

**TRADE CONTRACT**

**THIS AGREEMENT** made in duplicate this [REDACTED] day of [REDACTED], 20 [REDACTED].

Project No.: 20-03  
 RFQ No.: xxx  
 Contract No.: xxx  
 Cost Code: xxxx

**BETWEEN:** Spadina Sussex University Residence Inc.  
 by its agent, Daniels HR Corporation  
 (the “**Construction Manager**”)  
 130 Queen Quay East, West Tower, 8<sup>th</sup> Floor  
 Toronto, ON M5A 0P6

**AND:** TRADE NAME  
 (the “**Trade Contractor**”)  
 TRADE ADDRESS  
 TRADE ADDRESS

WITNESSETH that in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties agree as follows:

**ARTICLE 1  
 SCOPE OF THE WORK**

**1.1 Scope of the Work**

The Trade Contractor agrees to perform the Work described in the Contract Documents in accordance with the terms, conditions and stipulations set out therein. It is acknowledged and agreed that the Contract Documents provide a basic guide to the Work to be undertaken by the Trade Contractor and are not intended to exhaustively set forth every operation of labour to be performed or material to be supplied by the Trade Contractor. The Trade Contractor shall provide such services, labour and material consistent with, covered by or properly inferable from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result, whether or not specifically called for. Without limiting the foregoing, the Trade Contractor shall provide, perform and supply the scope of Work set out in Schedules B and C to Request for Quotation (RFQ) No. xxx, Cost Code No. xxxx, attached hereto, and for which [REDACTED] hereinafter is acting as the “**Payment Certifier**”.

**ARTICLE 2  
 CONTRACT DOCUMENTS**

**2.1 Contract Documents**

The Contract Documents, which comprise the entire agreement between the Owner and the Trade Contractor concerning the Work, consists of the following:

- (a) this Trade Contract;
- (b) Schedule 1 to this Trade Contract entitled “Definitions and Interpretation”;
- (c) the General Conditions (and supplementary conditions, if any) and the Appendices thereto;
- (d) Request for Quotation (RFQ) Package No. xxx, Cost Code No. xxxx, comprised of the following:
  - (i) Schedule A – Instructions to Bidders
  - (ii) Schedule B – Scope of Work
  - (iii) Schedule C – RFQ Package Documents
  - (iv) Schedule D – Contract Cost Summary
  - (v) Schedule E – Intentionally deleted.
  - (vi) Schedule F – Daniels Safety Package
  - (vii) Schedule G – Construction Schedule
- (e) Reports: Geotechnical Investigation Report by Terrapex Environmental Inc., dated December 18, 2020, available upon request.
- (f) all documents signed by the Construction Manager and the Trade Contractor amending, modifying or supplementing the Contract Documents.

## 2.2 Contract Documents Supersede

The Contract Documents listed in this Article 2 supersede all prior negotiations, representations or agreements, whether written or oral, relating in any manner to the Work. The Contract Documents may only be amended, modified or supplemented by written agreement between the parties. Parties agree that there are no oral representations or warranties or conditions applicable herein and that this written agreement is the sole and entire agreement between the parties.

## 2.3 Definitions and Interpretations

Save as otherwise expressly provided, the definitions and interpretations set out in Schedule 1 to this Trade Contract shall apply to all of the Contract Documents.

## 2.4 Construction Act

The parties acknowledge that the first procurement process for the Project (i.e. the “improvement” as that term is defined in the *Construction Act*) was commenced on or before July 1, 2018 and the first contract for the Project was entered into before July 1, 2018. Therefore, pursuant to Section 87.3(1)(b) of the *Construction Act*, the *Construction Act* and the regulations, as they read on June 29, 2018, continue to apply with respect to this Project

# ARTICLE 3 PAYMENT

## 3.1 Trade Contract Price

Provided that the Trade Contractor is not in default under this Trade Contract, and subject to satisfaction of the terms and conditions of this Article 3 - PAYMENT, the Construction Manager agrees to make payments to the Trade Contractor in Canadian funds of the Trade Contract Price.

## 3.2 Applications for Payment

The Trade Contractor shall submit to the Construction Manager on the 20<sup>th</sup> day of each month or the first Business Day prior if the 20<sup>th</sup> of the month falls on a weekend or a statutory holiday (but not more often than once a month) an application for payment using the Construction Manager’s billing format, covering the applicable portion of the Work completed as at such date and accompanied by the following supporting documentation:

- 3.2.1 a statutory declaration, in the form of a CCDC9A-2018 signed by the Trade Contractor stating that:
  - .1 all accounts for labour, products, machinery, equipment, services and other indebtedness which may have been incurred by the Trade Contractor in the performance of the Work have been paid in full, except statutory holdback monies properly retained; and
  - .2 it has received no written notice of lien or a claim for lien under the *Construction Act* and is aware of no liens that may still be preserved by any of the Trade Contractor’s subcontractors or suppliers;
- 3.2.2 a Workplace Safety and Insurance Board Certificate stating that the Trade Contractor is in good standing with the Workplace Safety And Insurance Board and that all assessments have been paid by the Trade Contractor to the date of such certificate; and
- 3.2.3 the written approval of the Site Manager of the completed Work.

In the event the Site Manager does not provide written approval, the Trade Contractor shall submit the application for payment without such written approval for assessment by the *Construction Manager*.

## 3.3 Set Off Rights

Any payment due to the Trade Contractor hereunder may be set off against the cost incurred or to be incurred by the Construction Manager in respect of deficient or defective Work not properly remedied, materials or labour not paid for or any lien registered or filed against the Project in respect of the Work contrary to the provisions of the Contract Documents.

## 3.4 No Relief

No payment made under this Trade Contract shall be conclusive evidence of the performance of this Trade Contract either in whole or in part, and no payment shall be construed as an acceptance of defective or improper work or relieve the Trade Contractor of responsibility for any guarantee or maintenance for which it may be liable under this Trade Contract.

## 3.5 Allowances

All items relating to provisional sums, prime costs or similar allowances shall be permitted in the Sole Discretion of the Construction Manager, and if not expressly directed in writing to be used, shall be deducted either in whole or in part, as the case may be, from the Trade Contract Price set out herein without any allowance to the Trade Contractor.

### 3.6 Payment of Amount Certified

Subject to the provisions of this Article 3 - PAYMENT, the Owner's statutory holdback obligations under the *Construction Act*, and the Warranty Holdback, payment in respect of the Work in the amount certified by the *Payment Certifier* shall be made to the Trade Contractor on the 1<sup>st</sup> day of the next complete month following the application for payment. For example, if the application for payment is made on the 20<sup>th</sup> day of October, payment will be made on the 1<sup>st</sup> day of December.

## ARTICLE 4 HOLDBACKS

### 4.1 Release of Holdback

The Construction Manager shall retain the appropriate holdback, as required by the *Construction Act*. The procedure for release of holdback monies upon completion of the Work shall be initiated by the Trade Contractor's written request to the Construction Manager and to the Payment Certifier for an inspection to determine the date of completion of the Work. The request shall be accompanied by the following documents:

- 4.1.1 a statutory declaration from the Trade Contractor confirming that all accounts have been paid by it under the Trade Contract except for statutory holdbacks properly retained;
- 4.1.2 all required guarantees, affidavits, releases, bonds and waivers shall have been received by the Construction Manager from the Trade Contractor, and have been assigned to the Owner, as applicable;
- 4.1.3 all required manufacturers' guarantees and warranties covering rated output, efficiency and performance for all operating equipment forming part of the Work shall have been received by the Construction Manager and have been assigned to the Owner, as applicable;
- 4.1.4 all required record drawings, as built drawings, records, and related data shall have been received by the Construction Manager, save and except for omissions which, in the aggregate as determined by the Construction Manager in its Sole Discretion, are immaterial;
- 4.1.5 all required maintenance manuals, operating instructions, equipment calibration sheets, maintenance and operating tools, replacement parts or materials shall have been received by the Construction Manager;
- 4.1.6 where applicable, the Construction Manager shall have received permits, licenses, approvals, certificates and authorizations required by any Governmental Authority having jurisdiction over the Work;
- 4.1.7 all required warranties as specified under the Trade Contract which have been assigned to the Owner; and
- 4.1.8 an up to date Workplace Safety and Insurance Board clearance certificate for the Trade Contractor.

### 4.2 Certification by the Payment Certifier

Upon satisfactory receipt by the Construction Manager of all documentation required under Article 4.1, the Payment Certifier shall review the Work, which may include a review of independent reports from the Consultants described in GC 20.1.2 of the General Conditions, within 15 Days. If the Payment Certifier is satisfied that all Work has been properly completed, and subject to the conditions precedent set out in Article 4.3, the Payment Certifier may issue a certificate to the Construction Manager and the Trade Contractor certifying Substantial Completion of the Trade Contract. The date of Substantial Completion of the Trade Contract shall be that fixed by the Payment Certifier in such certificate, or, where required based on the discretion of the Construction Manager, by any relevant Consultant. Within seven (7) calendar days of the certificate being issued, the Trade Contractor shall publish a copy of said certificate in the Daily Commercial News. If the Trade Contractor fails to publish such certificate, the Owner, through the Construction Manager, shall be at liberty to publish said certificate and back-charge the Trade Contractor for its reasonable costs for doing so, plus an administrative fee of 20%.

### 4.3 Conditions Precedent

The following are conditions precedent to the issuance by the Payment Certifier of the certificate referred to in Article 4.2 of this Trade Contract:

- 4.3.1 if required by the Payment Certifier, as identified by any relevant Consultant, any incomplete or deficient Work shall be completed or corrected by the Trade Contractor at its sole expense and subsequently approved as complete by the Payment Certifier; and
- 4.3.2 all documents required under Article 4.1 have been properly submitted to and approved by the Construction Manager.

### 4.4 Trade Contractor's Statement

If the Payment Certifier has issued a certificate pursuant to Article 4.2, the Trade Contractor shall then submit to the Construction Manager and the Payment Certifier an application for the release of the statutory holdback, which shall include the following:

- 4.4.1 a sworn statement or statutory declaration stating:
  - .1 that it has received no notice of lien or a claim for lien under applicable lien legislation and is aware of no liens that may still be preserved against the Project in respect of the Work;
  - .2 that it has received payment in full from the Construction Manager except for statutory holdback monies properly retained;
  - .3 the final net amount of the Work (if any) and the amount owing including the statutory holdback; and

.4 that it has received the certificate issued by the Construction Manager pursuant to Article 4.2 and the date of receipt;

4.4.2 suitable evidence showing the date of publication of the certificate referred to in Article 4.2 in the Daily Commercial News; and

4.4.3 a certificate of compliance from the Workplace Safety and Insurance Board on its own behalf and on behalf of its subcontractors and suppliers.

#### 4.5 Payment of Holdback

Provided that:

4.5.1 no written notices of lien or notices of unpaid subcontractors or suppliers are received by the Construction Manager or the Owner;

4.5.2 no claims for lien are preserved against the Project in respect of the Work and the time period for the preservation of liens under the Trade Contract has expired in accordance with the Construction Act, which shall be at an end of the appropriate period from the date of publication of a certificate of Substantial Completion of the Trade Contract.

4.5.3 all documents noted in this Article 4 have been received; and

4.5.4 the Payment Certifier has approved the payment to be made in respect of this Trade Contract,

the Construction Manager shall then make payment on the basis of the certificate issued by the Payment Certifier pursuant to Article 4.2 following the expiry of the time period for the preservation of liens as prescribed by the Construction Act.

#### 4.6 Warranties Unaffected

The release of holdback monies to the Trade Contractor does not affect the warranty requirements for this Trade Contract which shall commence on the Day of Project Completion in accordance with the provisions of General Condition 8.1 – Warranty Obligations of the General Conditions.

#### 4.7 Correction of Deficiencies

Notwithstanding anything to the contrary in this Article 4 and notwithstanding the wording of any certificate certifying completion of the Work, the Trade Contractor shall be responsible for the correction of defects in the Work regardless of whether or not they were apparent when such certificate was issued.

### ARTICLE 5 GENERAL

#### 5.1 Notices

5.1.1 Wherever in this Trade Contract provision is made for the giving, making or issuing of any notice, endorsement, consent, request, approval, certificate, report or determination by any person (a “**Notice**”), unless otherwise specified, such Notice will be in writing and the words “notice”, “notify”, “endorsed”, “consent”, “request”, “approval”, “certify”, “report” and “determined” and derivations thereof are to be construed accordingly.

5.1.2 Any Notice will be duly given if signed by or on behalf of a duly authorized officer of the person giving the Notice, and (i) personally delivered to, (ii) subject to the provisions hereof, sent by facsimile transmission or email to the following addresses:

.1 For all Notices other than deliveries or applications for payment, to the Construction Manager and to the Owner at:

130 Queen Quay East, West Tower, 8<sup>th</sup> Floor  
Toronto, ON  
Canada M5A 0P6  
Facsimile: (416) 979-0415  
Email: [aspano@danielscorp.com](mailto:aspano@danielscorp.com)  
Attention: Director, High Rise Construction

.2 For deliveries, to the Construction Manager at:

130 Queen Quay East, West Tower, 8<sup>th</sup> Floor  
Toronto, ON  
Canada M5A 0P6  
Facsimile: (416) 979-0415  
Attention: Project Manager

.3 For applications for payment, electronic invoices are acceptable and must be sent to the Construction Manager at:

130 Queen Quay East, West Tower, 8<sup>th</sup> Floor  
Toronto, ON  
Canada M5A 0P6  
Attention: Accounts Payable ([acctspayable@danielscorp.com](mailto:acctspayable@danielscorp.com))

.4 To the Trade Contractor at:

**TRADE NAME**  
**TRADE ADDRESS**  
**TRADE ADDRESS**  
Canada

5.1.3 Any party may change its address, facsimile number, or email for Notice to another address, facsimile number, or email in Ontario by prior Notice to the other party.

5.1.4 Any Notice will be deemed to have been received:

- .1 if sent by personal delivery, when delivered;
- .2 if sent by facsimile, on the Day of transmittal if sent during normal business hours, and otherwise on the next following Business Day; or
- .3 if sent by email, on the day on which written confirmation of receipt from the addressee (including any an automatic read receipt) is given, provided that if such confirmation is given outside of normal business hours, then receipt will be deemed on the next Business Day.

## 5.2 Governing Law

This Trade Contract will be governed by and construed in all respects in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## 5.3 No Amendment

No amendment to this Trade Contract will be binding unless it is in writing and signed by the duly authorized representative(s) of each of the parties.

## 5.4 Time of the Essence

Time shall be of the essence in this Trade Contract and every part hereof and of the Contract Documents. In the event of any extension of time by a party for the performance of an obligation by the other party under this Trade Contract, time shall continue to remain of the essence hereof notwithstanding such extension.

## 5.5 Assignment

The Owner shall be permitted to assign this Trade Contract in the Sole Discretion of the Owner, upon written notice to the Trade Contractor by the Construction Manager, in which event neither the Owner nor the Construction Manager shall have any further liability to the Trade Contractor. The Trade Contractor shall not be entitled to transfer or assign this Trade Contract, directly or indirectly, either in whole or in part to any person without the prior written consent of the Construction Manager, which consent may be granted or withheld in the Sole Discretion of the Owner.

## 5.6 Relationship of the Parties

Nothing herein shall be construed so as to make the Trade Contractor a partner, agent or joint venturer with or of the Construction Manager, the Owner, or their respective heirs, executors, administrators, successors, permitted transferees, permitted assigns, parent companies, governing councils, and organizations and all other Related Entities.

## 5.7 Succession

The General Conditions of this Trade Contract annexed hereto, and the other Contract Documents, are to be read into and form part of this Trade Contract and the whole shall constitute the Trade Contract between the parties, and subject to Laws and Regulations and the provisions of the Contract Documents, shall endure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, permitted transferees and permitted assigns.

## 5.8 Counterparts

This Trade Contract may be executed in counterparts; each of which shall constitute an original and which together shall constitute one and the same agreement. Execution and delivery of a facsimile or email transmission of this Trade Contract shall constitute delivery of an executed original and shall be binding upon the party whose signature appears on the transmitted copy.

**IN WITNESS WHEREOF** the Construction Manager, as agent of the Owner, and the Trade Contractor have executed this Trade Contract by the hands of their proper officers thereunto duly authorized.

**DATED** \_\_\_\_\_

**SPADINA SUSSEX UNIVERSITY  
RESIDENCE INC. by its agent, DANIELS HR  
CORPORATION**

**TRADE NAME**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

*//We have the authority to bind the Corporation*

*//We have the authority to bind the Corporation*

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATIONS

#### DEFINITIONS

1. For the purposes of this Trade Contract and all Schedules hereto, the following terms when capitalized shall have the following meanings:

1.1 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario.

1.2 “**Change Directive**” means a written instruction issued by the Construction Manager, signed by the Owner directing an addition, deletion, or revision to the Work within the general scope of the Contract Documents and which the affected parties expect will be documented and incorporated in a subsequently issued Change Order following negotiations by such parties as to its effect, if any, on the Trade Contract Price, or the Construction Schedule.

1.3 “**Change Order**” means a written amendment to the Trade Contract issued by the Construction Manager setting out:

- (a) the required change in the Work; and
- (b) the extent of the adjustment in the Construction Schedule and Trade Contract Price, if any.

1.4 “**Claims**” means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services, with legal costs on a substantial indemnity scale), proceedings, demands and charges.

1.5 “**Construction Act**” means the *Construction Act*, R.S.O. 1990, c. C.30, as it read on June 29, 2018, and all regulations passed under it and enforceable on that date. For certainty, the first procurement process for the Project (i.e. the “improvement” as that term is defined in the *Construction Act*) was commenced on or before July 1, 2018 and the first contract for the Project was entered into before July 1, 2018. Therefore, pursuant to Section 87.3(1)(b) of the *Construction Act*, the *Construction Act* and the regulations, as they read on June 29, 2018, continue to apply with respect to this Project

1.6 “**Construction Manager**” means Daniels HR Corporation, acting as agent on behalf of the Owner.

1.7 “**Construction Schedule**” means the construction schedule attached to Request for Quotation Package No. xxx, Cost Code No. xxxx as Schedule G, as amended by the Construction Manager, from time to time and is the schedule pursuant to which the Work must be completed.

1.8 “**Constructor**” (as defined by the Occupational Health & Safety Act) means the Construction Manager.

1.9 “**Consultant**” means the consultants described in GC 20.1.2 of the General Conditions, as applicable

1.10 “**Construction Management Agreement**” is defined as the agreement between the Owner and the Construction Manager.

1.11 “**Contract Documents**” has the meaning given in Article 2.1 of the Trade Contract.

1.12 “**Day**” means a calendar day of 24 hours measured from midnight to the next midnight. When any period of time is referred to in the Contract Documents by Days, it will be computed to exclude the first and include the last Day of such period. If the last Day of any such period falls on a Day that is not a Business Day in the Province of Ontario, such Day will be omitted from the computation and the last Day shall be the next Business Day.

1.13 “**Dispute Resolution Procedure**” means the procedure set out in Appendix 1 to the General Conditions.

1.14 “**Environmental Laws**” means all Laws and Regulations relating to the protection of the environment, environmental assessment, plant, animal or human health, including occupational health, management of waste and safety and transportation of dangerous goods.

1.15 DELETED

1.16 “**Force Majeure**” means any event beyond the reasonable control of the party to the Trade Contract claiming Force Majeure (the “**affected party**” for the purposes of this definition) including:

- (a) explosion, lightning, storm, tempest, hurricane, tornado, flood, ionizing radiation, earthquake, riot or civil commotion;
- (b) blockage or embargo;
- (c) war, civil war, civil riots, armed conflict, insurrections, acts of foreign enemies, hostilities or terrorism;
- (d) nuclear or radioactive contamination;
- (e) chemical or biological contamination of the Place of the Work;
- (f) any lawful labour action generally affecting the construction industry in the Province of Ontario;
- (h) emergency acts, orders, legislation, regulations or directives of any government or other public authority; or



- (i) epidemic, pandemic, or other public health emergency (e.g. SARS, COVID-19), so declared by the applicable Government Authority, which results in any public order requiring the cessation of work generally, or results in an inability to secure labour,

in each case, which delays or interrupts the performance of any material obligation under the Trade Contract provided that such event is not otherwise specifically dealt with under the Trade Contract and provided such event does not arise by reason of:

- (j) the willful act, negligence or default of the affected party or those for whom it is in law responsible;
- (ii) any act or omission by the affected party (or those for whom it is in law responsible) in breach of the provisions of the Trade Contract;
- (iii) in the case of the Trade Contractor, any strike, labour dispute or other labour protest involving any person retained, employed or hired by the Trade Contractor or any person for whom the Trade Contractor is responsible, to supply materials or services for or in connection with the Work that does not generally affect the construction industry in the Province of Ontario or any strike, labour dispute or labour protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Trade Contractor, or any person for whom the Trade Contractor is responsible;
- (iv) in the case of any shortage or unavailability of construction materials, a failure on the part of the Trade Contractor to exercise reasonable foresight in ordering materials and supplies to meet expected requirements in accordance with the timetable set out in the Construction Schedule and any updates and amendments thereto;
- (v) weather conditions; or
- (vi) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the affected party.

1.17 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of the Project.

1.18 “**General Conditions**” means the document forming part of the Contract Documents entitled “General Conditions”.

1.19 “**Hazardous Substance**” means , but is not limited to, any solid, liquid, gas, odour, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, toxic waste, hazardous material or hazardous substance which is or becomes regulated by Environmental Laws or which is classified as hazardous or toxic under Environmental Laws.

1.20 “**Indirect Losses**” means, collectively:

- (a) punitive, exemplary or aggravated damages; or
- (b) indirect, consequential, incidental, reliance or special damages, including loss of profits, business interruption losses, loss of contract, loss of use, loss of production, loss of business, cost of capital, loss of business opportunity, loss of goodwill or any economic loss of any other kind.

1.21 “**Lands**” means the lands on which the Project will be constructed described as the lands at the northwest corner of Spadina Avenue and Sussex Avenue in Toronto, Ontario.

1.22 “**Laws and Regulations**” means any and all requirements under or prescribed by the common law and the law of equity and any enactments, statutes, regulations, laws, court orders or judgments, decrees, writs, administrative interpretations, ordinances, orders in council, by-laws, codes (including design and construction codes), orders, injunctions, directives, guidelines, rules or policies of any Governmental Authority affecting, applicable to or otherwise relating to any of the parties to the Trade Contract, the Lands, the Place of the Work, the Work, the Project or any part thereof or the use thereof and includes, for greater certainty, all Environmental Laws.

1.23 “**Owner**” means Spadina Sussex University Residence Inc., 27 King’s College Circle, Toronto, Ontario, M5S 1A1.

1.24 “**Payment Certifier**” is the person or entity identified as such in Article 1.1 of this Trade Contract, or where no person or entity is identified in Article 1.1 the Payment Certifier shall be the Construction Manager until such time as the Owner in its sole and absolute discretion, by delivering a notice in writing to the Trade Contractor and the Construction Manager, appoints a person or entity as Payment Certifier.

1.25 “**PDI**” means pre-delivery inspections.

1.26 “**Place of the Work**” means the designated site or location of the Work.

1.27 “**Project**” means a mixed use student residence development to be constructed on the Lands, expecting to be comprised of a twenty three (23) storey tower with an estimated gross floor area of up to 18,000 square metres and be comprised of (i) approximately 19 floors of student housing inclusive of up to 511 beds, resident amenity areas, including a dining hall, event space, study rooms, exercise room, music room, project room, and student laundry room, as well as space for administration and residence life functions, (ii) an ancillary retail component of up to 750 square metres of grade related retail space, (iii) a parking component providing parking for users of retail and office space, and (iv) a 3-storey structure containing approximately 10 townhouse units for faculty, student families and/or other tenants.



- 1.28 **“Project Completion”** means when the Project in its entirety (1) is ready for use, (2) is being used for the purpose intended, and (3) the aggregate of all known defects for the Project can be corrected at a cost of not more than 1.5% of the total cost of the Project as determined by the Payment Certifier in its Sole Discretion.
- 1.29 **“Related Entities”** means any successor, parent, or other entity that is either controlled by the Owner or those entities having control of the Owner.
- 1.30 **“Shop Drawings”** means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data provided by the Trade Contractor to illustrate details of a portion of the Work.
- 1.31 **“Site Manager”** means the project manager designated in writing by the Construction Manager.
- 1.32 **“Sole Discretion”** means sole, absolute and unfettered discretion which may be arbitrarily exercised and in respect of the exercise of which, it is not necessary to provide any explanation or rationale whatsoever.
- 1.33 **“Substantial Completion of the Trade Contract”** means when (1) the requirements for substantial performance of a contract under Section 2(1) of the *Construction Act* are satisfied and (2) the requirements of Articles 4.1 and 4.3 have been satisfied by the Trade Contractor.
- 1.34 **“Request for Quotation Package Documents”** means the drawings and specifications for the Work described in Schedule C to Request for Quotation Package No. XXX, Cost Code No. XXXX.
- 1.35 **“Request for Quotation”** means the Request for Quotation (RFQ) package forming part of the Contract Documents entitled “Request for Quotation (RFQ) No. XXX, Cost Code No. XXXX”.
- 1.36 **“Trade Contract”** means the agreement forming part of the Contract Documents entered into between the Trade Contractor and the Owner entitled “Trade Contract” and includes the Agreement between the Trade Contractor and the Construction Manager as agent for the Owner, the Definitions and Interpretations, the General Condition, and the other Contract Documents.
- 1.37 **“Trade Contract Price”** means the total price in respect of the Work set out in Schedule D to Request for Quotation Package No. XXX, Cost Code No. XXXX – Contract Cost Summary.
- 1.38 **“Warranty Holdback”** refers to, in addition to the statutory holdback amount required to be retained pursuant to the Construction Act, a holdback amount equal to 2% of the gross value of each application for payment submitted by the Trade Contractor to be retained by the Owner for the duration of the warranty period and subject to the following terms:
1. during the period of two (2) years from the date of Project Completion, the Trade Contractor will have 15 days following receipt of a written notice from the Owner, which identifies a defect or deficiency in the Work, to correct the defect or deficiency;
  2. the Owner may carry out, or have others carry out, rectification work at the Trade Contractor’s cost, and draw upon the Warranty Holdback, if the Trade Contractor does not correct the defect or deficiency within the 15 day period prescribed, unless the nature of the defect or deficiency is such that it cannot be corrected within such time and the Owner, acting reasonably, agrees to an extension of such time;
  3. the Owner shall not be required to release the Warranty Holdback, or any remaining portion thereof, to the Trade Contractor until the later of:
    - (a) two (2) years from the date of Project Completion; or,
    - (b) the date upon which all defects and deficiencies that are the subject of a written notice from the Owner during the two (2) year period following the date of Project Completion are rectified and approved as satisfactorily complete by the Owner, acting reasonably;
  4. following two (2) years from the date of Project Completion and subject to all defects and deficiencies being rectified, the Trade Contractor may submit an application for the release of the Warranty Holdback, or any remaining portion thereof.
- 1.39 **“WHMIS”** means the system for the labelling and warning of Hazardous Substances used in the workplace, commonly referred to as a Workplace Hazardous Materials Information System, prescribed by Laws and Regulations over the delivery, storage and use of Hazardous Substances in the Province of Ontario.
- 1.40 **“Work”** means the scope of work described in Schedule B to Request for Quotation Package No. XXX, Cost Code No. XXXX – Scope of the Work, and Schedule C to Request for Quotation Package No. XXX, Cost Code No. XXXX – Request for Quotation Package Documents, and all labour, materials and services, to complete such work, and all items set forth in, required by or reasonably inferable from and/or necessary to produce the results intended by the Contract Documents in order to fully complete such work.

## 2. INTERPRETATION

This Trade Contract will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Trade Contract otherwise requires:

2.1 The table of contents, headings and sub-headings, marginal notes and references to them in the Trade Contract are for convenience of reference only, do not constitute a part of the Trade Contract, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, the Trade Contract.

2.2 All references to Articles, General Conditions, and Schedules are references to Articles and General Conditions of and Schedules to the Trade Contract and all references to parts, paragraphs or appendices are references to parts and paragraphs contained in and appendices to the Schedules.

2.3 The Schedules to the Trade Contract (including any appendices thereto) are an integral part of the Trade Contract and reference to the Trade Contract includes reference thereto and reference to any Schedule includes reference to any appendix thereto.

2.4 All references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of the Trade Contract expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

2.5 All references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and include any orders, regulations, by-laws, ordinances, codes of practice, instruments or other subordinate legislation made under the relevant statute.

2.6 All references to time of Day are references to Eastern Standard time or Eastern Daylight Saving time, as the case may be.

2.7 The words “herein”, “hereto”, “hereof” and “hereunder” and other words of like import refer to the Trade Contract as a whole and not to the particular Section, Schedule, part, paragraph or appendix in which such word may be used.

2.8 Words importing the singular include the plural and vice versa.

2.9 Words importing a particular gender include all genders.

2.10 Any reference to a public organization shall be deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization.

2.11 References to “parties” means the parties to the Trade Contract and references to a “party” means any one of the parties to the Trade Contract.

2.12 All monetary amounts are expressed in Canadian Dollars.

2.13 Any requirement for any thing or action to be “in accordance with” or “in compliance with” or “pursuant to” any standard, code, specification, guideline or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification, guideline or other requirement or stipulation.

2.14 Any reference to anything being “in”, “on”, “under” or “over” any other thing shall, where the context permits, include the others.

2.15 Whenever the terms “will” or “shall” are used in the Trade Contract they are to be construed and interpreted as synonymous and are to be read as “shall”

2.16 The words “includes” or “including” are to be construed as meaning “includes without limitation” or “including without limitation”, respectively.

2.17 The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances, including, where appropriate and applicable, taking into consideration, good construction industry practice, but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrue solely to that person’s own benefit.

2.18 All capitalized terms used in a Schedule have the meanings given to such terms in this Schedule 1, unless stated otherwise in a Schedule, in which case such term will have the meaning given to it in that Schedule solely for the purposes of that Schedule.

2.19 All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.

2.20 The words of the Trade Contract are to be given their natural meaning. The parties have had the opportunity to take legal advice on the Trade Contract and no term is, therefore, to be construed *contra proferentem*.

2.21 A reference to any right, power, obligation or responsibility of any department, ministry, agency, board, commission, corporation or other entity of any Governmental Authority is to the department, ministry, agency, board, commission, corporation or other entity of the Governmental Authority which, pursuant to Laws and Regulations, has such right, power, obligation or responsibility at the relevant time.

2.22 A reference to persons for whom a party is in law responsible includes that party's employees, agents, contractors and subcontractors of any tier, advisors and any other persons for whom that party is in law responsible or over whom that party could reasonably be expected to exercise control.

2.23 If the time for doing an act falls or expires on a Day that is not a Business Day, the time for doing such act will be extended to the next following Business Day.

2.24 Each provision of the Trade Contract will be valid and enforceable to the fullest extent permitted by law. If any provision of the Trade Contract is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of the Trade Contract. If any such provision of the Trade Contract is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore the Trade Contract as nearly as possible to its original intent and effect.

## GENERAL CONDITIONS

### GC 1.1 INTERPRETATION OF CONTRACT DOCUMENTS

- 1.1.1 Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in Schedule 1 to the Trade Contract.
- 1.1.2 Words and abbreviations that have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.1.3 No implied terms or obligations of any kind by or on behalf of the Construction Manager shall arise from anything in the Trade Contract and the express covenants and agreements therein contained and made by the Construction Manager are the only covenants and agreements upon which any rights against the Construction Manager are to be founded.
- 1.1.4 References to drawings are references to the drawings forming part of the Request for Quotation Package Documents.
- 1.1.5 These General Conditions will be interpreted according to the provisions set out in Section 2 of Schedule 1 to the Trade Contract applied *mutatis mutandis*, save to the extent that the context or the express provisions of these General Conditions otherwise require.

### GC 1.2 PRIORITY OF DOCUMENTS

- 1.2.1 The Contract Documents are complementary and what is required by any one shall be as binding as if required by all.
- 1.2.2 In the event of discrepancies or conflicts between Contract Documents, the following order of priority, from highest to lowest, shall apply:
- .1 any amendment of the Trade Contract that is made in accordance with the provisions of the Trade Contract;
  - .2 the executed Agreement between the Construction Manager and the Trade Contractor;
  - .3 Schedule 1 to the Trade Contract entitled “Definitions and Interpretation”;
  - .4 the document entitled “General Conditions”;
  - .5 the Appendices to the General Conditions; and
  - .6 Request for Quotation Package No. xxx, Cost Code No. xxxx.
- 1.2.3 In interpreting the Contract Documents:
- .1 Specifications shall govern over drawings;
  - .2 Drawings of larger scale shall govern over those of smaller scale of the same date;
  - .3 figured dimensions shown on a drawing shall govern even though they may differ from dimensions scaled on the same drawing; and
  - .4 notwithstanding the foregoing, documents of later date shall always govern.
- 1.2.4 The Trade Contractor shall review the Request for Quotation Package Documents for conformity with the other Contract Documents and shall inform the Construction Manager of any conflict, error, ambiguity or discrepancy between the Request for Quotation Package Documents and the other Contract Documents immediately upon becoming aware of same and shall not proceed further with any portion of the Work in respect of which there is such a conflict, error, ambiguity or discrepancy, without the prior written consent of the Construction Manager.

### GC 1.3 USE OF DOCUMENTS

- 1.3.1 All documents and data furnished by the Construction Manager to the Trade Contractor are and shall remain the property of the Construction Manager or the Owner, or another third party author of the documents and/or data, as applicable, with the exception of the signed Contract Documents set belonging to each party to the Trade Contract. The Trade Contractor may, at its cost, copy, use and communicate any such documents and/or data for the purposes of the performance of the Work. Such documents and/or data shall not, without the written authorization of the author or, where the author is not clearly identifiable in the document, the Construction Manager, be used, copied or communicated to a third party by the Trade Contractor, except as necessary for the purposes of the performance of the Work.

### GC 1.4 REFERENCE STANDARDS

- 1.4.1 Except as may be otherwise specifically provided in the Contract Documents, reference to standards, specifications, manuals or codes of any technical society, organization or association, manufacturer’s instructions or other reference

documents or Laws and Regulations of any Governmental Authority, whether explicit or implied, shall mean the most current edition of such standards, specifications, manuals, codes, instructions or Laws and Regulations in effect on the date hereof, whether or not the current edition is specified. Such references shall be considered as part of the specifications as much as if the pertinent portions of those references were printed herein in their entirety. When a newer edition becomes effective during the execution of the Work, and where the new edition affects the Work in any way, the Trade Contractor shall inform the Construction Manager of such newer edition immediately upon such change becoming known to the Trade Contractor, provided that the original edition shall apply unless a change is properly authorized by the Construction Manager.

1.4.2 Except where stated otherwise in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

- .1 the provisions of any such standard, specification, manual, code or instruction (whether or not explicitly incorporated by reference in the Contract Documents); or
- .2 the provisions of any such Laws and Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Laws and Regulations).

1.4.3 No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of the Trade Contractor from those set forth in the Contract Documents, nor shall it be effective to assign to the Construction Manager, any Consultant, or to the Owner, any duty inconsistent with the provisions of the Contract Documents.

## **GC 1.5 APPENDICES TO THE GENERAL CONDITIONS**

1.5.1 The following Appendices are incorporated herein by reference and form part of this Trade Contract:

Appendix 1: Dispute Resolution Procedures

## **GC 2.1 CHANGES TO THE TRADE CONTRACT WORK AND DELAYS**

2.1.1 Neither the Construction Manager nor the Owner shall be responsible for any changes in the Work unless the same have been authorized by a written Change Order signed by the Construction Manager. This requirement is of the essence and it is the express intention of the parties that any claims by the Trade Contractor for a change in the Trade Contract Price and/or Construction Schedule shall be barred unless there has been strict compliance with GC 2.1 CHANGES TO THE TRADE CONTRACT WORK AND DELAYS. No verbal dealings between the Trade Contractor, the Owner, and/or the Construction Manager, and no implied acceptance of alterations or additions to the Work by the Owner or the Construction Manager, and no claims that the Owner has been unjustly enriched by any alteration or addition to the Work, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional payment under this Trade Contract or a claim for any extension of the Construction Schedule. No changes in the Work shall be implemented without a Change Order and no payment shall be made unless accompanied by a certificate from the Payment Certifier certifying completion of the work which is the subject of the Change Order. Any approved Change Order shall set out any approved extensions to the Construction Schedule or adjustments to the Trade Contract Price.

2.1.2 If the Trade Contractor is of the opinion that a change in the Work is required it shall submit a written request for a change within three (3) Business Days of becoming aware of the event or circumstance giving rise to the change, clearly setting out required changes to the Construction Schedule and/or the Trade Contract Price. Requests for changes to the Construction Schedule and/or the Trade Contract Price that are not submitted in a timely manner or that are not submitted until completion of the Work will not be considered for compensation.

2.1.3 The Construction Schedule in respect of the Work shall, subject to the provisions of this Trade Contract and paragraph 2.1.4, be extended as a result of delays caused by events of Force Majeure. Such extension shall be for a period equivalent to the period of the delay. The Trade Contractor shall not be entitled to any additional compensation as a result of such delays.

2.1.4 If the Trade Contractor becomes aware of any event that could or will necessitate any change in the Construction Schedule, it shall:

- .1 notify the Construction Manager in writing of same within three (3) Business Days of becoming aware of the occurrence of any such matter providing details of the circumstances and consequences of the delay; and
- .2 use its reasonable commercial efforts to manage the Work to eliminate or minimize delays caused by Force Majeure or otherwise,

and if it fails to do so, such failure shall be taken into consideration in determining any extension of the Construction Schedule.

2.1.5 Each approved Change Order shall be deemed to be in full and final satisfaction of any Claims whatsoever sustained or incurred by the Trade Contractor arising by reason of any delay related to the change described therein, including without limitation any delay caused by Force Majeure.

2.1.6 If the Work herein contracted for becomes behind schedule the Trade Contractor shall use its best efforts to bring the Work back on schedule as set out in the Construction Schedule, at its sole cost and expense, including by increasing its

labour force and equipment and expediting of the Work, or working overtime as may be necessary to keep abreast of the Work.

- 2.1.7 The Construction Manager may issue a Change Directive to the Trade Contractor to proceed with a change in the Work where the Construction Manager and the Trade Contractor have yet to agree whether or not such change entitles the Trade Contractor to an adjustment to the Trade Contract Price or to the Construction Schedule. Upon receipt of a Change Directive, the Trade Contractor shall proceed promptly with the change in Work. The Trade Contractor shall keep full and detailed accounts and records necessary for the documentation of the alleged costs of performing the work attributable to the Change Directive, which shall be limited to the costs listed in paragraph 3.2.1, and shall provide the Construction Manager with copies thereof when requested. If the Construction Manager and the Trade Contractor do not agree on the proposed adjustment, if any, to the Construction Schedule or the Trade Contract Price, the adjustment shall be resolved pursuant to the Dispute Resolution Procedure. When the Construction Manager and the Trade Contractor reach agreement on the adjustment, if any, to the Trade Contract Price and/or to the Construction Schedule, this agreement shall be recorded in a Change Order.

### **GC 3.1 TRADE CONTRACT PRICE COMPLETE**

- 3.1.1 Unless otherwise expressly provided herein, the Trade Contractor acknowledges and agrees that all costs, charges and outlays of any kind whatsoever for or in respect of the Work are included in the Trade Contract Price, including, for greater certainty, the cost of all labour, material and supplies, payments to suppliers and subcontractors of any tier, wages and salaries to employees, statutory remittances and deductions, Workplace Safety and Insurance Board deductions, payments required for permits, licences and approvals required to be obtained by the Trade Contractor and all other costs, charges and outlays whether similar or dissimilar to the foregoing.

### **GC 3.2 PRICES**

- 3.2.1 The Trade Contract Price shall be complete for the applicable Work and shall include for, but not be limited to, the following:

- .1 expenditures for all wages and salaries for all persons employed by the Trade Contractor;
- .2 expenditures for all materials used in or required with the construction of the applicable work, including materials tests required by the laws or ordinances of any authority having jurisdiction;
- .3 expenditures for preparation, inspection, delivery, installation and removal of materials, plant, tools, equipment and supplies;
- .4 temporary facilities, protection and hoarding, as required, for the applicable work to meet all safety requirements and allow expedient progress of the Work;
- .5 travelling expenses;
- .6 rentals of all equipment whether rented from the Trade Contractor or others, including any applicable insurance premiums thereon and expenditures for transportation to and from the site of such equipment; costs of loading and unloading; cost of installation, dismantling and removal thereof and repairs or replacements during its use on the applicable Work;
- .7 the cost of all expendable materials, supplies and tools;
- .8 the cost of all personnel;
- .9 premiums on all insurance policies and bonds called for under this Trade Contract, as related to the specified prices;
- .10 royalties for the use of any patented invention on the applicable Work;
- .11 fees for licenses and permits in connection with the applicable Work;
- .12 duties and taxes imposed on the applicable Work; and
- .13 such other expenditures in connection with the applicable Work as may be necessary.

### **GC 3.3 UNIT PRICES**

- 3.3.1 Unit prices included in the Trade Contract shall be for the units of Work submitted by the Request for Quotationer and as detailed in the Trade Contractor's submission. Unit prices provided by the Trade Contractor (and any amendments thereto) and approved by the Owner and/or the Construction Manager shall form part of the Trade Contract and shall be used for adjustments to the Trade Contract Price.

### **GC 3.4 ITEMIZED PRICES**

- 3.4.1 An itemized price requested in the bidding documents shall be the amount included in the Request for Quotationed bulk sum price for the specified Work and which shall be deducted from the lump sum price should the specified work be excluded from the Work and the Trade Contract Price.



**GC 3.5 SEPARATE PRICES**

3.5.1 Separate prices requested in the bidding documents shall not be included in the Trade Contract Price. Consistent with their acceptance or rejection by the Owner and/or Construction Manager, they will be carried in the Trade Contract as an amount separate from the Trade Contract Price or in a separate agreement.

**GC 4.1 TAXES AND DUTIES**

4.1.1 The Trade Contract Price does not include HST, but does include any other applicable taxes and customs duties in force at the date of execution of the contract. The Trade Contractor/Supplier shall pay, when due, all such taxes and duties and any penalties and/or interest accruing thereon.

4.1.2 Any increase or decrease in costs to the Trade Contractor arising from changes in such taxes or due to changes or imposition of any other taxes after the date of this Trade Contract shall increase or decrease the Trade Contract Price accordingly. The Trade Contractor shall provide a detailed breakdown of additional taxes if requested by the Construction Manager in a form satisfactory to the Owner. Notwithstanding the foregoing, neither the Owner nor the Construction Manager shall have no liability whatsoever with respect to any increase in administrative or overhead costs and profit shall not be included in any costs increase related to any such taxes or the procedures contemplated in this clause.

4.1.3 The parties shall co-operate to minimize the impact of any tax increases or new taxes and take advantage of all tax reductions. The Trade Contractor agrees to comply with any system or procedures mandated by the Owner or the Owner's mortgagee or funding authority relating to the Harmonized Sales Tax. All applications for payment must include the following:

- .1 Trade Contractor's H.S.T. registration or business number; and
- .2 Total amount of H.S.T. charged, with period covered by invoice.

**GC 5.1 PERMITS, LICENCES AND APPROVALS**

5.1.1 The Construction Manager shall be responsible to obtain all building permits required in connection with the Project. The Trade Contractor shall be responsible to apply for, obtain and pay for any and all other permits, licenses and approvals required in connection with the Work.

**GC 6.1 CORRECTION OF DEFICIENCIES**

6.1.1 The Trade Contractor shall promptly, at its cost, correct defective Work that has been rejected by the Consultant, the Construction Manager, or the Owner, as applicable, as failing to conform to the Contract Documents, including any defects or deficiencies identified during PDI, whether or not the defective work has been incorporated in the 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 Trade Contractor.

6.1.2 The Trade Contractor will provide sufficient supervision, manpower, equipment and materials, as and where required, to complete in a good and workmanlike manner, the correction of all defects and deficiencies, including PDI items, prior to Substantial Completion of the Trade Contract, but in any event, not later than 15 Days following notification by the Construction Manager. The Trade Contractor acknowledges that failure to do so will result in payments to it being offset by the amount required to complete and implement such repairs by other forces as necessary.

**GC 7.1 STANDARD OF CARE AND REPRESENTATIVES**

7.1.1 The Trade Contractor shall, at its own cost and risk perform the Work:

- .1 in compliance with Laws and Regulations and the requirements of all Governmental Authorities;
- .2 in compliance with the Contract Documents;
- .3 in accordance with the standards, practices, methods and procedures conforming to Laws and Regulations which demonstrate the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experience person engaged in a similar type of undertaking under the same or similar circumstances;
- .4 with due regard to the health and safety of persons and property; and
- .5 in accordance with all other terms of this Trade Contract.

7.1.2 The Trade Contractor shall devote such time and attention to the Work as shall be reasonably necessary to permit the effective performance of the Work in accordance with the standards and requirements set out herein. The Trade Contractor shall appoint a representative for the entire duration of the Trade Contract. The Trade Contractor's representative will have full responsibility for the performance of the Trade Contractor's obligations under this Trade Contract, with full authority to act in all matters as necessary for the proper management, coordination, direction and technical administration of the Work. The Trade Contractor's representative shall attend all meetings in connection with the Project required by the Construction Manager.



**GC 8.1 WARRANTY OBLIGATIONS**

- 8.1.1 Without restricting any warranty stipulated or implied by Laws and Regulations, the Trade Contractor shall, upon direction in writing of the Construction Manager or the Owner and within such time as shall be specified in such direction, rectify and make good at its own cost and expense, any defects or other deficiencies that may appear in the Work for a minimum period of twenty-four (24) months from Project Completion.
- 8.1.2 Upon receiving written notice from the Construction Manager or the Owner, as the case may be, of any defect or deficiency the Trade Contractor will either make the necessary repairs, or in the event of failure to do so within fifteen (15) Days after receiving said written notice, the Owner may make such repairs at the Trade Contractor's expense and draw upon the Warranty Holdback to pay for such repairs. Where the Warranty Holdback has been exhausted, the Trade Contractor agrees to pay the Owner upon demand.
- 8.1.3 The correction of defects and deficiencies in the Work during the warranty period shall be at the sole cost of the Trade Contractor and shall be executed at times determined by the Construction Manager.
- 8.1.4 Any extended warranties required beyond the two-year warranty period as described in GC 8.1.1, shall be as specified in the Contract Documents. Extended warranties shall be issued by the warrantor for the benefit of the Owner. The Trade Contractor shall remain jointly liable with the manufacturer to the Owner with respect to such warranties to the extent required in the Contract Documents, notwithstanding any limitation in the manufacturer's warranty. If not issued to the Owner, extended warranties will be assigned to the Owner. The Contractor shall ensure that all extended warranties commence on the date of Project Completion.

**GC 9.1 SITE SAFETY AND SECURITY**

- 9.1.1 The Trade Contractor shall provide, erect and maintain proper warning signals, signs, lights, barricades, fences, flag persons and police supervision, if required, on and in respect to the Work and shall take all other necessary precautions for the protection of the work and the safety of the public, the workers and other persons carrying out the Work, all in conformance with the *Occupational Health & Safety Act*. The Trade Contractor shall be responsible for receiving and safeguarding materials delivered to or for the Work and the Construction Manager shall not be in any way responsible therefor.
- 9.1.2 The Construction Manager's Health and Safety Policy forms part of this Trade Contract. The Trade Contractor will comply with the safety regulations attached as Schedule F.

**GC 9.2 CONSTRUCTION SAFETY**

- 9.2.1 The Trade Contractor acknowledges that it is an "employer" within the meaning of the *Occupational Health and Safety Act* (Ontario) and accordingly, undertakes to carry out the duties and responsibilities of an employer with respect to the Work.
- 9.2.2 The Trade Contractor shall be responsible for construction safety at the site and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The Trade Contractor shall comply with all safety regulations or directives issued in writing by the Construction Manager, as "constructor" as that term is defined in the *Occupational Health and Safety Act* (Ontario), in respect of the Project.
- 9.2.3 Without limiting the generality of the foregoing, the Trade Contractor shall be responsible for the safety of its employees, suppliers, and visitors to the Project site, and must ensure that proper safety equipment and procedures are used at all times. Where required, the Trade Contractor shall conduct and/or attend regular health and safety meetings for the Project. Such meetings may include, without limitation, meetings organized by a site superintendent. The Trade Contractor shall be represented at any such meetings by a representative who is knowledgeable and competent in all aspects of the Work and who is authorized to make decisions on behalf of the Trade Contractor.
- 9.2.4 The Trade Contractor shall fulfil the obligations of Trade Contractor as identified in the Trade Contractor Safety Requirements attached hereto, as amended from time to time. The Trade Contractor shall fully cooperate with the Construction Manager to implement the occupational health and site Safety Program and comply with the requirements of the *Occupational Health and Safety Act* and all pertinent regulations, particularly the Regulations for Construction Projects R 214/ 91, as amended by R 145/ 00. The Trade Contractor shall be responsible for maintaining and supervising the program throughout the performance of the Work.
- 9.2.5 Without limiting the generality of the foregoing, the Trade Contractor shall submit to the Construction Manager, the following information regarding its Safety Program and accident experience. This documentation shall include, among other things:
- .1 Safety Policy and Programs;
  - .2 Outline of Safety Training (i.e., WHMIS);
  - .3 Current WSIB Workplace Injury Summary Report (WISR);
  - .4 Completed "Registration of Constructors and Employers Engaged in Construction" Form 1000;
  - .5 Digital Copy of the Trades Contractor's Health & Safety Policy & Programs (Manual) for Trade Contractors with 6 or more employees; and

.6 Current WSIB Clearance Certificate.

9.2.6 Upon award of the Trade Contract, the Trade Contractor shall provide the Construction Manager with complete documentation, as required by WHMIS Regulations, regarding designated substances to be used to complete the Work herein. The Trade Contractor's employees shall be WHMIS trained and shall provide evidence thereof.

9.2.7 The Trade Contractor shall deliver to the Construction Manager an Ontario Ministry of Labour “Registration of Constructors and Employers Engaged in Construction” (Registration) form referencing all subcontractors performing any part of the Work.

9.2.8 The Trade Contractor shall fully indemnify and hold harmless the Owner, the Construction Manager, and the Consultant(s), from any liability for claims, damages or penalties, including legal fees to defend any offences arising from the Trade Contractor's failure to comply with the duties and responsibilities referred to herein. The Trade Contractor shall fully indemnify and hold harmless the Owner and Construction Manager and any other related parties from any liability, costs, damages, expenses, claims, penalties, or legal fees arising from the Trade Contractor's involvement in any situation related to the obligations described herein. The Trade Contractor acknowledges and agrees that the Owner or Construction Manager shall have the sole, exclusive, and unilateral right to attribute, assign, determine, and allocate responsibility for these matters which without limiting the generality of the foregoing shall include the absolute right to charge or hold back from the Trade Contractor any and all amounts determined to be reasonable by the Owner or Construction Manager as arising out of matters related to *Occupational Health & Safety Act* obligations, WSIB obligations and any and all related or similar matters. This includes the unilateral right of the Owner and Construction Manager to consolidate or treat as one claims involving the Trade Contractor and any Related Entities. These rights in this clause set out are in addition to any other rights of indemnity found elsewhere in this Trade Contract.

#### **GC 10.1 MATERIALS HOISTING**

10.1.1 The formwork trade contractor will have a fully operational tower crane erected on site from commencement of its work on the Lands until approximately two weeks after completion of its work. Other trade contractors, including the Trade Contractor, requiring the use of the tower crane for hoisting materials and equipment must make all arrangements for such hoisting and co-ordinate all such hoisting directly with the formwork trade contractor. The Owner and the Construction Manager assume no responsibility for any such arrangements, including scheduling, co-ordination, liability or property damage nor lack of co-operation on the part of the formwork trade contractor. If any such hoisting is to take place outside of normal working hours, then the Construction Manager must be informed of such arrangements. A man-material hoist will be employed. When complete, the permanent elevator unit will be fitted for construction use.

#### **GC 11.1 SITE EXAMINATION**

11.1.1 The Trade Contractor shall examine the Project site and become familiar with all features and characteristics affecting the Work of the Trade Contract. No allowance will be made for any difficulties encountered due to any feature or peculiarity of the Project site or surrounding public or private property which existed at the time the Request for Quotations were submitted.

#### **GC 12.1 SITE INSPECTION**

12.1.1 The Trade Contractor shall inspect the Project site prior to commencement of the Work and immediately notify the Construction Manager in writing of any defective work in place which could adversely affect the Work. Failure to provide such notification will result in the Trade Contractor being responsible for any future remedial work. The Trade Contractor will undertake periodic inspections for defects and deficiencies in the Work, and when a defect or deficiency is discovered, the Trade Contractor shall record such defect or deficiency, report such defect or deficiency to the Construction Manager and correct it immediately.

#### **GC 14.1 CONSTRUCTION BY OTHER TRADES**

14.1.1 The Trade Contractor acknowledges that the Construction Manager shall be free to engage agents and other trade contractors as it sees fit in connection with work to be carried out for the Project. In connection with the foregoing, the Trade Contractor shall:

- .1 cooperate with the Construction Manager in connection with the engagement of such other trade contractors and agents;
- .2 coordinate the work of such agents and other trade contractors with the Work;
- .3 participate with such agents and other trade contractors in reviewing their expected on site work schedules to confirm that such schedules adhere to the Construction Schedule and advise such agents and other trade contractors, as well as the Construction Manager if the Trade Contractor anticipates that such schedules may interfere with the Construction Schedule; and
- .4 promptly report to the Construction Manager any apparent deficiencies in the work of such agents or other trade contractors which could affect the Work immediately upon such deficiencies coming to its attention.

14.1.2 The Trade Contractor agrees not to interfere with or prevent the performance of work by agents or other trade contractors engaged by the Construction Manager.

14.1.3 The placing, installation or connection of work by such agents or other trade contractors on, in or to the Work does not relieve the Trade Contractor of its responsibilities under the Trade Contract nor does it or will it invalidate any warranties provided in connection with the Work.

14.1.4 If the Trade Contractor has caused damage to the work of another trade contractor on the Project, the Trade Contractor agrees, upon due notice, to settle with the other trade contractor by negotiation or arbitration. If the other trade contractor makes a Claim against the Construction Manager and/or the Owner on account of damage alleged to have been sustained, the Construction Manager shall notify the Trade Contractor and may require the Trade Contractor to defend the Claim at the Trade Contractor's expense. The Trade Contractor shall satisfy a final order or judgment against the Construction Manager and/or Owner, as applicable, and pay the costs incurred by the Construction Manager and/or Owner, arising from any such Claim.

14.1.5 If the Trade Contractor becomes liable to pay or satisfy a final order, judgment, or award against the Construction Manager, then the Trade Contractor, upon undertaking to indemnify the Construction Manager and/or Owner, as against any and all liability for costs, shall have the right to appeal in the name of the Construction Manager such final order or judgment to any and all courts of competent jurisdiction.

#### **GC 14.1 USE OF PREMISES**

14.1.6 The Trade Contractor under this Trade Contract shall limit its work area and storage area so as not to unnecessarily encumber the Project site and/or conflict with the operation of the Construction Manager and other trade contractors or suppliers in the execution of the work relating to the construction of the Project.

#### **GC 15.1 HAZARDOUS SUBSTANCES**

15.1.1 The Trade Contractor agrees to comply with applicable Environmental Laws and any obligation to obtain any approval or permit required under Environmental Laws in respect of the Work, and further agrees to handle and dispose of all materials in accordance with such Laws and Regulations.

15.1.2 The Trade Contractor shall do, cause to be done or refrain from doing any act or thing as directed by the Construction Manager if at any time the Construction Manager considers that any situation or condition is unsafe, damaging to the environment or contrary to the provisions of Environmental Laws or any other applicable Laws and Regulations. If the Trade Contractor fails to comply with such direction, the Construction Manager may:

- .1 take action to remedy the situation or condition; or
- .2 terminate the Trade Contract pursuant to paragraph 19.1.4 of GC 19.1 – CONSTRUCTION MANAGER'S RIGHT TO PERFORM THE WORK OR TERMINATE THE AGREEMENT.

15.1.3 The Trade Contractor shall provide the Construction Manager with complete documentation as required by WHMIS, regarding Hazardous Substances to be used to complete the Work. The Trade Contractor's employees shall be trained in the implementation of WHMIS.

15.1.4 The following "designated substances", as defined in the *Occupational Health & Safety Act* (Ontario), may be present on the site: NONE. Furthermore, prior to bringing any Designated Substance onto the job site, this Trade Contractor must request in writing and obtain the Construction Manager's WRITTEN permission to do so.

#### **GC 16.1 SHOP DRAWINGS**

16.1.1 The Trade Contractor shall undertake the following responsibilities in connection with the preparation and approval of Shop Drawings:

- .1 arrange for the preparation of clearly identified Shop Drawings and other submittals as called for in the Request for Quotation Package Documents or as the Construction Manager may direct;
- .2 provide all Shop Drawings to the Construction Manager in both paper and electronic format for review; and
- .3 upon instructions from the Construction Manager, make changes or arrange to have changes made to Shop Drawings or other submittals to make them consistent with the Contract Documents.

#### **GC 17.1 FOSSILS AND ANTIQUITIES**

17.1.1 If any fossils, antiquities and other objects having artistic, historic, archaeological or monetary value, including human remains or burial sites are found on or at the Lands, such objects shall be dealt with in accordance with the provisions of this GC 17.1 and are or shall become, upon discovery, the absolute property of the Owner.

17.1.2 Upon the discovery of any object described in paragraph 17.1.1 of this GC 17.1 during the course of the Work, the Trade Contractor shall:

- .1 immediately inform the Construction Manager of such discovery;
- .2 take all steps not to disturb or permit the disturbance of the object and, if, material such as cut stone, brick rubble, mortar, stone footings, wood and associated artefacts are encountered, cease any Work insofar as the carrying out of such Work would endanger the object or prevent or impede its excavation;

- .3 take all necessary steps to preserve and ensure the preservation of the object in the same position and condition in which it was found; and
- .4 comply and ensure compliance by all employees, subcontractors and suppliers with applicable Laws and Regulations with respect to such discovery and the Trade Contractor shall promptly and diligently comply with such instructions.

17.1.3 Subject to paragraph 17.1.4, if the Construction Manager wishes the Trade Contractor to carry out procedures which are in addition to any required pursuant to Laws and Regulations or the requirements of any Governmental Authority having jurisdiction, then it shall issue instructions to the Trade Contractor specifying the additional action which the Construction Manager requires the Trade Contractor to take in relation to such discovery.

17.1.4 If the Work is delayed or additional costs are incurred as a result of the Trade Contractor taking the steps required under this GC 17.1, the Construction Schedule shall be extended and all costs incurred by the Trade Contractor as a result of taking those steps shall be added to the Trade Contract Price, all of which will be recorded in a Change Order.

#### **GC 18.1 SUSPENSION**

18.1.1 Should a stoppage or delay be caused by or result from the action or neglect of other trades, or be caused by or result from the work being taken out of the hands of other trades, the Construction Manager may give notice in writing to the Trade Contractor to stop the Work.

18.1.2 The Construction Manager may stop any portion of the Work if for any reason the requisite approvals from any applicable Governmental Authority are not available or, the Work is determined not to be in compliance with Laws and Regulations.

18.1.3 When the Work is discontinued for any reason and will not be resumed until the following working season or for any extended period, when directed by the Construction Manager the Trade Contractor shall open and place any highway, roadway or street affected by the Work in a passable, safe and satisfactory condition for public travel and the highway, roadway or street shall not again be closed to traffic or traffic thereon obstructed without the written authority of the Construction Manager.

18.1.4 During the period of suspension, the Trade Contractor shall not remove from the Lands any part of the Work or any product or materials, without the consent of the Construction Manager.

#### **GC 19.1 CONSTRUCTION MANAGER'S RIGHT TO PERFORM CONTRACT OR TO TERMINATE CONTRACT**

19.1.1 The Construction Manager, with the direction of the Owner, may at any time in its sole, absolute, unfettered discretion unilaterally and whether reasonable or not terminate this Trade Contract on a forthwith basis by providing written Notice to the Trade Contractor whose sole absolute and only entitlement thereafter shall be restricted to the reasonable amount owing in regard to Work actually performed at the time of receipt of said Notice. If the Trade Contractor should become bankrupt or insolvent or makes a general assignment for the benefit of creditors because of its insolvency; or if a receiver is appointed because of its insolvency; or if the Trade Contractor transfers, assigns or otherwise disposes of its interest in the Trade Contract or any part thereof without the written authority of the Construction Manager; or if the Trade Contractor ceases the performance of the Work for a period of 7 Days or more (other than for delays for which an extension of the Construction Schedule is permitted under this Trade Contract); or if the Trade Contractor fails to comply immediately with a direction of the Construction Manager under GC 15.1 – Hazardous Substances, the Construction Manager on behalf of the Owner and without prejudice to any other right or remedy that the Construction Manager or the Owner may have, may by giving the Trade Contractor or the receiver or trustee in bankruptcy written Notice:

- .1 terminate this Trade Contract; or
- .2 take all or any part of the Work out of the Trade Contractor's hands and employ such means as it may see fit to complete the Work and may deduct the cost thereof from the Trade Contract Price due or that may become due to the Trade Contractor hereunder.

19.1.2 If the Trade Contractor should neglect to prosecute the Work properly, or otherwise fails to comply with the requirements of this Trade Contract, the Construction Manager may notify the Trade Contractor in writing that it is in default of its contractual obligations and instruct it to correct the default within 5 Days of the receipt of such Notice or, where immediate action is required, in such lesser time as may be specified in the Notice.

19.1.3 Where the Project is proceeding in phases and the Trade Contractor has a separate contract for a separate phase, the Trade Contractor shall further be in default under this Trade Contract if it is in default of any trade contract entered into in respect of the Project and, where all cure periods have expired under such other trade contract, all cure periods shall be deemed to have expired under this Trade Contract. For certainty, the Owner on its own behalf or through the Construction Manager shall be entitled to exercise all of its rights and remedies against the Trade Contractor as set out in this Trade Contract in relation to defaults with respect to other phases of the Project, as if they were defaults under this Trade Contract.

19.1.4 If the default by the Trade Contractor cannot be corrected within the 5 Days or lesser time specified in the Notice from the Construction Manager, where immediate action is required, the Trade Contractor shall be in compliance with the Construction Manager's instructions if it:

- .1 immediately commences and thereafter diligently continues to remedy the breach and to mitigate any adverse effects on the Construction Manager and the Owner and the performance of its obligations hereunder;



- .2 puts forward, within 3 Days of receipt of Notice of such breach from the Construction Manager, a reasonable plan and schedule acceptable to the Construction Manager, acting reasonably, for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which and the latest date by which such breach is proposed to be remedied, which latest date shall, in any event be within 25 Days of notice of such breach, or if such breach is not capable of being rectified in such period, then such longer period as is reasonable in the circumstances; and
- .3 thereafter, performs its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.

19.1.5 If the Trade Contractor fails to correct the default in the manner set out in paragraph 19.1.4 of this GC 19.1, the Owner on its own behalf or through the Construction Manager may, without prejudice to any other right or remedy it may have, correct such default and deduct the cost thereof from the Trade Contract Price due or that may become due to the Trade Contractor or terminate this Trade Contract, in whole or in part, upon Notice to the Trade Contractor having immediate effect.

19.1.6 If the Trade Contract is terminated, the Owner on its own behalf or, through the Construction Manager shall:

- .1 be entitled to take possession of the premises and all materials, equipment, tools, construction equipment and machinery owned by the Trade Contractor and finish the Work by whatever method it may consider expedient;
- .2 pay to the Trade Contractor those amounts to which it is entitled in accordance with Schedule D to Request for Quotation Package No. XXX, Cost Code No. XXXX – Contract Cost Summary subject to any rights of set off pursuant to this Trade Contract;
- .3 pay to the Trade Contractor fair compensation, either by purchase or rental, at the option of the Construction Manager, for any construction tools or machinery and equipment retained for use on the Work owned by the Trade Contractor;
- .4 assume and become liable for all obligations, commitments and unliquidated claims that the Trade Contractor may have, in good faith, and with the Construction Manager’s approval, undertaken or incurred in connection with the Work;
- .5 withhold further payment to the Trade Contractor until a final certificate for payment is issued; and
- .6 charge the Trade Contractor the amount by which the full cost of completing the Work, as certified by the *Payment Certifier*, together with compensation to any Consultant for such Consultants’ additional services and a reasonable allowance as determined by the *Payment Certifier* to cover the cost of corrections to the Work as may be required under the warranty provisions of this Trade Contract, exceeds the unpaid balance of the Trade Contract Price; provided however, that if the cost of completing the Work is less than the unpaid balance of the Trade Contract Price, the Construction Manager shall pay the Trade Contractor the difference.

19.1.7 The Trade Contractor shall, as a condition of receiving the payments described, execute and deliver all such papers and take such action, including the legal assignment of its contractual rights, as the Construction Manager may require for the purpose of fully vesting in the Construction Manager or the Owner, as the case may be, the rights and benefits of the Trade Contractor under the obligations or commitments to be assumed by the Construction Manager or the Owner, as the case may be.

## GC 20.1 INDEMNIFICATION BY TRADE CONTRACTOR

20.1.1 The Trade Contractor shall indemnify the Owner, Construction Manager, the Consultant(s), and their respective directors, officers, servants, contractors, employees and their respective successors and assigns (collectively, the “**Construction Manager Indemnified Parties**”), and save them harmless from and against any and all Claims made against or suffered or incurred by the Construction Manager Indemnified Parties, directly or indirectly and which arise from or are connected with:

- .1 any failure or alleged failure by the Trade Contractor (or anyone for whom the Trade Contractor may be responsible) to comply with any applicable Laws or Regulations in the performance of its obligations under this Trade Contract;
- .2 any infringement or alleged infringement by the Trade Contractor (or anyone for whom the Trade Contractor may be responsible) of any intellectual property right including any misuse, passing off or infringement or alleged infringement of trade-marks;
- .3 any breach by the Trade Contractor of any of the provisions of this Trade Contract;
- .4 any Hazardous Substances used by the Trade Contractor (or anyone for whom the Trade Contractor may be responsible in law);
- .5 any form of theft, fraud, or illegal activity by the Trade Contractor (or anyone for whom the Trade Contractor may be responsible in law) or any of their respective directors, officers, servants, contractors or employees; and
- .6 any willful act, omission or negligence of the Trade Contractor (or anyone for whom the Trade Contractor may be responsible in law) or any of their respective directors, officers, servants, contractors or employees.

20.1.2 For clarity, the consultants on the Project include:

Architect of Record:	Diamond Schmitt Architects
Structural Engineer:	Entuitive Corporation
Mechanical Engineer:	Crossey Engineering Ltd.
Electrical Engineer:	Crossey Engineering Ltd.
Civil Engineer:	Counterpoint Engineering
Shoring Engineer:	InGeo Design Ltd.
Landscape Architect:	Nak Design Strategies
Heritage Consultant:	ERA Architects Inc.
Interior Designer:	Diamond Schmitt Architects
Elevator Consultant:	National Elevator Consulting Ltd.
Surveyor:	Kremer Surveyors Limited
Geotechnical Engineer:	Terrapex Environmental Inc.
Sustainability Engineer:	Purpose Building Inc.
Acoustical Engineer:	J.E. Coulter & Associates
Kitchen Consultant:	Van Velzen + Radchenko

20.1.3 For greater certainty, the Trade Contractor shall only be responsible for its own acts and omissions and for the acts and omissions of others for whom it is responsible in law, including each of its subcontractors and suppliers, and nothing in paragraph 20.1.1 is intended to otherwise impose liability on the Trade Contractor for the acts, omissions or negligence of other Persons, including the Construction Manager Indemnified Parties. If any of the matters referred to in paragraph 20.1.1 are caused or contributed to by any act, omission or negligence of a Construction Manager Indemnified Party, the Trade Contractor shall be relieved from liability hereunder but only to the extent that such matter has been caused or contributed to by the act, omission or negligence of the Construction Manager Indemnified Party.

### GC 21.1 THIRD PARTY CLAIMS

21.1.1 The parties shall respond to and deal with all third-party Claims in a prompt, courteous and efficient manner. The parties shall contact all third-party claimants and acknowledge receipt of all third-party Claims by telephone within 1 Business Day, and in writing within 3 Business Days upon being notified in writing of the third-party Claim. Each party shall immediately upon receipt of any third-party Claim, provide the other with notice of the third-party Claim and copies of all correspondence between such party or its agents and the third-party claimant.

### GC 22.1 RESPONSIBILITY FOR CLAIMS

22.1.1 Neither party shall advise any third-party claimant that the other party is responsible for its Claim.

### GC 23.1 PROCESS FOR INDEMNITY

23.1.1 This GC 23.1 shall apply to the conduct by a party giving or purporting to give an indemnity under GC 20.1 – INDEMNIFICATION BY TRADE CONTRACTOR, of Claims made by a third Person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the “Beneficiary” and the Party giving the indemnity is referred to as the “Indemnifier”. Accordingly:

- .1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is entitled to, or may become entitled to, indemnification under GC 20.1 the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and, in any event, notice must be received by the Indemnifier within 5 Business Days of receipt of the same. Such notice shall specify with reasonable particularity (to the extent that the information is available): (i) the factual basis for the Claim; and (ii) the amount of the Claim; provided that if the Beneficiary fails to give timely written notice to the Indemnifier, such failure shall not preclude the Beneficiary from making a Claim against the Indemnifier under GC 20.1 but the Beneficiary’s right to indemnification may be reduced to the extent that such delay prejudiced the defence of the Claims or increased the amount of liability or the cost of the defence;
- .2 subject to paragraphs 23.1.1.1 and 23.1.1.4 on the giving of a notice by the Beneficiary pursuant to paragraph 23.1.1.1, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (upon notice to the Beneficiary within 30 Days from its receipt of the Beneficiary’s notice referred to in paragraph 23.1.1.1 and subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the Claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim
- .3 with respect to any Claim conducted by the Indemnifier pursuant to paragraph 23.1.1.2:
  - .1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - .2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - .3 the Indemnifier shall not pay or settle such Claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - .4 the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

- .5 the Indemnifier shall use all reasonable efforts to have the Beneficiary named as beneficiary under any release given by the Persons bringing the Claim to which this GC 23.1 pertains and to have such release delivered to the Beneficiary;
- .4 the Beneficiary shall be free to pay, settle or defend against any Claim on such terms as it thinks fit and, without prejudice to its rights and remedies under this Contract, if:
- .1 the Indemnifier is not entitled to take conduct of the Claim in accordance with paragraph 23.1.1.2;
- .2 the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within 30 Days of its receipt of the notice from the Beneficiary under paragraph 23.1.1.2;
- .3 the Indemnifier notifies the Beneficiary that it does not intend to take conduct of the relevant Claim pursuant to paragraph 23.1.1.2; or
- .4 the Indemnifier fails to comply in any material respect with the provisions of paragraph 23.1.1.3;
- .5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any Claim (or of any incidental negotiations) to which paragraph 23.1.1.4 applies. On receipt of such notice, the Indemnifier shall promptly take all steps (including the delivery to the Beneficiary of all relevant documentation) necessary to transfer the conduct of such Claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim. If the Beneficiary gives any notice pursuant to this subsection, then the Indemnifier shall be released from the secured indemnity referred to in parenthesis in paragraph 23.1.1.2 and, without prejudice to any accrued liabilities, any liability under such secured indemnity in respect of such Claim; but, for greater certainty, the Indemnifier shall not be released from its obligation to indemnify the Beneficiary pursuant to GC 20.1;
- .6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently receives (whether by one or more payment, discount, credit, saving, relief or other benefit or otherwise) a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the Claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- .1 an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in obtaining the same; and
- .2 the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,
- provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the aggregate Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the Direct Losses sustained by the Beneficiary; and
- .7 any Person taking any of the steps contemplated by this GC 23.1 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract.

23.1.2 **Holding Indemnity In Trust** – The Construction Manager shall be deemed to hold the provisions of GC 20.1 – INDEMNIFICATION BY TRADE CONTRACTOR that are for the benefit an Construction Manager Indemnified Party that is not a party to this Trade Contract in trust for such Construction Manager Indemnified Party as a third party beneficiary under this Trade Contract.

23.1.3 **Indirect Losses** – Unless otherwise specifically provided under this Trade Contract, neither party shall be liable to the other party for any Indirect Losses, regardless of whether any such Indirect Losses arise in contract, tort, equity, at law, under statute or otherwise, and regardless of whether either party hereto has been advised of, foresees, or ought to have foreseen a possibility of any such Indirect Losses occurring.

23.1.4 **Limits on Recovery** – Notwithstanding any other provision of this Trade Contract, neither the Construction Manager nor the Trade Contractor shall be entitled to recover compensation or make a Claim under this Trade Contract or any other agreement in relation to the Work, in respect of any loss that it has incurred (or any failure of another party) to the extent that it has already been compensated in respect of that loss or failure pursuant to this Trade Contract or such other agreement, including pursuant to any policy of insurance taken out to cover such loss.

23.1.5 **Application of Limitations and Exclusions of Liability** – The limitations and exclusions of liability and the disclaimers in this Trade Contract shall apply irrespective of the nature of the Claim, whether brought, arising in, or founded in contract, tort, equity, at law, under statute or otherwise, and shall survive a fundamental breach of breaches of contract or the failure of the essential purpose of this Trade Contract or of an exclusive or limited remedy.

23.1.6 **Limitation Period** – Notwithstanding any other provision of this Trade Contract, the Construction Manager shall not be entitled to recover compensation or make a Claim under GC 20.1 – INDEMNIFICATION BY TRADE CONTRACTOR, unless such Claim is made or brought within the applicable limitation period permitted by Laws and Regulations.

## GC 24.1 OTHER PROVISIONS

### 24.1.1 Disputes



All disputes arising under this Trade Contract shall be resolved in accordance with the provisions of the Dispute Resolution Procedure.

#### 24.1.2 Construction Liens

.1 In the event that a construction lien (other than a lien by the Trade Contractor) is registered arising from the performance of the Work or the Owner or the Construction Manager receives a written notice of lien from a subcontractor or supplier of the Trade Contractor arising from the performance of the Work, the Trade Contractor shall at its sole expense within 10 Working Days:

- .1 ensure that any and all claims for lien and certificates of action are discharged, released, or vacated by the posting of security or otherwise. If the lien is merely vacated, the Trade Contractor shall undertake the defense of the Construction Manager and/or the Owner of any subsequent lawsuit commenced in respect of the lien at the Trade Contractor's sole expense. In the event that the Owner determines, acting reasonably, that the Trade Contractor is not satisfactorily defending the Owner's interests, the Owner shall defend the claim and the Trade Contractor shall indemnify the Owner for all costs thereof, including, without limitation, legal fees on a solicitor and client basis; and
- .2 in the case of written notices of lien, ensure that such notices are withdrawn, vacated or discharged from title to the premises, in writing.

.2 In the event that the Trade Contractor fails to conform with the requirements of GC 24.1.2.1, the Construction Manager, on behalf of the Owner, may fulfill those requirements without Notice in Writing to the Trade Contractor and set-off and deduct from any amount owing to the Trade Contractor, all costs and associated expenses, including the costs of posting security and all legal fees (on a solicitor and client basis) and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending any related action(s). If there is no amount owing by the Owner to the Trade Contractor, then the Trade Contractor shall reimburse the Owner for all of the said costs and associated expenses, including the Owner's reasonable legal expenses.

.3 In the event that any subcontractor or supplier registers any claim for lien with respect to all or part of the Lands, the Owner may withhold, in addition to the statutory holdback, the full amount of said claim for lien plus either: (a) \$50,000 if the claim for lien is in excess of \$250,000 or (b) 25% of the value of the claim for lien and to bring a motion to vacate the registration of said claim for lien and any associated certificate of action in respect of that lien, in accordance with Section 44 of the *Construction Act*, by paying into court as security the amount withheld, which payment into court shall be considered payment on account of the Trade Contract Price.

#### 24.1.3 Patent Fees

- .1 The Trade Contractor shall hold the Owner and the Construction Manager harmless from and against all Claims, arising out of the Trade Contractor's performance of the Trade Contract which are attributable to an infringement or an alleged infringement of a patent or invention by the Trade Contractor or anyone for whose acts it may be liable.
- .2 The Construction Manager shall hold the Trade Contractor harmless from and against all Claims, arising out of the Trade Contractor's performance of the Trade Contract which are attributable to an infringement or an alleged infringement of a patent or invention in executing anything for the purpose of the Trade Contract, the model, plan or design of which was supplied to the Trade Contract for the performance of the Trade Contract.

#### 24.1.4 Waiver

The parties hereby expressly agree that no waiver by the Construction Manager of or in respect of the performance by the Trade Contractor of any of the provisions, stipulations or agreements contained in the Trade Contract, shall be of any force or effect unless in writing signed by the Construction Manager, and in any event shall not operate as a waiver of any other subsequent default.

#### 24.1.4 Insurance

The Trade Contractor shall comply with the insurance requirements set out in Schedule A to Request for Quotation Package No. 324, Cost Code No. 15030 – Instructions to Bidders. Where insurance requirements are not specified in the Request for Quotation Package, the Trade Contractor shall provide, maintain, and pay for the following insurance coverages and, with respect to the coverages required in subparagraphs .1, .2, and .3, below, in the minimum amounts specified in the version of the CCDC 41 – INSURANCE REQUIREMENTS in effect at the time of the Trade Contract bid closing (whereby all applicable references to the "Contractor" in the CCDC 41 shall mean "Trade Contractor"):

- .1 Automobile Liability Insurance from the date of commencement of the Work until one year after the date of Substantial Completion of the Trade Contract;
- .2 Aircraft (manned or unmanned) or Watercraft Liability Insurance, as applicable, when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the Work;
- .3 Contractors' Equipment Insurance from the date of commencement of the Work until one year after the date of Substantial Performance of the Trade Contract; and
- .4 Commercial General Liability including but not limited to personal injury liability, contractual liability, employers' liability, coverage to include without limitation the activities and operations of the Trade Contractor at the Place of the Work or off-site, and any other person performing work on behalf of the Trade Contractor and those for whom the Trade Contractor is in law responsible. Such policy shall be written on a comprehensive basis with inclusive

limits of not less than \$5,000,000 per occurrence for bodily injury to any one or more persons, and/or property damage and an aggregate limit of not less than \$5,000,000 within any policy year.

#### 24.1.5 **Trade Contract Security**

.1 Where prescribed by the Contract Documents, the Trade Contractor shall, within five (5) Business Days of the execution of this Trade Contract, deliver to the Construction Manager a performance bond and a labour and materials bond in an amount equal to fifty percent (50%) of the Trade Contract Price. Each of the bonds shall be properly executed by a surety or by an agent or attorney in fact for the surety, in which latter case, the Trade Contractor shall submit with such bonds a power of attorney to the signatory agent or the attorney in fact executed by the surety to evidence the authority of the agent or the attorney in fact.

.2 Such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province of Ontario and shall be maintained in good standing until the fulfillment of the Trade Contract. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

#### 24.1.6 **Ownership of Materials**

Unless otherwise specified, all materials existing at the Place of the Work shall remain the property of the Owner. All products and materials delivered by the Trade Contractor which form part of the Work shall be considered the property of the Owner, but the Trade Contractor shall remove or arrange for the removal of all surplus or rejected materials when notified in writing to do so by the Construction Manager. Notwithstanding the foregoing, the Trade Contractor shall continue to bear the risk of loss or damage with respect to the Work until the date of written acceptance of the Work by the Construction Manager.

#### 24.1.7 **Payment of Disputed Amounts**

If the Construction Manager fails to pay any amount owing to the Trade Contractor because of a good faith dispute, no default by the Owner or the Construction Manager under the Contract Documents shall be deemed to have occurred because of such failure of payment, provided that the Construction Manager pays the amount which the parties agree is owing to the Trade Contractor within 21 Business Days following the resolution of such dispute.

## 24.1.8

**General Labour Conditions**

- .1 Any part of the Work performed by the Trade Contractor on behalf of the Owner that falls under the provisions of any collective agreement by which any of the Owner Indemnified Parties is bound, or which any of the Owner Indemnified Parties are contractually required to apply to the Project, shall in each case be performed by employees covered by the applicable collective agreement or, where subcontracted, subcontracted to a subcontractor bound to the applicable collective agreement. By entering into this Trade Contract, the Trade Contractor represents that it is bound to the collective agreements set out below applicable to the work it is contracted to perform. Without limiting the generality of the foregoing, but subject to GC 24.1.8.3, such collective agreements include, where applicable, the current provincial agreements:
  - (A) between the Electrical Trade Bargaining Agency of the Electrical Contractors' Association of Ontario and the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario, and its affiliated locals, including IBEW Local 353;
  - (B) between the Mechanical Contractors Association of Ontario and the Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting industry of the United States and Canada, and its affiliated locals, including UA Local 46;
  - (C) between the Canadian Automatic Sprinkler Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and its affiliated local, UA Local 853;
  - (D) between a council of employers' associations consisting of the Ontario Painting Contractors Association, the Acoustical Association of Ontario and the Interior Systems Contractors Association of Ontario and the International Union of Painters and Allied Trades and the Ontario Council of the International Union of Painters and Allied Trades, and its affiliated locals, including IUPAT Local 557; and
  - (E) between the Carpenters' Employer Bargaining Agency and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, and its affiliated locals, including Carpenters Local 27 and Carpenters Local 675.
- .2 GC 24.1.8.1 shall apply to each subcontract entered into by the Trade Contractor *mutatis mutandis* and the Trade Contractor shall ensure the provisions of GC24.1.8.1, with all necessary changes be included, in each subcontract for any part of the Work
- .3 Without limiting GC 24.1.8.1, if the Construction Manager is bound by the provisions of any collective agreements with unions to perform work which is covered by the Carpenter's Residential Agreement, the provisions of such collective agreement(s) shall also apply. However, where there is a conflict between GC 24.1.8.1 and this GC 24.1.8.1, GC 28.1.8.1 shall prevail.
- .4 The Trade Contractor shall indemnify and save the Owner Indemnified Parties and the Construction Manager harmless from and against all loss, claim, expense or damage suffered by any of the Owner Indemnified Parties or by the Construction Manager arising from the failure of the Trade Contractor or any subcontractor to comply with the requirements of these general labour conditions set out in GC 24.1.8. Without limiting the generality of the foregoing the Trade Contractor shall fully indemnify the Owner Indemnified Parties and the Construction Manager for any damages, costs, penalties, legal fees and/or interest that the Owner Indemnified Parties, or any of them, or the Construction Manager may suffer as a result of union grievances or any other legal action arising from the failure to comply with the appropriate collective agreements. The Trade Contractor agrees that the Owner may set-off against the Trade Contractor's payables an amount equal to said loss, claim, expense. In this GC 24.1.8, "**Owner Indemnified Parties**" means the Owner, the University of Toronto, The Governing Council of the University of Toronto, and their respective officers, directors, governors, administrators, employees, and assigns. This indemnity is in addition to, and not limited by, the indemnity of the Trade Contractor in GC20.1 – INDEMNIFICATION BY TRADE CONTRACTOR.

**APPENDIX 1 OF THE GENERAL CONDITIONS****DISPUTE RESOLUTION PROCEDURES****1. Pre-Arbitration Procedures**

In the event of any dispute which is to be settled by arbitration in accordance with the provisions of this Trade Contract, such dispute shall, in the first instance, be referred to a designated representative of each of the Construction Manager and the Trade Contractor (the “**Initial Reference Committee**”) for resolution. If the dispute is not resolved to the mutual satisfaction of the parties by the Initial Reference Committee within five (5) Business Days after written notice from any party requiring the dispute to be resolved, then such dispute shall be resolved by arbitration as set out below or as the parties may otherwise agree upon.

**2. Initiation of Arbitration Proceedings**

Whenever any arbitration is permitted or required hereunder, arbitration proceedings shall be commenced by the party desiring arbitration (the “**Initiating Party**”) giving notice to the other party entitled to participate in the arbitration proceedings (the “**Responding Party**”) specifying the matter to be arbitrated and requesting an arbitration thereof.

**3. Designation of Arbitrator**

Upon receipt by the Responding Party of the Initiating Party’s notice, the parties shall use reasonable commercial efforts during the next fifteen (15) Business Days to agree on and appoint a single arbitrator. Where the parties fail to jointly appoint an arbitrator within this prescribed timeframe, either party may apply to the Ontario Superior Court of Justice for the appointment of an arbitrator.

**4. Submission of Written Statements**

- (a) Within ten (10) Business Days of the appointment of the arbitrator, the Initiating Party shall send the Responding Party a Statement of Claim setting out in sufficient detail the facts and any contentions of law on which it relies, and the relief that it claims.
- (b) Within ten (10) Business Days of the receipt of the Statement of Claim, the Responding Party shall send the Initiating Party a Statement of Defence stating in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies, on what grounds, and on what other facts and contentions of law it relies.
- (c) Within ten (10) Business Days of receipt of the Statement of Defence, the Initiating Party may send the Responding Party a Statement of Reply.
- (d) All Statements of Claim, Defence and Reply shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and (where practicable) by any relevant samples.
- (e) After submission of all the Statements, the arbitrator will give directions for the further conduct of the arbitration.

**5. Meetings and Hearings**

- (a) Meetings and hearings of the arbitrator shall take place in the “Financial District” of the City of Toronto and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the arbitrator. Subject to the foregoing, the arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration, and will give all the parties adequate notice of these. Subject to any adjournments which the arbitrator allows, the final hearing will be continued on successive Business Days until it is concluded.
- (b) All meetings and hearings will be in private unless the parties otherwise agree.
- (c) Any party may be represented at any meetings or hearings by legal counsel.
- (d) Each party may examine, cross-examine and re-examine all witnesses at the arbitration.

**6. The Decision**

- (a) The arbitrator will make a decision in writing within five (5) Business Days after the conclusion of all hearings and, unless the parties otherwise agree, will set out reasons for decision in the decision.
- (b) The arbitrator will send the decision to the parties as soon as practicable after the conclusion of the final hearing, but in any event no later than five (5) Business Days thereafter, unless that time period is extended for a fixed period by the arbitrator on written notice to each party because of illness or other cause beyond the arbitrator’s control.
- (c) With the exception of monetary claims in excess of Five Hundred Thousand Dollars (\$500,000.00) or errors in law, the decision of the arbitrator shall be final and binding on the parties and shall not be subject to any appeal or review procedure, provided that the arbitrator has followed the rules and procedures provided herein in good faith and has proceeded in accordance with the principles of natural justice.
- (d) If the decision involves the resolution of a monetary claim in excess of Five Hundred Thousand Dollars (\$500,000.00) or there has been an error in law, the decision of the arbitrator may be appealed by the parties and determined by an action brought in a court of competent jurisdiction.

**7. Jurisdiction and Powers of the Arbitration Panel**

- (a) By submitting to arbitration under these provisions, the parties shall be taken to have conferred on the arbitrator the following jurisdiction and powers, to be exercised at the discretion of the arbitrator subject only to the provisions hereof and the relevant law with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.
- (b) Without limiting the jurisdiction of the arbitrator at law, the parties agree that the arbitrator shall have jurisdiction to:
- (i) determine any question of law arising in the arbitration;
  - (ii) determine any question as to the arbitrator's jurisdiction;
  - (iii) determine any question of good faith, dishonesty or fraud arising in the dispute;
  - (iv) order any party to furnish further details of that party's case, in fact or in law;
  - (v) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these provisions or with the arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that the arbitrator intends to do so;
  - (vi) receive and take into account such written or oral evidence Request for Quotationed by the parties as the arbitrator determines is relevant, whether or not strictly admissible in law;
  - (vii) make one or more interim awards;
  - (viii) hold meetings and hearings, and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of the parties hereto;
  - (ix) order the parties to produce to the arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or control which the arbitrator determines to be relevant;
  - (x) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the parties;
  - (xi) make interim orders to secure all or part of any amount in dispute in the arbitration;
  - (xii) include, as part of any award, the payment of interest at the rate set out in this Trade Contract from the appropriate date as determined by the arbitrator; and
  - (xiii) make any order or orders as to the payment of the costs of the arbitration.

**8. Arbitration Act**

The rules and procedures of the Arbitration Act shall apply to any arbitration conducted hereunder except to the extent that they are modified by the express provisions of this Appendix 1.

**9. Provisional Remedies**

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights which may be necessary and which is not otherwise available under this Trade Contract, including temporary and preliminary injunctive relief and restraining orders.

**10. Continuing Performance**

Notwithstanding the existence of any dispute, the Trade Contractor shall continue to perform its obligations in accordance with the provisions of this Trade Contract without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Trade Contract.

**APPENDIX 1 TO SCHEDULE 1 OF THE GENERAL CONDITIONS**

**LIST OF ARBITRATORS**

**(TBD)**