenses or losses caused by the *Subcontractor* or its *Sub-Subcontractors* to the *Subcontract Work* or to the property of the *Owner*, another contractor, or to anyone employed at the Place of the Work in connection with the Work, including for greater certainty, wages, expenses or other amounts payable to any person employed for the performance of the Work;

- .6 the actual or anticipated cost to of preparing and producing the documents required to be delivered by the Subcontractor to the Contractor pursuant to the Subcontract;
- .7 any other monetary claims against the *Subcontractor* which are enforceable against the *Contractor of the Owner* including garnishing orders;
- .8 security for any actual or potential liability to others for costs, damages or expenses resulting from the *Subcontractor's* performance of the *Subcontract Work*; and
- .9 any other amounts which the *Contractor* is authorized to withhold or deduct under the terms of the *Subcontract*."

.14 **ARTICLE 7 – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**, delete paragraph 7.4 and replace it with the following:

"7.4 A *Notice in Writing* sent by any form of electronic communication will not be deemed to have been received and will not be effectively given unless actually received."

## 1.2 AMENDMENTS TO THE DEFINITIONS

The following definitions are added, modified or replaced, as set out below:

### **Builders Lien Act**

*Builders Lien Act* means the *Builders Lien Act* (British Columbia), as amended from time to time. The *Builders Lien Act* is the lien legislation applicable to the *Place of the Work*, for the purpose of the *Subcontract*.

### **Confidential Information**

*Confidential Information* shall have the meaning set forth in paragraph 14.1.1 of SCC 14.1-CONFIDENTIALITY.

### **Value Added Taxes**

The definition of "Value Added Taxes" is deleted and the following is substituted therefor:

*Value Added Taxes* means such sum as shall be levied upon the *Subcontract Price* by the Federal Government and is computed as a percentage of the *Subcontract Price* and includes Goods and Services Tax (GST) and any similar tax, the collection and payment of which have been imposed on the *Subcontractor* by tax legislation. *Value Added Taxes* excludes any such sum as shall be levied on the *Subcontract Price* by the British Columbia Government on account of the tax under the Provincial Sales Tax Act (British Columbia) and any regulation thereunder (PST), and the *Subcontract Price* is inclusive of all applicable PST.

## 1.3 AMENDMENTS TO THE SUBCONTRACT CONDITIONS

### **SCC 1.1 – SUBCONTRACT DOCUMENTS**

.1 Delete 1.1.1 in its entirety and replace it with the following:

"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. The *Subcontractor* represents and agrees that it has examined all of the *Subcontract Documents* to fully acquaint itself with the complete scope and requirements of the *Subcontract Work* prior to the execution of the *Subcontract*, and that no claim for a change in the *Subcontract Work* shall be accepted as a result of failure of the *Subcontractor* to do so or in respect of any matter disclosed by or reasonably inferable from the *Subcontract Documents*. It is not intended, however, that the *Subcontractor* shall supply products or perform work not consistent with, not disclosed by, or not reasonably inferable from the *Subcontract Documents*."

.2 Delete subparagraph 1.1.5.2 in its entirety.

.3 Add new subparagraphs 1.1.5.7 and 1.1.5.8 as follows:

" .7 Architectural drawings shall govern over structural, mechanical or electrical drawings for general work.

.8 More stringent reference standards and *Specifications* shall govern over less stringent reference standards and *Specifications*."

.4 Add new paragraph 1.1.10 as follows:

"1.1.10 The *Contractor* shall provide the *Subcontractor* with an electronic copy of the *Subcontract Documents*."

.5 Add new paragraph 1.1.11 as follows:

"1.1.11 The location of fixtures, outlets, conduit, piping and any other locations shown or specified but not dimensioned in any *Subcontract Documents* shall be considered approximate. The actual location shall be as approved by the *Consultant* and as required to suit job conditions."

## SCC 1.2 – ASSIGNMENT

.1 Amend paragraph 1.2.1 to delete “,which consent shall not be unreasonably withheld”.

## SCC 2.1 – SUPPLEMENTAL INSTRUCTIONS

.1 Add new paragraph 2.1.2 as follows:

"2.1.2 The *Subcontractor* shall be responsible for requesting any additional instructions or clarifications from the *Contractor* which are needed for the performance of the *Subcontract Work* and shall request such instructions or clarifications and use its best efforts to avoid any delay of the *Subcontract Work*. The *Contractor* shall normally require seven (7) *Working Days* to adequately consider a request and provide a response, except for requests critical to the construction schedule. The *Subcontractor* shall schedule such requests accordingly."

**SCC 2.2 – REVIEW AND INSPECTION OF THE SUBCONTRACT WORK**

- .1 Add new paragraph 2.2.8 as follows:

“2.2.8 Acceptance of the *Work* by the *Owner, the Consultant and the Contractor* does not relieve the *Subcontractor* of its responsibility for correcting deficiencies, including any which are missed at the time of drawing up the deficiency list, or hidden deficiencies, which become apparent at a later date.”

**SCC 2.3 – DEFECTIVE WORK**

- .1 Amend the 3<sup>rd</sup> line of paragraph 2.3.1 to insert the phrase “or its *Sub-Subcontractors*” after the word “*Subcontractor*”.
- .2 Amend paragraph 2.3.3 to delete the phrase “the difference in value between the work as performed and that called for by the *Subcontract Documents*”, and replace it with the phrase “the value of such work as is necessary to correct any non-compliance with the *Subcontract Documents*.”
- .3 Add new paragraphs 2.3.4 and 2.3.5:

“2.3.4 If the *Subcontractor* does not promptly correct defective work, the *Contractor* may correct such defective work at the expense of the *Subcontractor* and may invoice the *Subcontractor* for the cost of correcting such defective work (which cost the *Contractor* may set off and deduct from any amount owed by the *Contractor* to the *Subcontractor*).

2.3.5 The *Contractor* may require that the *Subcontractor* remove any defective work that has been rejected by the *Consultant* as failing to conform to the *Subcontract Documents*. If the *Subcontractor* does not promptly remove defective work, the *Contractor* may remove such defective work at the expense of the *Subcontractor* and may invoice the *Subcontractor* for the cost of removing and storing such defective work. If the *Subcontractor* does not pay the cost of removing and storing such defective work, the *Contractor* may, upon ten (10) calendar days written notice to the *Subcontractor*, sell such defective work at auction or a private sale and shall account for the net proceeds thereof, after deducting all the costs and expense that should have been borne by the *Subcontractor*. The *Subcontractor* shall accept such net proceeds as full and final compensation for the defective work sold and waives and releases any claim it may have in relation to the net proceeds of sale being insufficient or the sale being improvident.”

**SCC 3.1 – CONSTRUCTION BY CONTRACTOR OR OTHER SUBCONTRACTORS**

- .1 Delete paragraph 3.1.2 in its entirety.
- .2 Add new paragraph 3.1.7 as follows:

“3.1.7 If the *Subcontractor* has caused damage to the work of *Other Subcontractors* or the *Contractor’s own forces*, the *Subcontractor* agrees to settle the matter with the *Other Subcontractor* or the *Contractor* by negotiation or arbitration. If the *Other Subcontractor* makes a claim against the *Contractor* on account of damage alleged to have been so sustained, the *Contractor* shall notify the *Subcontractor* and may require the *Subcontractor* to defend the action at the

*Subcontractor's* expense. The *Subcontractor* shall satisfy any order or judgment against the *Contractor* and pay the costs incurred by the *Contractor* arising from any such action."

### SCC 3.2 – TEMPORARY WORK

- .1 Delete paragraph 3.2.1 in its entirety.

### SCC 3.5 – SHOP DRAWINGS

- .1 Amend paragraph 3.5.1 to add at the end of the paragraph:

"The *Consultant* shall determine the number of copies of *Shop Drawings* to be provided by the *Subcontractor*. The *Consultant* shall determine if electronic submissions are acceptable and the means of an acceptable submission."

- .2 Delete paragraph 3.5.2 in its entirety and replace it with the following:

"3.5.2 The *Subcontractor* shall provide, within 10 days of award of the *Subcontract*, a proposed schedule of the dates for the provision, review and return of *Shop Drawings*. The *Contractor* shall approve, revise or reject the proposed schedule."

- .3 Add new paragraph 3.5.7 as follows:

"3.5.7 The *Subcontractor* at its own cost shall provide revised *Shop Drawings* to correct any errors or omissions in the *Shop Drawings* previously provided."

### SCC 3.6 – PAYMENT OF ACCOUNTS

- .1 Delete paragraph 3.6.1 in its entirety and replace it with the following:

"3.6.1 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, and any amounts so paid by the *Contractor* shall be deducted and the cost shall be deducted from the *Subcontract Price*."

### SCC 3.7 – CONSTRUCTION FORCE

- .1 Add the following as SCC 3.7 – CONSTRUCTION FORCE

#### "SCC 3.7 – CONSTRUCTION FORCE

- 3.7.1 Without limiting the generality of the *Subcontract Documents*, if the *Subcontractor*, proposes to employ labour at the *Place of Work* who are members of a trade union, including a trade union affiliated with the Trade Union Council authorized to bind its member trade unions, then the *Subcontractor* must first submit to the *Contractor*:

- (a) A waiver of all non-affiliation or reservations rights under applicable collective agreement, including renewals or replacement thereof, effective for the duration of the *Subcontract* and executed by the Trade Union Council on behalf of all trades, or executed by the particular trade unions whose members will be so employed; and
- (b) An agreement that there will be no Site Labour Disturbance at or affecting the *Place of Work* and/or the progress of the *Subcontract Work*, effective for the duration of the *Subcontract*, and executed by the Trade Union Council on behalf of all the trades, or executed by the particular trade unions whose members will be so employed.

3.7.2 The *Subcontractor*, shall pay or cause to be paid every person employed on the *Subcontract Work* not less than the wages or remuneration generally accepted as current at that time."

#### **SCC 4.1 – CASH ALLOWANCES**

.1 Amend paragraph 4.1.4 by deleting the second sentence thereof in its entirety and replacing it with the following:

"4.1.4 Where the actual cost of the *Subcontract Work* under all cash allowances exceeds the total amount of all cash allowances, the *Subcontractor* shall be compensated for the excess incurred and substantiated, in accordance with the provisions contained in the *Prime Contract*."

.2 Add new paragraph 4.1.6 as follows:

"4.1.6 The *Subcontractor* shall maintain full and complete records of all costs related to cash allowances for review and determination of the *Contractor* upon request."

#### **SCC 5.1 – APPLICATIONS FOR PAYMENT**

.1 Add new paragraph 5.1.7 as follows:

"5.1.7 Each application for payment must include the *Subcontractor's* GST registration number."

#### **SCC 6.2 – CHANGE ORDER**

.1 Delete the last sentence of paragraph 6.2.1 and replace it with the following:

"The *Subcontractor* shall present, within 10 *Working Days* of receipt of a written description of the proposed change in the *Subcontract Work*, and 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*."

.2 Add new paragraph 6.2.3 as follows:

"6.2.3 When the *Contractor* and the *Subcontractor* agree to the adjustments in the *Subcontract Price* and the *Subcontract Time* or to the method to be used to determine the adjustments in respect of any change in the *Subcontract Work*, such agreement shall include any and all claims of any kind whatsoever that the *Subcontractor* may have resulting from such change in the *Subcontract Work*, including without limitation any claims for delay, impact or acceleration of the *Subcontract Work*, and the *Subcontractor* shall not be entitled to any further claim or



adjustment in the *Subcontract Price* or the *Subcontract Time*, or any further compensation in respect of such change in the *Subcontract Work*.”

### SCC 6.3 – CHANGE DIRECTIVE

- .1 Delete paragraph 6.3.3 in its entirety.
- .2 Delete paragraph 6.3.6 in its entirety and replace it with the following:

“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 terms and conditions set forth in the *Prime Contract*.”
- .3 Delete paragraph 6.3.7 in its entirety and replace it with the following:

“6.3.7 The cost of performing the *Subcontract Work* attributable to a *Change Directive* shall be determined on the terms and conditions set forth in the *Prime Contract*.”

### SCC 6.5 – DELAYS

- .1 Amend paragraph 6.5.1 by adding the following after the words “*Subcontract Documents*” in the second line thereof:

“and to the extent that the delay is not attributable to a default or breach of the *Subcontract* by the *Subcontractor* or anyone employed or engaged by it directly or indirectly.”
- .2 Amend paragraph 6.5.3 to add new subparagraph 6.5.3.5 as follows:

“.5 any cause, arising after the date of this *Subcontract*, and resulting from an epidemic or pandemic of infectious disease of humans, as declared by the World Health Organization or the Public Health Officer under the *Public Health Act (British Columbia)*.”
- .3 Add new paragraphs 6.5.6 through 6.5.10 as follows:

“6.5.6 Any extension of the *Subcontract Time* and reimbursement of costs shall be made only if and to the extent that the *Subcontractor* has taken all reasonable steps to mitigate the impact of the delay, and can establish with supporting documentation that the delays affected the *Subcontractor's* performance of the *Subcontract Work* within the *Subcontract Time* and the *Subcontractor's* costs in the performance of the *Subcontract Work* to such a degree that no reasonable measures could have been taken (other than those that were taken by the *Subcontractor*) to avoid or prevent the additional time and costs incurred.

6.5.7 The claim for reimbursement by the *Subcontractor* under paragraphs 6.5.1 and 6.5.2 of this GC 6.5 shall be determined on the basis of the cost of the *Subcontractor's* actual expenditures and savings attributable to the delay, valued in accordance with the terms and conditions of the *Prime Contract*.

6.5.8 Notwithstanding the generality of paragraph 6.5.3, the *Subcontractor* acknowledges that labour disputes, strikes or lockouts involving *Suppliers* which are not directed specifically at the *Subcontract Work* and which do not involve picketing the *Place of the Work* shall not constitute grounds for delay where other equivalent *Suppliers* are available at a comparable price.

- 6.5.9 Notwithstanding the generality of paragraph 6.5.3, the *Subcontractor* agrees that delays by common carriers, where other carriers are available at a comparable price, shall not constitute grounds for claim for delay of the *Subcontract Work*.
- 6.5.10 If the *Subcontract Work* is delayed by the *Subcontractor*, or anyone employed or engaged by it directly or indirectly, contrary to the provisions of the *Subcontract Documents*, or is delayed for reasons other than those contemplated by paragraphs 6.5.1, 6.5.2 or 6.5.3 of this GC 6.5, the *Subcontractor* shall promptly accelerate the performance of the *Subcontract Work* to ensure the *Subcontract Work* shall be performed and completed within the *Subcontract Time*, in accordance with any notice issued by the *Contractor*.”

**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**

- .1 Amend paragraph 7.1.1 by adding “commits an act of bankruptcy” after the word “*bankrupt*” in the first line thereof.
- .2 Add new paragraph 7.1.7 as follows:
- “7.1.7 For greater certainty, but without intending to limit the circumstances in which notice of default might be given, the *Contractor* shall be entitled to give the *Subcontractor Notice in Writing* that the *Subcontractor* is in default pursuant to paragraph 7.1.2 of this SCC 7.1 and instruct the *Subcontractor* to correct the default as set out therein:
- .1 if the *Subcontractor* fails to make prompt payment to its *Sub-Subcontractors*;
  - .2 if *Subcontract Work* of the *Subcontractor* is rejected and the *Subcontractor* fails to promptly correct same;
  - .3 if the *Subcontractor* assigns the *Subcontract* without the required consent of the *Contractor*;
  - .4 if the *Subcontractor* abandons the *Subcontract Work*;
  - .5 if the *Subcontractor* fails to provide any bonds or contract security required by the *Subcontract Documents*;
  - .6 if the *Subcontractor* fails to carry and maintain any insurance policies or coverage required by the *Subcontract Documents*;
  - .7 if the *Subcontractor* fails to discharge any claims of builders liens when required to do so;
  - .8 if in the reasonable determination of the *Consultant*, the *Subcontractor* does not have sufficient workforce, *Products* or *Construction Equipment* at the *Place of the Work*, or otherwise is not meeting or shall not meet the requirements of the schedule for the performance of the *Subcontract Work*, including the requirement to meet important milestone dates from time to time designated by the *Contractor*, acting reasonably; and
  - .9 if the *Subcontractor* after receiving Notice in Writing that the rate of progress of the *Subcontract Work* or any part thereof is insufficient to enable the *Subcontract Work* to be performed within the *Subcontract Time*, fails to promptly accelerate the

performance of the *Subcontract Work* to ensure that the *Subcontract Work* shall be performed and completed within the *Subcontract Time*.

#### **SCC 7.2 – SUBCONTRACTOR'S RIGHT TO STOP THE SUBCONTRACT WORK OR TERMINATE THE SUBCONTRACT**

- .1 Revise paragraph 7.2.1 by adding “commits an act of bankruptcy” after the word “*bankrupt*” in the first line thereof.
- .2 Delete paragraph 7.2.2 in its entirety.
- .3 Delete paragraph 7.2.5 and replace it with the following:

“7.2.5 If the *Subcontractor* terminates the *Subcontract* by giving a *Notice in Writing to the Contractor* under paragraph 7.2.3, the *Subcontractor* shall be entitled to be paid for all work performed to the date of termination, and, subject to mitigation by the *Subcontractor*, for loss sustained upon *Products* and *Construction Equipment*, but not for any other damages as the *Subcontractor* may have sustained as a result of the termination of the *Subcontract*.”

#### **SCC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES**

- .1 Delete SCC 9.2.1 in its entirety.

#### **SCC 9.4 – CONSTRUCTION SAFETY**

- .1 Add a new paragraph 9.4.2 as follows:

"9.4.2 Prior to commencement of the *Subcontract Work*, the *Subcontractor* shall provide to the *Contractor*:

- .1 a valid clearance certificate stating that the *Subcontractor* has complied with the requirements of the Workers' Compensation Act.
- .2 evidence of the *Subcontractor's* insurance coverage.
- .3 documentation relating to the *Subcontractor's* safety-related programs for the Project.”

#### **SCC 10.1 – TAXES AND DUTIES**

- .1 Add new paragraph 10.1.3 as follows:

“10.1.3 With respect to taxes and duties, the *Subcontractor* shall, at the request and expense of the *Contractor*, assist, join in, or make application for any exemption, recovery or refund of any taxes or duties. The *Subcontractor* shall provide the *Contractor* with copies, or, where required original of records, invoices, purchase orders or other documentation as may be necessary to support such application.”

- .2 Add new paragraph 10.1.4 as follows:

“10.1.4 Any amount included in the *Subcontract Price* for such taxes and duties, whether or not paid, which is found to be inapplicable or for which an exemption, recovery or refund is obtained shall become the sole and exclusive property of the *Contractor*. ”

**SCC 10.2 – LAWS, NOTICES, PERMITS & FEES**

- .1 Add new paragraph 10.2.7 as follows:

“10.2.8 The *Subcontractor's* compliance with laws, ordinances, rules, regulations or codes relating to the *Subcontract Work* shall not relieve it of any obligations set out in the *Subcontract Documents* which are more extensive than the requirements of those laws, ordinances, rules, regulations or codes.”

**SCC 10.4 – WORKERS’ COMPENSATION**

- .1 Add new paragraph 10.4.2 as follows:

“10.4.2 The *Subcontractor* shall indemnify and hold harmless the *Contractor* from and against all claims, demands, actions, suits or proceedings by any of the employees of the *Subcontractor* or *Sub-Subcontractors* with respect to worker's compensation insurance. This indemnity shall survive the completion of the *Subcontract Work* or the termination for any reason of the *Subcontract*.”

**PART 11 – INSURANCE**

- .1 Delete PART 11 INSURANCE in its entirety and replace it with the following:

**“PART 11 – INSURANCE AND SUBCONTRACT SECURITY****SCC 11.1 – INSURANCE**

11.1.1 The *Subcontractor* shall obtain and continuously maintain at its own expense and cost the following insurance, and any other insurance specified in the *Prime Contract* (except for the insurance set out in paragraph 11.1.4), in the greater of the corresponding coverage and limits required by the *Prime Contract* or as specified below:

- .1 **Workers Compensation Insurance** covering all employees engaged in the *Subcontract Work* in accordance with the statutory requirements of the Province or Territory having jurisdiction over such employees.
- .2 **Commercial General Liability Insurance** covering the risks of liability for bodily injury, including death, loss of use, and property damage, arising from the activities at or away from the Place of the Work. This policy shall provide for coverage of not less than \$10,000,000 per occurrence and \$10,000,000 in the aggregate and shall include the following coverage features: Premises and Operations Liability; Owners' and Contractors' Protective Liability; Products and Completed Operations Liability; Blanket Contractual Liability; Cross Liability and Severability of Interests Clause; Contingent Employer's Liability; Employer's Liability; Personal Injury Liability; "Occurrence" basis coverage for Bodily Injury and Property Damage; "Broad Form" Property Damage coverage, including "Broad Form" Completed Operations coverage; Loss of Use of Property; Sudden & Accidental Pollution (120 Hours / 120 Hours); Coverage for shoring, blasting, excavating, underpinning, demolition, pile driving, caisson work, grading, tunneling, and all work below ground surface if applicable; Non-Owned Automobile Liability insurance, including third party liability arising from use and operation of hired

vehicles. This insurance shall be maintained continuously from the date of commencement of the *Subcontract Work* until one year from the date of Ready-for-Takeover. Liability coverage shall be provided for completed operations hazards on an ongoing basis for a period of 6 years from the date of Ready-for-Takeover.

- .3 **Automobile Liability Insurance** covering all licensed vehicles owned, or leased for a period in excess of 30 days, by the *Subcontractor*, with third party liability limits of not less than \$5,000,000 inclusive for bodily injury and property damage plus statutory Accident Benefits.
  - .4 **Contractor's Equipment Insurance** covering all tools and equipment used at the *Place of the Work* by, or on behalf of, the *Subcontractor* against "All Risks" of direct physical loss or damage, including the perils of earthquake and flood, subject to customary exclusions, and be maintained continuously from commencement of the *Subcontract Work* until all construction, erection, installation and testing has been completed and the Project has been finally accepted by the Owner. The *Contractor* shall not be responsible for any loss to the tools and equipment used at the *Place of the Work* by, or on behalf of, the *Subcontractor*, whether caused by the negligence of the *Contractor*, *Owner* or otherwise.
  - .5 **Aircraft, Unmanned Aerial Vehicles (UAV's) and Watercraft Liability (if applicable)** If the *Subcontract Work* involves the use of owned or non-owned aircraft, including UAV's, or watercraft directly or indirectly in the performance of the *Subcontract Work*, appropriate Aircraft Liability and/or Watercraft Liability insurance must be purchased and maintained for the duration of such operations, with limits of liability not less than \$5,000,000 per occurrence insuring against claims for bodily injury, including death and for property damage arising out of the use of such aircraft, UAV's or watercraft.
  - .6 **Contractor's Pollution Liability Insurance**, where the *Subcontract Work* requires the remediation, disposal, handling, transportation and/or storage of hazardous materials, contractor's pollution liability insurance shall be maintained with limits no less than \$5,000,000 per claim and provide coverage for third party bodily injury, property damage, cleanup costs and defense cost arising out of the *Subcontract Work*. This insurance shall be maintained continuously from the date of commencement of the *Subcontract Work* until one year from the date of *Ready-for-Takeover*.
  - .7 **Open Cargo Insurance** insuring all materials, equipment or other property to be transported by Marine Cargo or Aircraft Cargo and forming part of the *Subcontract Work* shall be insured on an All Risks basis and to their full replacement cost value.
- 11.1.2 Prior to commencement of the *Subcontract Work*, the *Subcontractor* must provide the *Contractor* with certificates of insurance, or a certified copy of the actual policy if the *Contractor* so requests, showing compliance with this SCC 11.1 – INSURANCE, and shall upon the placement, renewal, amendment, or extension of all or any part of the insurance, or otherwise from time to time as requested by the *Contractor*, provide proof of continuation of these policies. If the *Subcontractor* either does not obtain or maintain any insurance as required by this SCC 11.1 - INSURANCE, the *Contractor* shall have the right to take such actions as it deems necessary to ensure the *Subcontractor* complies with its obligations hereunder and the *Contractor* complies with its obligations under the *Prime Contract*, including but not limited to termination of this *Subcontract* or the placement of such insurance at the sole cost of the *Subcontractor*.

11.1.3 The policies listed in paragraph 11.1.1:

- .1 with the exception of Workers Compensation Insurance, Contractor's Equipment Insurance and Automobile Liability Insurance, shall be endorsed to include the *Contractor*, *Owner* and any other party required by the *Prime Contract* as additional insureds ("Additional Insureds") for liabilities arising out of the operations of the *Subcontractor*;
- .2 with the exception of Workers Compensation Insurance and Automobile Liability Insurance, shall include a provision providing a waiver of the insurer's right of subrogation against the Additional Insureds, and the *Subcontractor* and its insurers hereby waive any and all claims against the Additional Insureds for any claims covered by the insurance to be provided by the *Subcontractor* under paragraph 11.1.1;
- .3 subject to section 11.1.4, shall apply as primary insurance and shall not call into contribution any other insurance maintained by each of the Additional Insureds; and
- .4 with the exception of Workers Compensation Insurance and Automobile Liability Insurance, shall be endorsed with the insurer's undertaking to provide the *Contractor* and *Owner* with not less than thirty (30) days written notice in advance of cancellation, change, or amendment restricting coverage.

11.1.4 **Contractor and/or Owner Insurance.** On projects where the *Contractor* or the *Owner* provides All Risks Builder's Risk Insurance, such insurance shall be subject to normal exclusions, terms, deductibles and conditions. It is the responsibility of the *Subcontractor* to satisfy itself as to the adequacy of such insurance. At the discretion of the *Contractor* or *Owner*, or as required in the *Prime Contract*, the *Contractor* or *Owner* may procure Wrap Up Liability Insurance coverage for liability for bodily injury, including death and for property damage arising from the activities at the *Place of the Work*, subject to customary exclusions. It is the responsibility of the *Subcontractor* to satisfy itself as to the adequacy of such insurance. If Wrap Up Liability Insurance is procured by the *Contractor* or *Owner*, the *Subcontractor* will still be required to maintain Commercial General Liability Insurance for any claims arising from the operations of the *Subcontractor* away from the *Place of the Work*, or any claims arising from the *Subcontract Work* performed by or on behalf of the *Subcontractor* if such claims arise after the specified Products and Completed Operations period in the Wrap Up Liability Insurance. The *Subcontractor* and its *Sub-Subcontractors* shall be responsible for any deductible amounts to the extent arising from or where it caused, is responsible for or has, a claim in relation to the All Risks Builder's Risk Insurance and/or the Wrap Up Liability Insurance. The *Subcontractor* shall be responsible for any increase in premiums for insurance where such increase is caused by the *Subcontractor* or any of its *Sub-Subcontractors*.

11.1.5 The insurance requirements set out in this SCC 11.1 - INSURANCE shall support, but shall not limit, the *Subcontractor's* duties, obligations, and liabilities under SCC 13.1 – INDEMNIFICATION or any other provision of this *Subcontract*.

11.1.6 The *Subcontractor* shall purchase and maintain any additional insurance which it is required to carry by law or which it considers necessary to cover risks not otherwise covered by insurance specified in this SCC 11.1 - INSURANCE. The *Subcontractor* shall also purchase and maintain, and cause each *Sub-Subcontractor*, to purchase and maintain, such other insurance, or amendments to the foregoing policies, as the *Contractor* may reasonably require and direct.

11.1.7 The *Subcontractor* shall ensure that all Sub-Subcontractors maintain and adhere to the requirements specified in this SCC 11.1 - INSURANCE.

### **SCC 11.2 – SUBCONTRACT SECURITY**

11.2.1 **Subcontractor Bonding:** The *Subcontractor* shall, prior to the commencement of the *Subcontract Work*, or within the time specified in the *Subcontract Documents*, provide to the *Contractor* any surety bonds specified in the *Subcontract Documents*. Such surety bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained by the *Subcontractor* in good standing until the fulfilment of the obligations of the *Subcontractor* under this Subcontract and until the expiration of the warranty period specified in this *Subcontract*. The provision of such surety bonds by the *Subcontractor* is a condition precedent to the *Subcontractor's* right to receive payment under this *Subcontract*, and any failure to provide or maintain such surety bonds shall constitute a material default of the obligations of the *Subcontractor* under this *Subcontract*."

### **SCC 13.1 – INDEMNIFICATION**

.1 Revise paragraph 13.1.1 by adding the word "defend", after the word "each" in the second line thereof.

.2 Add new paragraph 13.1.7 as follows:

"13.1.7 The obligation of either party to indemnify the other as set forth in paragraphs 13.1.1 and 13.1.2 shall extend to the directors, officers, agents and employees of the party to be indemnified."

.2 Add new paragraph 13.1.8 as follows:

"13.1.8 The *Subcontractor* assumes towards the *Contractor* all obligations and responsibilities that *Contractor* has to indemnify the *Owner* as set forth in the *Prime Contract Documents*, insofar as applicable, generally or specifically, to the *Subcontract Work* to be performed by the *Subcontractor* under this Subcontract."

### **PART 14 – CONFIDENTIALITY AND PERSONAL INFORMATION**

.1 Add new PART 14 CONFIDENTIALITY AND PERSONAL INFORMATION as follows:

#### **"PART 14 CONFIDENTIALITY AND PERSONAL INFORMATION**

#### **SCC 14.1 – CONFIDENTIALITY**

14.1.1 Subject to paragraph 14.1.2, each party shall hold in confidence any information provided to it in confidence (in this SCC 14.1, "*Confidential Information*") received from the other party, except that this paragraph 14.1.1 shall not restrict either party from disclosing or granting access to such information to its professional advisors and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under the *Subcontract* and provided further that the *Subcontractor* may, subject to obtaining confidentiality restrictions similar to those set out in the *Subcontract*, provide to its advisors or to a *Sub-Subcontractor*, or provide or cause to be provided other third parties, *Confidential Information* which is necessary to enable the applicable party to perform (or cause to be

performed) its obligations under the *Subcontract* and the parties shall remain fully liable for any breach of confidentiality by any person to whom the applicable party has disclosed or granted access to *Confidential Information* pursuant to this paragraph 14.1.1.

14.1.2 Subject to any restrictions on the *Confidential Information* which are imposed by a third party that may own any *Confidential Information*, the obligation to maintain the confidentiality of any *Confidential Information* does not apply to *Confidential Information*:

- (a) which the party that disclosed the *Confidential Information* confirms in writing is not required to be treated as *Confidential Information*;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by the *Subcontract*;
- (c) to the extent any person is required to disclose such *Confidential Information* by the laws of the *Place of the Work*, including without limitation, a disclosure required under the *Freedom of Information and Protection of Privacy Act* (British Columbia);

14.1.3 Without prejudice to any other rights and remedies that either party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of paragraph 14.1.1 and that the owner party shall, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of paragraph 14.1.1.

#### **SCC 14.2 – PERSONAL INFORMATION**

14.2.1 The *Subcontractor* shall only collect, hold, process, use, store and disclose “personal information” as permitted by the *Personal Information and Protection of Privacy Act* (British Columbia).

#### **PART 15 BUILDERS LIEN ACT**

.1 Add new PART 15 BUILDERS LIEN ACT as follows:

##### **“PART 15 BUILDERS LIEN ACT**

##### **SCC 15.1 – BUILDERS LIEN ACT**

15.1.1 The *Consultant* shall be the "payment certifier" for the purposes of the *Builders Lien Act* in respect of amounts due to the *Subcontractor* under the *Subcontract*. Certification by the *Consultant* in respect of any amounts due to the *Subcontractor*, and the payment of any amounts by the *Contractor* in respect of amounts due to any such *Subcontractor* in connection with any such certification by the *Consultant*, shall not be taken as acceptance or approval by the *Contractor* of any of the *Subcontract Work* by the *Subcontractor*.

15.1.2 The *Contractor* may from time to time apply to the court under section 7(5) of the *Builders Lien Act* in the name of the *Subcontractor* (and for this purpose the *Subcontractor* hereby irrevocably authorizes that the *Contractor* to do so) for an order declaring whether the *Subcontract* or any contract under the *Subcontract* has been completed. The *Subcontractor* agrees to execute such further and other documents and assurances to give effect to the foregoing.

15.1.3 The *Contractor* may from time to time make application to court for directions and a determination as to the dealing with and disposition of any holdback amount under *Builders*



*Lien Holdback*, and the *Subcontractor* shall be bound by any action taken by the *Contractor* in accordance with any order or direction given by the court. The *Contractor* may at any time pay monies into court pursuant to section 23 of the *Builders Lien Act*, or pursuant to any order or direction of the court, and any such payment shall be credited against amounts due to the *Subcontractor* under the *Subcontract*.

- 15.1.4 The *Subcontractor* covenants and agrees with the *Contractor* that the *Subcontractor* shall not cause or permit any claim of lien to be lodged for registration against the *Project* in respect of the *Subcontract Work* or materials supplied to the *Project* under the *Subcontract* unless the *Contractor* is in default in making payments due to the *Subcontractor* under the *Subcontract* and the *Subcontractor* has provided the *Contractor* with five (5) days prior written notice setting out the particulars of such default.
- 15.1.5 The *Subcontractor* shall do all reasonable things requested by the *Contractor* or the *Consultant* to comply with the *Builders Lien Act* including, without limitation, providing, if required, information in connection with contracts entered into by parties under the *Subcontractor*.
- 15.1.6 The *Subcontractor* will, at its sole risk and expense, do everything necessary, including the commencement, prosecution or defense of legal proceedings, to promptly discharge from title to the *Project* any claim of lien filed by any *Sub-Subcontractor* or other person claiming under or through the *Subcontractor* or any *Sub-Subcontractor*. If the *Contractor* becomes aware that any claim of lien has been registered against title to the *Project*, the *Contractor* may withhold, out of any other monies payable to the *Subcontractor*, such amounts as the *Contractor* reasonably considers necessary in order to secure the discharge of the claim of lien. The *Contractor* will cooperate with the *Subcontractor* in securing the discharge of any claim of lien, subject to such arrangements being made as the *Contractor* reasonably considers necessary before the holdback monies under the *Builders Lien Holdback* or any portion thereof is paid to any person or into court.”

**END OF SUPPLEMENTARY CONDITIONS**