

*The following supplementary conditions to the CCDC 2-2020 Stipulated Price Contract have been developed in consultation and agreement with the Ontario General Contractors Association (OGCA) and are in alignment with supplementary conditions that have been established previously in consultation with specific owner groups and industry partners. This document updates the previous supplementary conditions document which was jointly developed for use with CCDC 2-2008.*

*The OGCA has issued this same set of supplementary conditions to their members with the advice that they have been developed in consultation with the Ontario Association of Architects (OAA).*

## **Recommended Supplementary Conditions for the Stipulated Price Contract – CCDC 2-2020**

**September 1, 2021**

The Standard Construction Document for CCDC 2 Stipulated Price Contract, 2020 English version, consisting of the Agreement Between *Owner* and *Contractor*, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 13 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications. Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, or General Conditions, these amendments, additions and modifications shall govern.

Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused

## **ARTICLES**

### **ARTICLE A-5 – PAYMENT**

- .1 In paragraph 5.1.1 of Article A-5 add the following words to the end:  
“or, where there is no *Payment Certifier*, jointly by the *Owner* and *Contractor*”

### **ARTICLE A-6 – RECEIPT AND ADDRESSES FOR NOTICES IN WRITING**

- .1 Delete paragraph 6.5 of Article A-6 in its entirety and replace it with the following:
  - 6.5 Contact information for a party may be changed by *Notice in Writing* to the other party setting out the new contact information in accordance with this Article.

## **DEFINITIONS**

- .1 Add the following definition: Proper Invoice  
*Proper Invoice* means a “proper invoice” as defined in the *Payment Legislation*, if any, and as may be modified by written agreement between the parties to the extent permitted by such *Payment Legislation*.

- .2 Add the following definition: Submittals

*Submittals* are documents or items required by the *Contract Documents* to be provided by the *Contractor* such as:

- *Shop Drawings*, samples, models, mock ups to indicate details or characteristics, before the portion of the *Work* that they represent can be incorporated into the *Work*, and
- As-built drawings and manuals to provide instructions to the operation and maintenance of the *Work*.

## GENERAL CONDITIONS

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

- .1 Delete paragraphs 1.1.3 and 1.1.4 in their entirety and replace them with the following:

“1.1.3 The *Contractor* shall review the *Contract Documents* for the purpose of facilitating and co-ordination and execution of the *Work* by the *Contractor*. The *Contractor* shall report promptly to the *Consultant* any ambiguities, design issues or other matters requiring clarification made known to the *Contractor* or that the *Contractor* may discover from such a review. Such review by the *Contractor* shall comply with the standard of care described in paragraph 3.9.1 of the *Contract*.

1.1.4 Except for its obligation to review the *Contract Documents* and report the result pursuant to paragraph 1.1.3, the *Contractor* is not responsible for ambiguities, design issues or other matters requiring clarification in the *Contract Documents* and does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. Without limiting the foregoing, the *Contractor* shall not be liable for any damages or costs resulting from any ambiguities, design issues or other matters requiring clarification in the *Contract Documents* which the *Contractor* could not reasonably have discovered from such a review in accordance with the standard of care. If the *Contractor* does discover any ambiguities, design issues or other matters requiring clarification in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received modified or additional information from the *Consultant*. The impacts of any ambiguities, design issues or other matters requiring clarification in the *Contract Documents*, including to the *Contract Price* and *Contract Time*, shall be addressed by the parties in accordance with Part 6 – CHANGES.”

- .2 Add the following to the end of subparagraph 1.1.6.2:

Except to the extent the *Consultant* is indemnified as a third party beneficiary as provided in subparagraphs 9.2.7.4 and 9.5.3.4 and in paragraph 13.1.3.

## **PART 2 ADMINISTRATION OF THE CONTRACT**

### **GC 2.2 ROLE OF THE CONSULTANT**

- .1 In paragraph 2.2.3 add the following to the end:

“Without limiting the foregoing, the *Consultant* may appoint one or more authorized representatives in writing who may fulfill the obligations of the *Consultant* under this *Contract*.”
- .2 In paragraph 2.2.8 add the words “, written statements” after the word “interpretations” in both the first and second sentences; and
  - i. add the following to the end of paragraph 2.2.8:

The *Owner* and the *Contractor* shall waive any claims against the *Consultant* arising out of its making of any interpretations, written statements or findings in accordance with paragraphs 2.2.6, 2.2.7, 2.2.8, and 7.1.2, but only to the extent that any such interpretations, written statements, and findings are made by the *Consultant* in an unbiased manner, and in accordance with the *Consultant*'s professional standard of care at law.
- .3 In paragraph 2.2.13 add the words “which are provided” before the words “by the *Contractor*”.

### **GC 2.4 DEFECTIVE WORK**

- .1 In paragraph 2.4.1:
  - i. Add after the words “shall promptly correct” the phrase “in a manner acceptable to the *Owner* and the *Consultant*”; and
  - ii. Add after the words “*Contract Documents*” the phrase “or work that the *Contractor* discovers to be defective, whether or not the defective work had been identified by the *Consultant*, and”.
- .2 Add new paragraph 2.4.4 as follows:

2.4.4 The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day-to-day operation of the *Owner*.

## **PART 3 EXECUTION OF THE WORK**

### **GC 3.1 CONTROL OF THE WORK**

- .1 Add new paragraph 3.1.3 as follows:

3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or contradictions exist, or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work.

## **GC 3.2 CONSTRUCTION BY OWNER AND OTHER CONTRACTORS**

- .1 Add new paragraph 3.2.7 as follows:
  - 3.2.7 At the commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant*, a schedule indicating the times, within the construction schedule referred to in GC 3.4, that items that are specified to be *Owner* purchased and *Contractor* installed or hooked up are required at the site to avoid delaying the progress of the *Work*.

## **GC 3.7 LABOUR AND PRODUCTS**

- .1 Add the following to the end of paragraph 3.7.1:

The *Contractor* represents that it has sufficient skilled employees to replace, subject to the *Owner's* approval, acting reasonably, its designated supervisor and project manager in the event of death, incapacity, removal or resignation.
- .2 Add new paragraphs 3.7.4 and 3.7.5 as follows:
  - 3.7.4 The *Owner* shall provide the *Contractor* in a timely manner with all relevant information (including storage, protection, and installation requirements) regarding *Products* to be supplied by the *Owner* or other contractors and, prior to delivery of any such *Products* to the *Place of the Work*, the *Owner* shall obtain the *Contractor's* written approval of the delivery date and proposed storage, protection and installation requirements.
  - 3.7.5 Once the *Contractor* has accepted delivery of *Products*, the *Contractor* shall be responsible for the safe storage and protection of *Products* as required to avoid dangerous conditions or contamination to the *Products* or other persons or property. *Products* shall be stored in locations and at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant* as agreed and approved by the *Contractor* pursuant to paragraph 3.7.4.

Notwithstanding the foregoing, the *Contractor* shall not be responsible for any *Products* supplied by the *Owner* or other contractors unless:

    - (i) the *Contract Documents* expressly stipulate that such *Product* is to be the *Contractor's* responsibility and to be installed by the *Contractor* as part of the *Work*;
    - (ii) the *Contractor* has or has received from the *Owner* proof of insurance coverage sufficient, at a minimum, to cover the replacement cost of such *Product*; and
    - (iii) the *Owner* obtained the *Contractor's* approval as required by paragraph 3.7.4.

## **GC 3.8 SHOP DRAWINGS**

- .1 Add the words "AND OTHER SUBMITTALS" to the title of GC 3.8 after the words "SHOP DRAWINGS".
- .2 Add the words "and *Submittals*" after the words "*Shop Drawings*" in paragraphs 3.8.1, 3.8.2, 3.8.3, 3.8.3.2, 3.8.5, 3.8.6, and 3.8.7.
- .3 Delete paragraph 3.8.2 in its entirety and replace it with new paragraph 3.8.2 as follows:
  - 3.8.2 Prior to the first application for payment, the *Contractor* and the *Consultant* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings* and *Submittals* in an orderly sequence.

- .4 Delete the words “with reasonable promptness so as to cause no delay in the performance of the Work” and replace them with the words “within 10 *Working Days* or such longer period as may be reasonably required” in paragraph 3.8.7.

### **GC 3.9 PERFORMANCE BY CONTRACTOR**

- .1 Add new General Condition GC 3.9 as follows:

#### **GC 3.9 PERFORMANCE BY CONTRACTOR**

- 3.9.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.

## **PART 4 ALLOWANCES**

### **GC 4.1 CASH ALLOWANCES**

- .1 Delete paragraph 4.1.7 in its entirety and replace it with the following:
  - 4.1.7 At the commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant* a schedule indicating the times within the construction schedule referred to in GC 3.4 that items called for under cash allowances are required to be delivered to the *Place of the Work* to avoid delaying the progress of the *Work*.
- .2 Add new paragraph 4.1.8 as follows:
  - 4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work* to be paid for from cash allowances.

## **PART 5 PAYMENT**

### **GC 5.2 APPLICATIONS FOR PAYMENT**

- .1 Delete the word “first” in paragraph 5.2.7 and replace it with the word “second.”

### **GC 5.4 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

- .1 Delete all paragraphs of GC 5.4 in their entirety and replace them with the following paragraphs:
  - 5.4.1 When the *Contractor* considers that the *Work* is substantially performed, or if permitted by the lien legislation applicable to the *Place of the Work* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Contractor* shall, within five (5) *Working Days*, deliver to the *Consultant* and to the *Owner* a comprehensive list of items to be completed or corrected, together with a written application for a review by the *Consultant* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.

- 5.4.2 The *Consultant* will review the *Work* to certify or verify the validity of the application and shall promptly, and in any event, no later than 10 calendar days after receipt of the *Contractor's* application:
- .1 advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
  - .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.
- 5.4.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate lien holdback account, the *Owner* shall, no later than 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Contractor*.
- 5.4.4 Subject to the requirements of any *Payment Legislation*, all holdback amounts prescribed by the applicable lien legislation for the *Place of the Work* shall become due and payable to the *Contractor* no later than 10 *Working Days* following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, as certified or verified by the *Consultant* when permitted by any *Payment Legislation*.
- 5.4.5 The *Contractor* shall submit an application for release of the lien holdback amount in accordance with the lien legislation applicable to the *Place of the Work*. Except to the extent required by any *Payment Legislation*, such application for release of the holdback shall not constitute an application for payment that is subject to *Proper Invoice* requirements.
- 5.4.6 Where legislation permits progressive release of the holdback for a portion of the *Work* and the *Consultant* has certified or verified that the part of the *Work* has been performed prior to *Substantial Performance of the Work*, the *Owner* hereby agrees to release, and shall release the holdback for such portion of the *Work* to the *Contractor* in accordance with such legislation.
- 5.4.7 Notwithstanding any progressive release of the holdback, the *Contractor* shall ensure that such parts of the *Work* are protected pending the issuance of a final certificate for payment or until the *Owner* takes early occupancy in accordance with GC12.2, whichever comes first, and shall be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when the holdback was released.

## **GC 5.5 FINAL PAYMENT**

- .1 Add to the end of paragraph 5.5.1 the following sentence:  
The application for final payment shall meet the requirements of a *Proper Invoice*.
- .2 Add the following to the end of paragraph 5.5.3:  
Subject to any *Payment Legislation*, when the *Consultant* finds the *Contractor's* application for final payment to be not valid, the *Contractor* shall revise and resubmit the application when the *Contractor* has addressed the reasons given by the *Consultant*.

## **PART 6 CHANGES IN THE WORK**

### **GC 6.3 CHANGE DIRECTIVE**

- .1 Delete the word “and” from the end of subparagraph 6.3.7.17.
- .2 Delete the period from the end of subparagraph 6.3.7.18 and replace it with “; and”.
- .3 Add new subparagraph 6.3.7.19 as follows:
  - .19 safety measures and requirements.

### **GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

- .1 Add new paragraph 6.4.5:
  - 6.4.5 The *Contractor* confirms that, prior to bidding the *Project*, it carefully reviewed the *Place of the Work* and applied to that review the degree of care and skill described in paragraph 3.9.1, given the amount of time provided between the issue of the bid documents and the actual closing of bids, the degree of access provided to the *Contractor* prior to submission of bid, and the sufficiency and completeness of the information provided by the *Owner*. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such review undertaken in accordance with this paragraph 6.4.5.

### **GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE**

- .1 Add the words “as noted in paragraph 6.6.3” after the words “of the claim” in paragraph 6.6.5 and add the words “and the *Consultant*”, at the end of paragraph 6.6.5.

## **PART 8 DISPUTE RESOLUTION**

### **GC 8.3 ADJUDICATION**

- .1 Delete the word “prescribed” from paragraph 8.2.1 and substitute the words “provided for”.

### **GC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION**

- .1 Add the following new paragraphs 8.3.9 to 8.3.13:
  - 8.3.9 Within five days of receipt of the notice of arbitration by the responding party under paragraph 8.3.6, the *Owner* and the *Contractor* shall give the *Consultant* a written notice containing:
    - .1 a copy of the notice of arbitration;
    - .2 a copy of supplementary conditions 8.3.9 to 8.3.14 of this *Contract*, and;
    - .3 any claims or issues which the *Contractor* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* arising out of the issues in dispute in the arbitration.

- 8.3.10 The *Owner* and the *Contractor* agree that the *Consultant* may elect, within ten days of receipt of the notice under paragraph 8.3.9, to become a full party to the arbitration under paragraph 8.3.6 if the *Consultant*:
- .1 has a vested or contingent financial interest in the outcome of the arbitration;
  - .2 gives the notice of election to the *Owner* and the *Contractor* before the arbitrator is appointed;
  - .3 agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.3.6, and,
  - .4 agrees to be bound by the arbitral award made in the arbitration.
- 8.3.11 Without limiting and subject to the *Owner* and *Contractor*'s rights under paragraph 8.3.12 to challenge whether the *Consultant* has satisfied the requirements of paragraph 8.3.10, if an election is made under paragraph 8.3.10:
- .1 the *Owner* or *Contractor* may request particulars and evidence of the *Consultant*'s vested or contingent financial interest in the outcome of the arbitration;
  - .2 the *Consultant* shall participate in the appointment of the arbitrator; and,
  - .3 notwithstanding the rules referred to in paragraph 8.3.6, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the respondent receives a copy of the notice of arbitration.
- 8.3.12 The arbitrator in the arbitration in which the *Consultant* has elected under paragraph 8.3.10 to become a full party may:
- .1 on application of the *Owner* or the *Contractor*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.3.10, and;
  - .2 make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.
- 8.3.13 The provisions of paragraph 8.3.9 shall apply (with all appropriate changes being made) to written notice to be given by the *Consultant* to any sub-consultant.

## **PART 9 PROTECTION OF PERSONS AND PROPERTY**

### **GC 9.1 PROTECTION OF WORK AND PROPERTY**

- .1 Delete subparagraph 9.1.1.1 in its entirety and replace it with the following:
  - 9.1.1.1 errors or omissions in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.9.1;
- .2 Delete paragraph 9.1.2 in its entirety and replace it with the following:
  - 9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground utilities and structures indicated in the *Contract Documents*, or that are discoverable by applying to an inspection of the *Place of the Work* the degree of care and skill described in paragraph 3.9.1.



## **GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

- .1 Add the following words to paragraph 9.2.6 after the word "responsible":  
or whether any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,
- .2 Add the words "and the *Consultant*" after the word "*Contractor*" in subparagraph 9.2.7.4.
- .3 Add the following words to paragraph 9.2.8 after the word "responsible":  
or that any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,

## **GC 9.5 MOULD**

- .1 Add the words "and the *Consultant*" after the word "*Contractor*" in subparagraph 9.5.3.4.

## **PART 10 GOVERNING REGULATIONS**

### **GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

- .1 Delete from the first line of paragraph 10.2.5 the word, "The" and substitute the words: "Subject to paragraph 3.9.1, the".

## **PART 12 OWNER TAKEOVER**

### **GC 12.1 READY-FOR-TAKEOVER**

- .1 After the second occurrence of the term "*Ready-for-Takeover*" insert before the term "*Ready-for-Takeover*" in paragraph 12.1.3 the words "determination of".

### **GC 12.2 EARLY OCCUPANCY BY THE OWNER**

- .1 Delete the word "achieve" in paragraph 12.2.4 and replace it with the words "have achieved".

### **GC 12.3 WARRANTY**

- .1 Delete the word "The" from the first line of paragraph 12.3.2 and replace it with the words "Subject to paragraph 3.9.1, the".

## PART 13 INDEMNIFICATION AND WAIVER

### GC 13.1 INDEMNIFICATION

- .1 Add new paragraph 13.1.0 as follows:
  - 13.1.0 The *Contractor* shall indemnify and hold harmless the *Consultant*, its agents and employees from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by third parties that arise out of, or are attributable to the *Contractor's* performance of the *Contract*, provided such claims are:
    - .1 attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and
    - .2 caused by negligent acts or omissions of the *Contractor* or anyone for whose negligent acts or omissions the *Contractor* is liable, and
    - .3 made by *Notice in Writing* within a period of 6 years from the *Ready-for-Takeover* date or within such shorter such period as may be prescribed by any limitation statute or the Province or Territory of the *Place of Work*.
- .2 Add the words "13.1.0," after the word "paragraphs" in paragraph 13.1.3.

**[End of supplementary conditions]**