

stipulated price

subcontract

Project Name:

Subcontract Work:

Subcontract Number:

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For internal use only

ACL Project Number:

--

Business Unit:

--

ACL Pay Item:

--

ACL Cost Code:

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TABLE OF CONTENTS

AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

Article 1A	Work to be Performed
Article 2A	Conflict Between the Prime Contract and Subcontract
Article 3A	Subcontract Documents
Article 1B	Work to be Performed
Article 2B	Conflict Between the Prime Contract and Subcontract
Article 3B	Subcontract Documents
Article 4	Schedule
Article 5	Subcontract Price
Article 6	Payment
Article 7	Addresses for Notice

DEFINITIONS

1.	Change Directive
2.	Change Order
3.	Construction Equipment
4.	Contract Documents
5.	Drawings
6.	Owner, Consultant, Contractor, Subcontractor
7.	Place of the Work
8.	Prime Contract
9.	Product
10.	Project
11.	Provide
12.	Shop Drawings
13.	Specifications
14.	Subcontract
15.	Subcontract Documents
16.	Subcontract Price
17.	Subcontract Time
18.	Subcontract Work
19.	Substantial Performance of the Subcontract Work
20.	Substantial Performance of the Work
21.	Sub-Subcontractor
22.	Supplemental Instruction
23.	Temporary Work
24.	Value Added Taxes
25.	Work
26.	Working Day

SUBCONTRACT CONDITIONS

PART 1 GENERAL PROVISIONS

SCC 1.1	Documents
SCC 1.2	Assignment

PART 2 ADMINISTRATION OF THE SUBCONTRACT

SCC 2.1	Supplemental Instructions
SCC 2.2	Review and Inspection of the Work
SCC 2.3	Defective Work

PART 3 EXECUTION OF THE WORK

SCC 3.1	Construction by Contractor or Other Subcontractors
SCC 3.2	Temporary Services
SCC 3.3	Supervision
SCC 3.4	Sub-Subcontractors
SCC 3.5	Shop Drawings
SCC 3.6	Use of the Work
SCC 3.7	Cutting and Remedial Work
SCC 3.8	Cleanup
SCC 3.9	Quality Assurance
SCC 3.10	Payment of Accounts
SCC 3.11	Design Delegation

PART 4 ALLOWANCES

SCC 4.1	Cash Allowances
---------	-----------------

PART 5 PAYMENT

SCC 5.1	Application for Payment
SCC 5.2	Withholding of Payment
SCC 5.3	Non-Conforming Work

PART 6 CHANGES IN THE WORK

SCC 6.1	Changes
SCC 6.2	Change Order
SCC 6.3	Change Directive
SCC 6.4	Concealed or Unknown Conditions
SCC 6.5	Delays
SCC 6.6	Claims

PART 7 DEFAULT NOTICE

SCC 7.1	Contractor's Right to Perform the Subcontract Work, Stop the Subcontract Work, or Terminate the Subcontract
SCC 7.2	Subcontractor's Right to Suspend the Subcontract Work or Terminate the Subcontract

PART 8 DISPUTE RESOLUTION

SCC 8.1	Interpretation and Instruction of the Contractor
SCC 8.2	Negotiation, Mediation, and Arbitration
SCC 8.3	Retention of Rights

PART 9 PROTECTION OF PERSONS AND PROPERTY

SCC 9.1	Protection of Work and Property
SCC 9.2	Damages and Mutual Responsibility
SCC 9.3	Toxic and Hazardous Substances
SCC 9.4	Construction Safety
SCC 9.5	Control of the Work

PART 10 GOVERNING REGULATIONS

SCC 10.1	Taxes and Duties
SCC 10.2	Laws, Notices, Permits, and Fees
SCC 10.3	Patent Fees
SCC 10.4	Workers' Compensation

PART 11 INSURANCE AND CONTRACT SECURITY

SCC 11.1	Liability Insurance
SCC 11.2	Property Insurance
SCC 11.3	Contract Security

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

SCC 12.1	Indemnification
SCC 12.2	Waiver of Claims
SCC 12.3	Warranty
SCC 12.4	Severability
SCC 12.5	Rights and Remedies
SCC 12.6	Waiver
SCC 12.7	Effective Date

Enquiries should be directed to: Canadian Construction Association
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Ottawa, Ontario K1P 5E7
Tel: (613) 236-9455
Fax: (613) 236-9526
www.cca-acc.com



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AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

This Subcontract Agreement made on the [] day of [] in the year []
by and between

[Alberici Constructors, Ltd.
name of Contractor

hereinafter called the "*Contractor*"

and

[
name of Subcontractor

hereinafter called the "*Subcontractor*"

Whereas the *Contractor* has entered into an agreement hereinafter called the "*Prime Contract*" on the [] day of [] in the year [] with []

[
Name of Owner

hereinafter called the "*Owner*" for the construction of []

[
hereinafter called the ~~Project~~ "*Work*". *Name of Project Work*

And whereas the *Prime Contract* includes the *Subcontract Work* to be performed under this Subcontract Agreement in accordance with the *Contract Documents* for which []

[
Name of Consultant

is acting as and is hereinafter called the "*Consultant*"

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

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

NOW THEREFORE THE SUBCONTRACT AGREEMENT WITNESSETH as follows:

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~~(NOTE: THE PARTIES SHALL COMPLETE ARTICLES 1A, 2A AND 3A AND DISCARD ARTICLES 1B, 2B AND 3B IF THERE IS A PRIME CONTRACT IN WRITING BETWEEN THE OWNER AND THE CONTRACTOR, AND IT IS THE INTENTION OF THE CONTRACTOR AND THE SUBCONTRACTOR THAT THE CONDITIONS OF SUCH PRIME CONTRACT ARE TO BE INCORPORATED INTO THIS SUBCONTRACT AND SHALL GOVERN IN THE EVENT OF A CONFLICT.)~~

ARTICLE 1A – WORK TO BE PERFORMED

- 1.1 The *Subcontractor* shall furnish the *Products* and perform the *Subcontract Work* in a proper and workmanlike manner pertaining to: *(Insert full description of all work to be done with reference to specification section as described by number and heading if applicable)*

**(Insert here, attaching additional pages if required, a list identifying all other Subcontract Documents, e.g. Supplementary Conditions; Specifications, giving a list of contents with section numbers and titles, number of pages and date; drawings, giving drawing number, title date, revision date or mark; Addenda, giving title, number and date)*

Including all work necessary or incidental to the proper performance of said work.

1.2 The *Subcontractor* shall perform the *Subcontract Work* as required by the *Subcontract Documents*.

1.3 The *Subcontractor* acknowledges reviewing the contract documents and making all necessary inspections of the Place of the Work.

1.4 Work to be performed at the following address:

ARTICLE 2A – CONFLICT BETWEEN THE PRIME CONTRACT AND SUBCONTRACT

2.1 The requirements, terms and conditions of the *Prime Contract* as far as they are applicable to this *Subcontract*, shall be binding upon the *Contractor* and the *Subcontractor* as if the word “owner” appearing therein had been changed to “*Contractor*” and the word “contractor” appearing therein has been changed to “*Subcontractor*”. In the event of any conflict between the terms of this *Subcontract* and the *Prime Contract*, the ~~*Prime Contract*~~ *Subcontract* shall govern.

~~2.2 Paragraphs 10.2.4 and 10.2.5 of SCC 10.2 – LAWS, NOTICES, PERMITS, AND FEES and SCC 12.1 – INDEMNIFICATION shall be individually inoperative and considered as deleted from this contract in the event that conditions of identical wording or effect as they relate to each of these articles are not set out in the *Prime Contract*.~~

ARTICLE 3A – SUBCONTRACT DOCUMENTS

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

- ~~*Prime Contract Agreement*~~ between *Owner* and *Contractor* as may be amended prior to the execution of this Subcontract Agreement
- Definitions of the *Prime Contract* as may be amended prior to the execution of this Subcontract Agreement
- The General Conditions of the *Prime Contract* as may be amended prior to the execution of this Subcontract Agreement
- ~~*Subcontract*~~ Agreement between *Contractor* and *Subcontractor*
- Definitions of the *Subcontract*
- ~~The General Conditions of the Subcontract Conditions~~
- ACL Letter of Intent dated , attached hereto.
- ~~Supplementary *Subcontract* Conditions~~



ARTICLE 4 – SCHEDULE

- 4.1 The *Subcontractor* shall perform the *Subcontract Work*:
 - .1 in accordance with a Schedule provided by the *Contractor* at the time of signing this *Subcontract*; or
 - .2 in accordance with a Schedule mutually agreed if provided by the *Contractor* after the signing of this *Subcontract*; or
 - .3 starting on or about (day/month/year) [] and substantially perform the *Subcontract Work* by, on or about (day/month/year) []

The *Contractor* may reasonably adjust any schedule or specified timing during the course of the *Work* after consulting with the *Subcontractor*.

- 4.2 The *Subcontractor* shall commence, continue and complete its performance of the *Subcontract Work* in a prompt and diligent manner at such time, order and manner as directed by the *Contractor* in accordance with the schedule of work without hindering the work of the *Contractor* or any other *Subcontractor*, and so as to ensure completion as directed by the *Contractor*. Whenever, in the *Contractor's* opinion, the *Subcontractor* fails to maintain its part of the schedule of work, the *Contractor* may direct the *Subcontractor* to take all steps, such as overtime or shift work, until the *Subcontract Work* is in compliance with according to such schedule. Such steps shall be without additional cost to or compensation from the *Contractor*.
- 4.3 The *Subcontract Work* shall be deemed to be substantially performed or completed when approved by the *Contractor* and certified as such by the *Consultant*.

ARTICLE 5 – SUBCONTRACT PRICE

- 5.1 The *Subcontract Price*, which excludes *Value Added Taxes (G.S.T.)* is: but includes all other applicable taxes, customs, duties or the like, is:
[]
[] /100 dollars \$ []
 P.S.T. Included P.S.T. Exempt [If exempt, provide exemption number]
- 5.2 *Value Added Taxes (G.S.T.)* of 7% payable by the *Contractor* to the *Subcontractor* are:
[]
[] /100 dollars \$ []
- 5.3 Total amount payable by the *Contractor* to the *Subcontractor* for the construction of the *Subcontract Work* is:
[]
[] /100 dollars \$ []
- 5.4 These amounts shall be subject to adjustments as provided in the *Subcontract Documents*.
- 5.5 The *Subcontractor's* fee applicable to *Change Directives* shall be [] percent OR in accordance with prime contract.
- 5.6 All amounts are in Canadian funds.

ARTICLE 6 – PAYMENT

- 6.1 Subject to the provisions of the *Subcontract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages the *Contractor* shall:
 - .1 make progress payments to the *Subcontractor* on account of the *Subcontract Price* in accordance with paragraph 6.2 of this Article. The amounts of such payments shall be as certified by the *Consultant* or *Contractor* if there is no *Consultant* together with such *Value Added Taxes* as may be applicable to such payment;
 - .2 upon *Substantial Performance of the Work*, pay to the *Subcontractor* the percentage of the *Subcontract Price* which has been held back from the preceding progress payments when due together with such *Value Added Taxes (G.S.T.)* as may be applicable to such payment; and

.3 upon the issuance of the Contractor's or Consultant's certificate of payment that incorporates final payment of the Subcontract Work, pay to the Subcontractor the unpaid balance of the Subcontract Price when due together with such Value Added Taxes (G.S.T.) as may be applicable to such payment.

6.2 The Subcontractor shall make applications for payment together with supporting sworn statements and/or other documents when required by the Subcontract Documents a current W.S.I.B. CAD-7 rating, CCDC Form 9B, a certificate of insurance, current clearance certificate from W.S.I.B. on or before the 25th day of each month or otherwise advised (herein called the Submission Date) to the Contractor for approval and due processing. The amount claimed shall be for the value, proportionate to the amount of the Subcontract, of Subcontract Work performed and Products delivered to the Place of incorporated into the Work up to the 30th day of the month or otherwise advised. The Contractor shall pay the Subcontractor, no later than thirty (30) days after the Submission Date or ten (10) days after the date of a Consultant's certificate for payment whichever is the later, _____ percent of the amount applied for or such other amount as the Contractor or the Consultant determines to be properly due. Payments to the Subcontractor for satisfactory performance of the Subcontract Work less statutory holdback shall be made no later than 10 working days after receipt by the Contractor of payment from the Owner for the Subcontract Work. Where the Contractor or the Consultant makes any changes to the amount of the applications for payment as submitted by the Subcontractor, the Subcontractor shall be notified promptly in writing by the Contractor of changes and given the opportunity to defend the Subcontractor's submission without delay.

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

.1 The Contractor shall immediately notify the Owner of the Owner's default as provided for by the terms of the Prime Contract, contemporaneously advise the Subcontractor in writing of such default and provide to the Subcontractor a copy of any and all notices of default delivered by the Contractor to the Owner.

.2 Should the Owner not remedy the default within the time prescribed by the Prime Contract, the Contractor shall stop the Work and shall, within the time stipulated in the applicable lien legislation, take such steps as are required to enforce all of the Contractor's lien rights to recover all amounts unpaid on the Subcontract. The Contractor shall provide the Subcontractor prompt notice in writing of all steps taken to enforce payment.

.3 In the event that the Contractor has complied with all the provisions of this paragraph 6.3, the time for payment provided for in paragraph 6.2 of this Article shall be extended for _____*days from that otherwise provided for in paragraph 6.2 of this Article and the amount of the payment so suspended shall be deemed to be a holdback authorised pursuant to the terms of this Subcontract and shall be payable at the time provided for in this subparagraph. (* NOTE: the suspension time shall be 90 days or as otherwise agreed by the Contractor and the Subcontractor.)

.4 Notwithstanding any suspension as herein provided of the obligation to make payment which would otherwise be payable pursuant to paragraph 6.2 of this Article, the Contractor shall be obliged to pay interest on the amount of the payment which is suspended at the date payment of that sum finally becomes due at the rate provided in paragraph 6.5 of this Article calculated from the date when, but for paragraph 6.3 of this Article, payment would otherwise have been due.

If payment from the Owner for such Subcontract Work is not received by the Contractor, through no fault of the Subcontractor, notwithstanding the requirements of paragraph 6.2, the Contractor will make payment to the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed. This reasonable period of time shall be defined to be that period of time which will allow the Contractor to diligently complete dispute resolution procedures for non payment available under the Prime Contract or by law to collect such sums as are justly payable to the Contractor.

6.4 If no claims exist against the Subcontract Work and the Subcontractor has submitted to the Contractor all specified warranties, guarantees, bonds, records, certificates, manuals and other required documents, plus a sworn statement that all accounts for labour, sub-subcontracts, Products, Construction Equipment and other indebtedness which may have been incurred by the Subcontractor in the performance of the Subcontract Work and for which the Contractor might in any way be held responsible have been paid in full, except for holdback amounts (to be payable out of the funds to be paid to the Subcontractor pursuant to this paragraph 6.4) or as an identified amount in dispute, the amount withheld from progress payments made pursuant to paragraph 6.1.1 of this Article and which is payable pursuant to paragraph 6.1.2 of this Article is due and payable:

.1 In the Common Law provinces, on the day following the expiration of the holdback period stipulated in the lien legislation applicable to the Place of the Work. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice, or provisions which may be agreed to between the parties. The Contractor may retain out of the holdback amount any sums required by law to satisfy any liens against the Subcontract Work or, if permitted by the lien legislation applicable to the Place of the Work, other third party monetary claims against the Subcontractor which are enforceable against the Contractor.

.2 In the Province of Quebec, no later than 30 days after the date of *Substantial Performance of the Work*. The *Contractor* may retain out of the holdback amount any sums required by law to satisfy any legal hypothecs that have been taken or could be taken against the *Work* or other third party monetary claims against the *Owner* which are enforceable against the *Contractor*.

6.5 Interest

.1 Should either party fail to make payments as they become due under the terms of this *Subcontract* or in an award by arbitration or court, interest at two percent per annum above the prime rate on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by **#Canadian Imperial Bank of Commerce for prime business loans**. No interest shall accrue or be due the *Subcontractor* on any funds or payments withheld to protect the interest of the *Contractor* or the *Owner* as set forth elsewhere in this agreement. (~~# NOTE: Insert name of chartered lending institution whose prime rate is to be used.~~)

.2 Interest shall apply at the rate and in the manner prescribed by paragraph 6.5.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Subcontract*, had it not been in dispute, until the date it is paid.

ARTICLE 7 – ADDRESSES FOR NOTICE

7.1 Notices in writing between the parties shall be considered to have been received by the addressee on the date of delivery if delivered to the individual, or to a member of the firm, or to an officer of the corporation for whom they are intended by hand, facsimile, email or by registered post; or if sent by regular post, to have been delivered within 5 *Working Days* of the date of mailing when addressed as follows:

The *Contractor* at

400 Wellington Street North, P.O. Box 301

street and number and postal box number if applicable

Hamilton, Ontario L8N 3G4

post office or district, province or territory, postal code

The *Subcontractor* at

street and number and postal box number if applicable

post office or district, province or territory, postal code

Subcontractor Phone No

Subcontractor Fax No.

The *Consultant* at

street and number and postal box number if applicable

post office or district, province or territory, postal code

IN WITNESS WHEREOF,

Paragraphs (1) and (2), which only apply to the Province of Quebec, shall read as follows:

- (1) having read and fully understood this *Subcontract* and all the documents it includes or to which it refers, as well as the rights and obligations resulting therefrom; and
- (2) having had the opportunity of negotiating the essential stipulations of this *Subcontract*,

the parties hereto have executed this *Subcontract* by the hands of their duly authorized representatives.

SIGNED, SEALED AND DELIVERED

CONTRACTOR

Alberici Constructors, Ltd.
name of Contractor (Seal)

signature

name and title of person signing

signature

name and title of person signing

name of Subcontractor (Seal)

signature

name and title of person signing

signature

name and title of person signing

WITNESS

signature

name and title of person signing

WITNESS

signature

name and title of person signing

- N.B. Where legal jurisdiction, local practice, or Contract or Subcontract requirement calls for:*
- (a) *proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Subcontract for and on behalf of the corporation or partnership; or*
 - (b) *the affixing of a corporate seal, this Subcontract shall be properly sealed.*

This *Subcontract* is drawn in English at the request of all parties hereto. La présente convention est rédigée en anglais à la demande des parties.

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 ~~an~~ any necessary adjustment in *Subcontract Price* and *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, schedules, and diagrams.

6. Owner, Consultant, Contractor, Subcontractor

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

7. Place of the Work

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

8. 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*.

9. Product

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

10. Project

The *Project* means the total construction contemplated of which the *Work* performed under the *Contract Documents* may be the whole or a part.

11. Provide

Provide means to supply and install.

12. 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*.

13. 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, and the services necessary for the performance of the *Subcontract Work*.

14. 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*.

15. Subcontract Documents

The *Subcontract Documents* consist of those documents as listed in Article 3A or Article 3B of the Subcontract Agreement, and any other provisions as agreed upon between the *Contractor* and *Subcontractor*.

16. Subcontract Price

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

17. 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.

18. Subcontract Work

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

19. 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.

20. 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* if the *Consultant* is required by the terms of the *Prime Contract* to issue such a certificate.

21. Sub-Subcontractor

A *Sub-Subcontractor* is the person or entity having a direct contract with the *Subcontractor* to perform a part or parts of the *Subcontract Work* included in this *Subcontract* or to supply *Products* worked to a special design according to the *Subcontract Documents* but does not include one who merely supplies *Products* not so worked.

22. Supplemental Instruction

A *Supplemental Instruction* is an instruction, ~~not involving~~ that may or may not involve an 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*.

23. Temporary Work

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

24. 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 is by the *Subcontractor* as imposed by the tax legislation.

25. Work

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

26. Working Day

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

27. Contemplated Change Order

Contemplated Change Order is a written notice issued by the *Contractor* describing a proposed change in the *Subcontract 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* 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* creates any contractual relationship between the *Contractor* and a *Sub-Subcontractor* or the *Sub-Subcontractor's* agent, employee, or other person performing any 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* into divisions, sections, and parts nor the arrangement of *Drawings* shall control the *Subcontractor* in dividing the work among *Sub-Subcontractors* or in establishing the extent of the work to be performed by a trade.
- 1.1.7 If there is a conflict within *Subcontract Documents*:
- ~~1~~ the order of priority of documents listed in Article 3A, 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 General Conditions of the *Subcontract*,~~
 - ~~Division 1 of the *Specifications*,~~
 - ~~Divisions 2 through 16 of the *Specifications*,~~
 - ~~material and finishing schedules,~~
 - ~~*Drawings*.~~
 - 2 the order of priority of documents listed in Article 3B A, from highest to lowest, shall be
 - the Agreement of the *Subcontract Agreement*
 - the Definitions of the *Subcontract*,
 - Supplementary Conditions of the *Subcontract*,
 - the General 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*,
 - ~~Divisions 2 through 16 of the *Specifications*,~~
 - material and finishing schedules,
 - *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 or containing the same provision.
- 1.1.8 The *Contractor* shall provide the *Subcontractor*, without charge, sufficient copies of the *Subcontract Documents* to perform the *Subcontract Work*, provided the *Contractor* has been furnished by the *Owner* with sufficient copies of the *Subcontract Documents*. The *Subcontractor* shall make copies of the applicable portions of the *Subcontract Documents* available to its proposed sub-subcontractors and suppliers.
- 1.1.9 The *Subcontract Documents* represent the entire agreement between the *Contractor* and *Subcontractor* and supersede all prior negotiations, representations or agreements, whether written or verbal, relating in any manner to the *Subcontract Work*.
- 1.1.10 Time shall be of the essence.

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.~~

The Subcontractor shall not assign the whole or any part of the Subcontract Work without the prior written approval of the Contractor. To the extent ~~required~~ permitted by the Prime Contract, the Contractor's contingent assignment of the Subcontract to another Contractor or to the Owner, is effective when the Owner has terminated the Contractor for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of any surety that may be obligated under the Contractor's bond, if any. The Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Subcontract and to release the Contractor from its Subcontract obligations.

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 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, the Consultant's instructions or 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/or 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 or is required to perform the Subcontract 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.
- 2.2.8 The Subcontractor shall review the Subcontract Documents and shall report promptly to the Contractor any errors, inconsistencies or omissions the Subcontractor discovers. If the Subcontractor does discover one or more errors, inconsistencies or omissions, he shall not proceed with the work affected thereby until he has received corrected information from, and the written permission of, the Contractor.

SCC 2.3 DEFECTIVE WORK

- 2.3.1 The Subcontractor shall promptly remove from the Place of the Work and 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 removals or replacements 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* for this *Subcontract*, if any, 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*.

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 – LIABILITY INSURANCE and SCC 11.2 – PROPERTY 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 introduce and store their products and use their construction machinery and equipment to execute their work;
 - .2 ~~cooperate with other subcontractors and the *Contractor* in reviewing their construction schedules; and~~ cooperate with the *Contractor* and other *Subcontractors* whose work may affect the *Subcontract Work*; and participate in the preparation of coordinating drawings and *Subcontract Work* schedules in areas of congestion; and specifically note and promptly advise the *Contractor* in writing of any such necessary changes to the drawings or schedule by other *Contractors* or *Subcontractors*;
 - .3 where part of the *Subcontract Work* is affected by or depends upon for its proper execution the work of other subcontractors or *Contractor's* own forces, promptly report to the *Contractor* in writing and prior to proceeding with that part of the *Subcontract Work*, any apparent deficiencies in such work. Failure and delays by the *Subcontractor* to so report shall invalidate any claims against the *Contractor* by reason of the deficiencies in the work of other *Subcontractors* or *Contractors* own forces except those deficiencies not then reasonably discoverable.
- 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 and interface 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 interface 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 – CHANGES, SCC 6.2 – CHANGE ORDER, and SCC 6.3 – CHANGE DIRECTIVE.
- 3.1.6 If any other subcontractor with whom the *Subcontractor* has a dispute related to the *Work* requests that the dispute be arbitrated in accordance with the provisions of Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION, the *Subcontractor* shall be deemed to have consented to arbitration of any such dispute with any other subcontractor whose subcontract with the *Contractor* contains a similar agreement to arbitrate.

SCC 3.2 TEMPORARY SERVICES AND SUPPORTS

- 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.

- 3.2.2 The *Subcontractor* shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary supports, structures and facilities and the design and execution of construction methods required in their use which he requires to perform the *Subcontract Work*.

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* and notices and instructions given to the appointed representative by the *Contractor* shall be held to have been received by the *Subcontractor*.

SCC 3.4 SUB-SUBCONTRACTORS

- 3.4.1 The *Subcontractor* shall preserve and protect the rights of the parties to 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, ~~at the request of the Contractor~~, prior to hiring any *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 whom 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 described in the *Subcontract Documents*. The *Subcontractor* shall review all *Shop Drawings* prior to submission to verify all field measurements, product requirements and compliance with the *Subcontract Documents*.
- 3.5.2 The *Contractor* shall determine the number of copies of *Shop Drawings* as may reasonably be required together with the procedure and schedule for transmittal of same, and the *Subcontractor* shall so supply *Shop Drawings*. At the time of submission, the *Subcontractor* shall notify the *Contractor* in writing of any deviations in the *Shop Drawings* from the requirements of the *Subcontract Documents*. Review of *Shop Drawings* shall not relieve the *Subcontractor* of responsibility for errors or omissions in the *Shop Drawings* or of responsibility for meeting all requirements of the *Subcontract Documents*.
- 3.5.3 Upon the *Contractor's* request, the *Subcontractor* shall revise and resubmit *Shop Drawings* which the *Contractor* rejects as inconsistent with the *Subcontract Documents* unless otherwise directed by the *Contractor*. The *Subcontractor* shall notify the *Contractor* in writing of any revisions to the resubmission other than those requested by the *Contractor*.

SCC 3.6 USE OF THE WORK

- 3.6.1 The *Subcontractor* shall confine *Construction Equipment*, *Temporary Work*, *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 *Work* with *Products*.
- 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 safety signs, advertisements, fires, and smoking.

SCC 3.7 CUTTING AND REMEDIAL WORK

- 3.7.1 The *Subcontractor* shall do the cutting and remedial work as required by the *Subcontract Documents* to make the several parts of the *Subcontract Work* come together properly and to ensure that the *Subcontract Work* fits with and is properly finished to the work of others whose work precedes that of the *Subcontractor*.
- 3.7.2 The *Subcontractor* shall coordinate the *Subcontract Work* to ensure that this requirement 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* or 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 – 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, at the *Subcontractor's* own expense, keep the *Subcontractor's* work area in a **safe** and tidy condition and free from accumulation of waste products and debris created in the performance of the *Subcontract Work*. The *Subcontractor* shall remove from the work site all such waste products and debris caused by the *Subcontract Work* to the satisfaction of the *Contractor*. Should the *Subcontractor* fail to perform these housekeeping requirements, the *Contractor* shall have the right, after notice in writing, 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.
- 3.8.2 Prior to application for *Substantial Performance of the Subcontract Work*, the *Subcontractor* shall remove all surplus products, tools, construction machinery and equipment, and any waste products and debris and leave the *Place of the Work* in a clean and tidy condition to the satisfaction of the *Contractor*.

SCC 3.9 QUALITY ASSURANCE

- 3.9.1 The *Contractor* or *Owner* may implement a Quality Assurance program for the *Work*. The *Subcontractor* shall respect and comply with such program.
- 3.9.2 *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Contractor*.
- 3.9.3 The *Subcontractor* shall maintain good order and discipline among the *Subcontractor's* employees and *Sub-Subcontractor's* employees and shall not employ persons not skilled in the tasks assigned.

SCC 3.10 PAYMENT OF ACCOUNTS

- 3.10.1 The *Subcontractor* shall promptly and satisfactorily settle and pay for all accounts, claims or liens with respect to the *Work*. If, after having received 2 *Working Days* written notice 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 and/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 *Subcontractor* causes any claim for lien to be ~~bonded~~ vacated by payment ~~to the~~ into court or posting security, ~~in which event~~, 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.
- 3.10.2 The *Contractor* shall have the right at all times to directly contact the *Subcontractor's* *Sub-subcontractors* and suppliers to ensure the same are being paid promptly by the *Subcontractor* for the labour and materials furnished for use in performing the *Subcontract Work*.

SCC 3.11 DESIGN DELEGATION

- 3.11.1 If the *Subcontract Documents* (1) specifically require the *Subcontractor* to provide design services and (2) specify all design and performance criteria, the *Subcontractor* shall provide the design services necessary to satisfactorily complete the *Subcontract Work*. Design services provided by the *Subcontractor* shall be procured from licensed, design professionals (the "*Designer*"), retained by the *Subcontractor* as permitted by the law of the place where the *Project* is located. The *Designer's* signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the *Designer*. Shop Drawings and other submittals

related to the *Subcontract Work* designed or certified by the *Designer*, if prepared by others, shall bear the *Subcontractor's* and the *Designer's* written approvals when submitted to the *Contractor*. The *Contractor* shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the *Designer*.

- 3.11.2 If the *Designer* is an independent professional, the design services shall be procured pursuant to a separate written agreement between the *Subcontractor* and the *Designer*. The *Subcontractor-Designer* agreement shall not provide for any limitation of liability. If applicable, the *Designer(s)* is (are):

The *Subcontractor* shall notify the *Contractor* in writing if it intends to change the *Designer*. The *Subcontractor* warrants the design furnished by the *Designer* will be in conformance with the information given and the design concept expressed in the *Subcontract Documents*. The *Subcontractor* shall not be responsible for the adequacy of the performance or design criteria required by the *Subcontract Documents* furnished by the *Owner, Architect/Engineer* or *Contractor*.

- 3.11.3 The *Subcontractor* shall not be required to provide design services in violation of any applicable law.

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 costs under a cash allowance exceed the amount of the allowance, the *Subcontractor* shall, in each case, be compensated for the excess costs incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Subcontract Documents*. Where costs under any cash allowance are less than the amount of the allowance, the *Subcontract Price* shall be adjusted 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 actual cost as determined in accordance with paragraph 4.1.4 and each cash allowance.

PART 5 PAYMENT

SCC 5.1 APPLICATION 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*, 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 Claims 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 Notwithstanding any other provisions of this *Subcontract*, 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 certificate for payment, 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 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*, 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*.
- 6.1.3 Notwithstanding any other provision, if the *Subcontract Work* for which the *Subcontractor* claims additional compensation is determined by the *Owner* or *Consultant* not to entitle the *Contractor* to a *Change Order*, additional compensation or a time extension as requested because such work is within the scope of the ~~*Subcontract Contract Work*~~ *as defined by Paragraph 3.1*, then the *Contractor* shall not be liable to the *Subcontractor* for any additional compensation or time extension for such *Subcontract Work*, unless the *Contractor* agrees in writing to pay such additional compensation or to grant such extension.

SCC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Subcontract Work* is proposed or required, the *Contractor* shall provide notice in writing to the *Subcontractor* describing the proposed change in the *Subcontract Work*. The *Subcontractor* shall 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*, signed by *Contractor* and *Subcontractor*. The value of the work performed as the result of a *Change Order* shall be included in applications for progress payment.
- 6.2.3 The adjustment in the *Subcontract Price* shall be deemed to include all adjustments, costs, expenses, impacts or damages, direct or indirect, whether to price or to time, caused by the subject change in the *Subcontract Work*. The *Change Order* or *Change Directive* shall be complete and shall not reserve for the *Subcontractor* the right to make further claims of any kind as a result, directly or indirectly, of the subject change.

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 adjustment in *Subcontract Price* and *Subcontract Time*, the *Contractor* shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used by the *Contractor* to direct a change in the *Subcontract Work* which is within the general scope of the *Subcontract Documents*.
- 6.3.3 Upon receipt of a *Change Directive*, the *Subcontractor* shall proceed promptly with the change in the *Subcontract Work*.
- 6.3.4 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*.

- 6.3.5 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~~ reasonable expenditures and savings attributable to the change, valued in accordance with the cost plus method described in paragraph 6.3.6 and as follows:
- .1 If the change results in a net increase in *Subcontractor's* cost, the *Subcontract Price* shall be increased by the amount of the net increase in the *Subcontractor's* cost, plus the *Contractor's* fee on such net increase, as specified in paragraph 5.5 of Article A-5 of the Agreement – SUBCONTRACT PRICE.
 - .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 deduction for the *Subcontractor's* fee.
- 6.3.6 The cost of performing the work attributable to the *Change Directive* shall be limited to the ~~actual~~ reasonable cost of all the following as applicable to such work:
- .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, coordination drawings, and project record 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 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 work as provided in paragraph 6.3.6.1;
 - .3 travel and subsistence expenses of the *Subcontractor's* personnel described in paragraph 6.3.6.1;
 - .4 the cost of all *Products* including cost of transportation thereof;
 - .5 the cost of materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed; and cost less salvage value on such items used but not consumed in the performance of the *Subcontract Work*, which remain the property of the *Subcontractor*;
 - .6 the cost of all tools, *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 the cost of all equipment and services required for the *Subcontractor's* field office;
 - .8 deposits lost;
 - .9 the amounts of all sub-subcontracts;
 - .10 the cost of 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 therefore 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;
 - .13 any adjustment in taxes and duties, other than *Value Added Taxes*, for which the *Subcontractor* is liable;
 - .14 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*;
 - .15 the cost of removal and disposal of waste products and debris; and
 - .16 the cost incurred due to emergencies affecting the safety of persons or property.
- 6.3.7 The *Subcontractor* shall keep full and detailed accounts and records necessary for the documentation of the cost of work and shall provide the *Contractor* with copies thereof when requested.
- 6.3.8 The *Contractor* shall be afforded reasonable access to all of the *Subcontractor's* books, records, correspondence, instructions, drawings, receipts, vouchers, and memoranda related to the cost of work, 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*.
- 6.3.9 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.10 If the *Contractor* and *Subcontractor* do not agree on the proposed adjustment in the *Subcontract Time* or the method of determining it, the adjustment shall be referred to Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION.

- 6.3.11 If at any time after the start of the work directed by a *Change Directive*, 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* signed by *Contractor* and *Subcontractor*.

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 notify the other party in writing before conditions 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 under paragraph 6.4.1 and such conditions were not reasonably discoverable by the *Subcontractor* prior to the execution of this agreement 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. Notwithstanding the foregoing the adjustment which a *Subcontractor* may receive for additional costs and/or time shall be limited to the proportionate share of the corresponding adjustment the *Contractor* receives from the *Owner* on behalf of the *Subcontractor* (exclusive of the *Contractor's* mark-up).
- 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.

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*, or *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, any such extension shall be limited by the extension provided for in the agreement between the *Contractor* and *Owner*. 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, or without limit to any of the foregoing, by a cause beyond the *Subcontractor's* control,
 - .3 abnormally adverse weather conditions, or
 - .4 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* or *Contractor*.
- 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 two (2) *Working Days* after commencement of delay, providing however, that in the case of continuing cause of delay only one notice of claim 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

- 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 promptly give notice in writing to the other party of intent to claim.
- 6.6.2 Upon commencement of the event or series of events giving rise to the claim, the party intending to make a claim shall:
- .1 take all reasonable measures to mitigate any loss or damage 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 and afford reasonable access to all books, records, receipts and vouchers to the other party until one year from the date of *Substantial Performance of the Work*.
- 6.6.3 The party making the claim shall submit to the other party a detailed account of the amount claimed and the grounds upon which the claim is based. Such details shall be submitted within a reasonable time.
- 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 such other time period as may be agreed by the parties. 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, STOP THE SUBCONTRACT WORK, OR TERMINATE THE SUBCONTRACT

- 7.1.1 If the *Subcontractor* should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Subcontractor's* insolvency, or make an application under the *Companies' Creditors Arrangement Act* or if a receiver is appointed which in any way interferes with the *Subcontractor's* ability to discharge its obligations under the *Subcontract*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, by giving the *Subcontractor* or receiver or trustee in bankruptcy or monitor notice in writing, terminate the *Subcontractor's* right to continue with the *Subcontract Work* in whole or in part or terminate the *Subcontractor's* right to continue with the *Subcontract Work*.
- 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, notify the *Subcontractor* 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.
- 7.1.3 If the default cannot be corrected in the 3 *Working Days* specified, 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 such schedule.
- 7.1.4 If the *Subcontractor* fails to correct the default in the time specified or subsequently agreed upon, 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*; utilize the *Construction Equipment*, subject to the rights of third parties; 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 *Consultant's* certificate of payment that incorporates the final payment of the *Subcontract Work* 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 .1 Should the ~~Owner terminate its contract with the Contractor or any part~~ *Prime Contract* be terminated in whole or in part which includes the *Subcontract Work*, the *Contractor* shall notify the *Subcontractor* in writing and upon written notification, this Agreement shall be terminated and the *Subcontractor* shall immediately stop the *Subcontract Work*, follow all of the *Contractor's* instructions, and mitigate all costs. In the event of ~~Owner~~ termination, the *Contractor's* liability to the *Subcontractor* shall be limited to the ~~extent~~ proportionate share of the *Contractor's* recovery ~~on the Subcontractor's behalf under the Subcontract Documents~~, at the *Subcontractor's* expense, from the *Owner*, in the prosecution of any ~~Subcontractor~~ claim arising out of the *Owner* termination and to permit the *Subcontractor* to prosecute the claim, in the name of the *Contractor*, for the use and benefit of the *Subcontractor*, or assign the claim to the *Subcontractor*.

.2 If it is determined or agreed that the *Contractor* wrongfully exercised any option under this SCC, terminated the *Subcontractor*, the *Contractor* shall be liable to the *Subcontractor* solely for the reasonable value of *Subcontract Work* performed by the *Subcontractor* prior to such ~~action~~ termination, including reasonable overhead and profit on the *Subcontract Work* performed, less prior payments made. Under no circumstances shall the *Subcontractor* be entitled to recovery of ~~claimed~~ lost or future profits or other damages.

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 which in any way interferes with the *Contractor's* ability to discharge its obligations under the *Subcontract*, the *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, by giving the *Contractor* or receiver or trustee in bankruptcy notice in writing, terminate the *Subcontract*.

7.2.2 If the *Work* should be suspended or otherwise delayed for a period of ~~20~~ sixty (60) *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, by giving the *Contractor* notice in writing, terminate the *Subcontract*.

7.2.3 The *Subcontractor* may notify the *Contractor* in writing 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, stop 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.~~

If the *Subcontractor* terminates the *Subcontract* under the conditions set out above, the *Subcontractor* shall be entitled to recover from the *Contractor* payment for all *Subcontract Work* satisfactorily performed but not yet paid for, including reasonable overhead and profit on work satisfactorily completed and attorney's fees, costs and expenses. However, if the *Owner* has not paid the *Contractor* for the satisfactory performance of the *Subcontract Work* through no fault or neglect of the *Contractor*, and the *Subcontractor* terminates this Agreement under this Article because it has not received corresponding progress payments, the *Subcontractor* shall be entitled to recover from the *Contractor*, within a reasonable period of time following termination, payment for all *Subcontract Work* satisfactorily performed but not yet paid for, including reasonable overhead and profit. The *Contractor's* liability shall not be liable for any other damages claimed by the *Subcontractor* under such circumstances. ~~shall be extinguished by the Contractor pursuing said damages and claims against the Owner, on the Subcontractor's behalf, in the manner provided for in Subparagraphs.~~

~~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. 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*.
- 8.1.4 Notwithstanding the foregoing, to the extent such instructions given by the *Contractor* to the *Subcontractor* are the result of instructions given by the *Owner* and/or its *Consultant*, the *Subcontractor* shall only be entitled to additional compensation or time extension to the extent *Contractor* receives such on the *Subcontractor's* behalf from the *Owner*.

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 the notice of dispute 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 or *Consultant* of the *Work* to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the latest edition of the Rules for Mediation of Construction Disputes as provided in CCDC 40 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 latest edition of the Rules of Arbitration of Construction Disputes as provided in CCDC 40 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 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, if any, 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 required under Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3.
- 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 or obligation by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.5 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 be responsible for the protection of the *Subcontract Work* and shall take all reasonable precautions to protect the *Work* and property of others during the performance of the *Subcontract Work*. The *Subcontractor* shall ensure the conduct of its employees, suppliers and agents at the *Place of the Work* is in accordance with all requirements set out by the *Contractor*. Violations of *Subcontract* requirements or any rules and regulations of the *Contractor* by the *Subcontractor's* employees, suppliers and agents, including but not limited to theft, smoking in restricted areas, gambling, fighting on premises, possession or display of firearms, use of personal entertainment devices, the consumption of alcohol or non-prescription drugs, and failure to adhere to any safety requirement, or such other conduct as may be deemed by the *Contractor* to be inappropriate, shall result in the *Subcontractor* immediately removing the employee, agent or supplier from the *Place of the 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 from 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 DAMAGES AND MUTUAL RESPONSIBILITY

- 9.2.1 If either party to the *Subcontract* should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone for whom the other party is responsible in law, then that party shall be reimbursed by the other party for such damage. The reimbursing party shall be subrogated to the rights of the other party in respect of such wrongful act or neglect if it be that of a third party.

- 9.2.2 Claims for reimbursement under paragraph 9.2.1 shall be made in writing to the party liable within reasonable time after the first observance of such damage or if undisputed, shall be confirmed by *Change Order*. Disputed claims shall be resolved as set out in Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION.

SCC 9.3 TOXIC AND HAZARDOUS SUBSTANCES

- 9.3.1 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 disclosed to the *Contractor* in writing prior to the commencement of the *Subcontract Work* or which were disclosed but have not been dealt with by the *Contractor* or *Owner* in accordance with legal requirements, 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 the time weighted levels prescribed by labour regulations at the *Place of the Work*, and
 - .4 immediately report the circumstances to the *Contractor* in writing.
- 9.3.2 If the *Subcontractor* is delayed in performing the *Subcontract Work* or incurs additional costs as a result of taking steps required under paragraph 9.3.1.3, and those substances were not known to, or reasonably discoverable by the *Subcontractor*, the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and *Subcontractor* shall agree that the *Subcontract Work* was delayed and the *Subcontractor* shall be reimbursed for reasonable costs incurred as a result of the delay and as a result of taking those steps. Notwithstanding the foregoing, the adjustment which a *Subcontractor* may receive for additional costs and/or time shall be limited to the appropriate proportion of the adjustment the *Contractor* receives from the *Owner* on behalf of the *Subcontractor* relative to the *Subcontract Work* in question (exclusive of the *Contractor's* mark-up).
- 9.3.3 Notwithstanding paragraphs 8.1.1 and 8.1.2 of SCC 8.1 – INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR, the parties may select and rely upon the advice of an independent expert in a dispute under paragraph 9.3.2 and, in that case, the expert shall be deemed to have been jointly retained by the *Contractor* and the *Subcontractor* and shall be jointly paid by them.
- 9.3.4 The *Contractor* shall indemnify and hold harmless the *Subcontractor*, the *Subcontractor's* agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from the presence of, or exposure to, toxic or hazardous substances known to the *Contractor* before the execution of this *Agreement* and not known or reasonably discoverable by the *Subcontractor* prior thereto in excess of the time weighted levels prescribed by labour regulations at the *Place of the Work* which were at the *Place of the Work* prior to the *Subcontractor* commencing the *Subcontract Work*. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in SCC 12.1 – INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.
- 9.3.5 SCC 9.3 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS shall govern over the provisions of SCC 9.2 – DAMAGES AND MUTUAL RESPONSIBILITY.

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 The health and safety policies of the *Contractor*.
- 9.4.2 The *Subcontractor* is required to perform the *Subcontract Work* in a safe and reasonable manner. The *Subcontractor* shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:
- .1 Employees and other persons at the site; and
 - .2 Materials and equipment stored at the site or at the off-site locations for use in performance of the *Subcontract Work*; and
 - .3 All property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the *Project* or involved in the *Subcontract Work*.
- 9.4.3 The *Contractor* and the *Subcontractor* shall give all notices required by law and the *Subcontract Documents* and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

- 9.4.4 Not less than ten (10) calendar days before commencing *Subcontract Work*, *Subcontractor* shall submit its site-specific Safety Program to the *Contractor* Project Manager for approval. Such Safety Program shall implement safety measures, policies and standards conforming to those required or recommended by the *Contractor*, the *Owner*, governmental and quasi-governmental authorities having jurisdiction, including, but not limited to, requirements imposed by the *Subcontract Documents*. Such Safety Program shall be comprehensive and shall require the implementation of safety measures according to the best current industry practices pertaining to the *Subcontract Work* and the *Project*, including but not limited to establishing safety rules, tie off and fall protection requirements, posting appropriate warnings and notices, erecting and/or maintaining appropriate safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage. Where in the opinion of the *Contractor* the *Subcontractor's* site-specific Safety Program does not meet the requirements of the contract, it shall be incumbent upon the *Subcontractor* to amend the Safety Program as directed by the *Contractor*. If the *Subcontractor* doesn't provide or amend its *Safety Program* as required, the *Contractor* shall be entitled to suspend all payments and terminate this *Subcontract*.
- 9.4.5 The *Subcontractor* shall give twenty-four (24) hour written notice to the *Contractor* in carrying out any of the *Subcontract Work* which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. The *Subcontractor* shall use properly qualified individuals or entities to carry out the *Subcontract Work* in a safe and reasonable manner so as to protect persons and property at the site and adjacent to the site from injury, loss or damage.
- 9.4.6 Damage or loss to property which results from the *Subcontractor's* negligence or failure to adhere to applicable safety standards shall be promptly remedied by: (1) *Subcontractor*, to the extent of the negligence attributed to acts or omissions of the *Subcontractor* or its *Sub-subcontractors* may be liable; and (2) *Contractor* to the extent of the negligence attributed to acts or omissions of the *Contractor*, or any of its agents or employees, other than the *Subcontractor*.
- 9.4.7 The *Contractor's* safety representative shall be its Safety Director. The *Subcontractor* shall designate an employee who shall be on-site full-time, who shall act as the *Subcontractor's* designated safety representative, and who shall have the responsibility for *Subcontractor's* compliance with *Subcontractor's* Safety Program. The name of *Subcontractor's* safety representative shall be submitted by *Subcontractor* to the *Contractor* not less than ten (10) calendar days prior to commencing *Subcontract Work*.
- 9.4.8 The *Subcontractor* has an affirmative duty not to overload the *Work*, structures or conditions at the site and shall take reasonable steps not to load any part of the *Work*, structures or site so as to give rise to an unsafe condition or create a risk of personal injury or property damage. The *Subcontractor* shall have the right to request, in writing, from the *Contractor* loading information concerning the structures at the site and *Contractor* will obtain such information from the *Consultant* and provide it to *Subcontractor* in a written response. The *Subcontractor* will not load the structure until such response is received.
- 9.4.9 The *Subcontractor* shall notify the *Contractor* in writing immediately following any accident involving personal injury, any property damage, or any incident or "near miss" that could have resulted in serious personal injury or property damage, whether or not such an injury or damage was sustained.
- 9.4.10 Prevention of accidents at the *Project* is the responsibility of the *Contractor*, the *Subcontractor*, and all other *Subcontractors*, persons and entities at the site. Establishment of a safety program by the *Contractor* shall not relieve the *Subcontractor* or other parties of their safety responsibilities. The *Subcontractor* shall comply with the reasonable recommendations of insurance companies having an interest in the *Project*, and shall stop any part of the *Subcontract Work* that the *Contractor* deems unsafe until corrective measures satisfactory to the *Contractor* are taken. The *Contractor's* failure to stop the *Subcontractor's* unsafe practices shall not relieve the *Subcontractor* of the responsibility for those practices. The *Subcontractor* shall notify the *Contractor* immediately following and accident, incident or "near miss" and promptly confirm the notice in writing. A detailed written report shall be furnished to the *Contractor* within twenty-four (24) hours of the incident. Each party to this *Subcontract* shall indemnify the other party from and against fines or penalties, damages or other losses imposed as a result of safety violations, but only to the extent that such fines, penalties, ~~or~~ damages or other losses are caused by their respective failure to comply with safety requirements imposed by this *Subcontract* and by applicable law.
- 9.4.11 The *Subcontractor* shall immediately remove from the *Project* any employee who creates an unsafe condition, or who performs work in an unsafe manner on the *Project*, or who violates the *Contractor's* Safety Procedures. The

Subcontractor agrees not to assign that employee to this or any of the *Contractor's* other *Projects* for the period of time specified in the *Contractor's* Safety Program Protection Procedures.

SCC 9.5 CONTROL OF THE WORK

- 9.5.1 The *Subcontractor* shall have total control of and responsibility for the *Subcontract Work* and shall effectively direct and supervise his forces and *Sub-subcontractors* so as to ensure conformity with the *Subcontract Documents*.
- 9.5.2 The *Subcontractor* shall be solely responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the *Subcontract Work*.
- 9.5.3 The *Subcontractor* agrees, that should the *Contractor* provide any direction or instructions, same will not be taken as replacing the *Subcontractor's* total responsibility for safety and the *Subcontractor* hereby releases and agrees to indemnify and hold harmless the *Owner*, the *Consultant* and the *Contractor* and their successors, assigns, agents, employees, directors and officers, from and against all claims, demands, losses, costs, damages and actions by third parties that arise out of, or are attributable to, any breach of care or breach of safety health and safety legislation by the *Subcontractor* or its *Sub-subcontractors*.

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~~ signing of this agreement 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~~ signing of this agreement shall increase or decrease the *Subcontract Price* accordingly, provided that *Contractor* first obtains such adjustment from the *Owner*, on behalf of the *Subcontractor*.

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 Except for the permits and fees, including those required under paragraph 10.2.3, which the *Subcontract Documents* specify as the responsibility of the *Subcontractor*, the *Contractor* shall obtain and pay for all necessary approvals, permits, charges, permanent easements, and rights of servitude.
- 10.2.3 The *Subcontractor* shall obtain and pay for permits, licenses, inspections and certificates necessary for performance of the *Subcontract Work* in accordance with the *Subcontract Documents*.
- 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 date of ~~bid-closing~~ execution of this agreement, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Subcontract Documents*, the *Subcontractor* shall notify 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 – CHANGES, SCC 6.2 – CHANGE ORDER, and SCC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Subcontractor* fails to notify 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~~ execution of this agreement, 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.

SCC 10.3 PATENT FEES

- 10.3.1 The *Subcontractor* shall pay the royalties and patent license 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 LIABILITY INSURANCE

- 11.1.1 Without restricting the generality of SCC 12.1 – INDEMNIFICATION, the *Subcontractor* shall provide, maintain and pay for general liability insurance, automobile liability insurance, aircraft and watercraft liability and professional liability (errors and omissions) insurance in the amounts of not less than \$2,000,000 per occurrence or as acceptable to the *Contractor* but not more than as described in the *Contract Documents* unless specified otherwise. The *Contractor* and *Owner* shall be identified as an additional insured under general liability insurance, with respect to liability arising out of the operations of the *Subcontractor* with regard to the *Subcontract Work*. Prior to commencement of the *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.
- 11.1.2 Unless specified otherwise, the duration of each insurance policy shall be from the date of commencement of the *Subcontract Work* until the date of the final certificate for payment of the *Work*. The policy shall be endorsed with an undertaking by the Insurer to provide the *Contractor* with not less than 30 days written notice in advance of cancellation (except 15 days in the event of cancellation for non-payment of premium), and of change or amendment restricting coverage.
- 11.1.3 Where any insurance claim is made which results, directly or indirectly, from an act or omission of the *Subcontractor* or its *Sub-subcontractors*, the *Subcontractor* shall be responsible to pay the deductible called for by the policy or policies.

SCC 11.2 PROPERTY INSURANCE

- 11.2.1 The *Contractor* or the *Owner* will arrange for and maintain property insurance in the joint names of the *Contractor*, the *Owner*, and the *Consultant*, if any, insuring not less than the price of the *Prime Contract* and the full value, as stated in the Supplementary Conditions, of *Products* that are specified to be provided by the *Owner* for incorporation into the *Work*. Given the fact that the *Subcontractor* is not a named insured, it is the responsibility of the *Subcontractor* to be satisfied that the property policy provides adequate protection. If the coverage provided by the *Contractor* or the *Owner* is inadequate for the *Subcontractor*'s needs, the *Subcontractor* shall provide, maintain, and pay for such additional insurance to protect the *Subcontractor* from losses.
- 11.2.2 If the *Subcontractor* is afforded protection under the property policy arranged by the *Contractor* or the *Owner*, the *Subcontractor* shall be responsible for any deductible amounts under the policies as may be applicable to their operations.
- 11.2.3 If the *Subcontractor* fails to procure and maintain the insurance referred to in SCC 11.1 or 11.2 in addition to the option of declaring *Subcontractor* in default for breach of a material provision of the *Subcontract*, *Contractor* shall have the right, but not the duty, to procure and maintain the same insurance, or other insurance that provides *Contractor* with equivalent protection, and *Subcontractor* shall furnish all necessary information to make effective and maintain such insurance. At the option of the *Contractor*, the cost of said insurance purchased by *Contractor* shall be charged against and deducted from any monies then due or to become due to the *Subcontractor* or *Contractor* shall notify *Subcontractor* of the cost thereof and *Subcontractor* shall promptly pay such cost.

SCC 11.3 CONTRACT SECURITY

- 11.3.1 The *Subcontractor* shall provide and maintain in good standing until the fulfillment of the *Subcontract* the contract security required at the time of bidding or mutually agreed upon prior to signing this *Subcontract*.
- 11.3.2 The *Contractor* shall, at the request of the *Subcontractor*, furnish evidence that contract security has been provided to fulfill the *Contractor*'s obligations under the *Contract*.

- 11.3.3 If the *Change Order* or *Change Directive* results in an increase in the *Subcontract Price*, the *Subcontractor* shall provide to the *Contractor* additional contract security commensurate with the new price.

PART 12 INDEMNIFICATION, WAIVER AND WARRANTY

SCC 12.1 INDEMNIFICATION

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

- .1 attributable to bodily injury, sickness, disease, or death, or to injury to or ~~destruction~~ damages of tangible property, including the cost to repair or replace defective work, and
- .2 caused by willful or negligent acts or omissions or the failure to comply with the terms of this *Subcontract* ~~of~~ by the *Subcontractor* or anyone for whose acts the *Subcontractor* may be liable, and
- .3 made in writing within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work*, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

~~The *Contractor* expressly waives the right to indemnity for claims other than those stated above.~~

~~12.1.2 The obligation of the *Subcontractor* to indemnify hereunder shall be limited to \$2,000,000 per occurrence from the commencement of the *Subcontract Work* until *Substantial Performance of the Work* and thereafter to an aggregate limit of \$2,000,000.~~

12.1.3 The *Contractor* shall indemnify and hold harmless the *Subcontractor*, the *Subcontractor's* agents and employees 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 a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

12.1.4 SCC 12.1 – INDEMNIFICATION shall govern over SCC 9.2 – DAMAGES AND MUTUAL RESPONSIBILITY.

12.1.5 The *Subcontractor* shall be responsible for and bear all costs, expenses, and damages attributable to its failure to comply with provisions of the applicable Labour or safety legislation effect at the *Place of the Work*.

SCC 12.2 WAIVER OF CLAIMS

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

- .1 those made in writing prior to the date of the final certificate for payment of the *Work* and still unsettled;
- .2 those arising from the provisions of SCC 12.1 – INDEMNIFICATION or SCC 12.3 – WARRANTY;
- .3 those arising from the provisions of paragraph 9.3.1 of SCC 9.3 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS and arising from the *Subcontractor* bringing or introducing any toxic or hazardous substances and materials to the *Place of the Work* after the *Subcontractor* commences the *Subcontract Work*.
- .4 In the Common Law jurisdictions, those 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* and arising from any liability of the *Subcontractor* for damages resulting from the *Subcontractor's* performance of the *Subcontract* with respect to substantial defects or deficiencies in the *Subcontract Work* for which the *Subcontractor* is proven responsible. As used herein "substantial defects or deficiencies" means 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 *Subcontract Work* is unfit for the purpose intended by the *Subcontract Documents*.
- .5 In the Province of Quebec, those arising under Articles 2118 and 2120 of the Civil Code of Quebec.

12.2.2 As of the date of the final certificate for payment of the *Work*, the *Subcontractor* expressly waives and releases the *Contractor* from all claims against the *Contractor* including without limitation those that might arise from the negligence or breach of this *Subcontract* by the *Contractor* except:

- .1 those made in writing prior to the *Subcontractor's* application for final payment and still unsettled; and
- .2 those arising from the provisions of SCC 9.3 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS or SCC 10.3 – PATENT FEES.

12.2.3 SCC 12.2 – WAIVER OF CLAIMS shall govern over the provisions of SCC 9.2 – DAMAGES AND MUTUAL RESPONSIBILITY.

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~~ two years 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* only 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~~ two 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.

12.4 SEVERABILITY

- 12.4.1 It is intended that all provisions of this *Subcontract* shall be fully binding between the parties, but in the event that any particular provision or provisions or a part of one, is found to be void, voidable or unenforceable, for any reason whatsoever, then the particular provision or provisions or part of a provision shall be deemed severed from the remainder of this *Subcontract* and the other provisions shall remain in full force and effect.

12.5 RIGHTS AND REMEDIES

- 12.5.1 Except as expressly provided in the *Subcontract Documents*, the duties and obligations imposed and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

12.6 WAIVER

- 12.6.1 Except as specifically provided herein to the contrary, no action or failure to act by the *Contractor*, *Consultant* or *Subcontractor* shall constitute a waiver of any right or duty afforded any of them under this *Subcontract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12.7 EFFECTIVE DATE

- 12.7.1 This *Subcontract* takes effect at the time it is signed by the latter of the *Contractor* and *Subcontractor*.