

## 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 3A or Article 3B 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 3A of the Subcontract Agreement – SUBCONTRACT DOCUMENTS, from highest to lowest, shall be
    - the Agreement of the *Prime Contract*,
    - the Definitions of the *Prime Contract*,
    - Supplementary Conditions of the *Prime Contract*,
    - the General Conditions of the *Prime Contract*,
    - the Agreement of the *Subcontract*,
    - the Definitions of the *Subcontract*,
    - 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 the order of priority of documents listed in Article 3B of the Subcontract Agreement – SUBCONTRACT DOCUMENTS, from highest to lowest, shall be
    - the Agreement of the *Subcontract*,
    - the Definitions of the *Subcontract*,
    - Supplementary Conditions of the *Subcontract*,
    - the Subcontract Conditions of the *Subcontract*,
    - the Agreement of the *Prime Contract*, if any
    - the Definitions of the *Prime Contract*, if any
    - Supplementary Conditions of the *Prime Contract*, if any
    - the General Conditions of the *Prime Contract*, if any
    - Division 1 of the *Specifications*,
    - technical *Specifications*,
    - material and finishing schedules,
    - the *Drawings*.
  - .3 drawings of larger scale shall govern over those of smaller scale of the same date.
  - .4 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
  - .5 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 water, power and heat, general purpose lighting and toilet facilities 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*.
- 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 amount 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*.

### **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, 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 7 *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*, or if the *Contractor* intends to make a claim against the *Subcontractor* for a credit to the *Subcontract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party.

- 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 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.
- 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. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 The responding party 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 8.2.4 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 the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of bid closing except as hereinafter provided:
- .1 General liability insurance in the name of the *Subcontractor* and include, or in the case of a single, blanket policy, be endorsed to name, the *Contractor* as insured but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Subcontractor* with regard to the *Subcontract Work*. General liability insurance shall be maintained from the date of commencement of the *Subcontract Work* until one year from the date of *Substantial Performance of the Work*. Liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*.
  - .2 Automobile Liability Insurance from the date of commencement of the *Subcontract Work* until one year after the date of *Substantial Performance of the Work*.
  - .3 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Subcontract Work*.

- .4 Boiler and machinery insurance in the joint names of the *Subcontractor*, the *Contractor*, the *Owner*, and the *Consultant*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
  - .5 Contractors' Equipment Insurance from the date of commencement of the *Subcontract Work* until one year after the date of *Substantial Performance of the Work*.
- 11.1.2 The *Contractor* shall provide, maintain and pay for "Broad form" property insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include the *Subcontractor* as insured. The "Broad form" property insurance shall be provided from the date of commencement of the *Subcontract Work* until the earliest of:
- .1 10 calendar days after the date of *Substantial Performance of the Work*;
  - .2 on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
  - .3 when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- 11.1.3 The "Broad form" property policy shall provide that, in the case of a loss or damage, payment shall be made to the *Contractor* and the *Subcontractor* as their respective interests may appear. In the event of loss or damage:
- .1 the *Contractor* shall act on behalf of the *Subcontractor* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Subcontractor* shall proceed to restore the *Subcontract Work*. Loss or damage shall not affect the rights and obligations of either party under the *Subcontract* except that the *Subcontractor* shall be entitled to a reasonable extension of *Subcontract Time* agreed between the *Contractor* and the *Subcontractor* in consideration of the extent of the loss or damage;
  - .2 the *Subcontractor* shall be entitled to receive from the *Contractor*, in addition to the amount due under the *Subcontract*, the amount which the *Contractor's* interest in restoration of the *Subcontract Work* has been appraised, such amount to be paid as the restoration of the *Subcontract Work* proceeds in accordance with the progress payment provisions. In addition the *Subcontractor* shall be entitled to receive from the payments made by the insurer the amount of the *Subcontractor's* interest in the restoration of the *Subcontract Work*; and
  - .3 to the *Subcontract Work* arising from the work of the *Contractor*, the *Contractor's* own forces, or another contractor, the *Contractor* shall, in accordance with the *Contractor's* obligations under the provisions relating to construction by the *Contractor* or other contractors, pay the *Subcontractor* the cost of restoring the *Subcontract Work* as the restoration of the *Subcontract Work* proceeds and as in accordance with the progress payment provisions.
- 11.1.4 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*.
- 11.1.5 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*.
- 11.1.6 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*.
- 11.1.7 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.8 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Subcontractor's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.9 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Contractor* may request the increased coverage from the *Subcontractor* by way of a *Change Order*.
- 11.1.10 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – CCDC INSURANCE REQUIREMENTS.

## SCC 11.2 CONTRACT SECURITY

- 11.2.1 The *Subcontractor* shall provide and maintain in good standing until the fulfilment of the *Subcontract* the contract security required at the time of bidding or mutually agreed upon prior to signing this *Subcontract*.
- 11.2.2 The *Contractor* shall, at the request of the *Subcontractor*, furnish evidence that contract security has been provided in accordance with the *Prime Contract*.

## 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 indemnify 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, judgment 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 one year from the date of *Substantial Performance of the Work*.
- 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 one year 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 one year 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 one year 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.