COVER PAGE

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CCA and NTCCC remind uses that, as with all CCDC and CCA standard documents, the pre-printed contract form is to remain intact and unchanged in any way. Any modifications to the terms and conditions contained in the pre-printed form are to be made using supplementary conditions which are to be prepared and appended to the executed contract.

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This Guide has been commissioned by the National Trade Contractors Coalition of Canada to assist its members in using the new CCA 1-2021 Stipulated Price Subcontract form of subcontract agreement.

The CCA 1-2021 document is the latest version of the standard subcontract form most widely used throughout Canada. It was created in a process of joint consultation between general contractors and trade contractors, and seeks to fairly balance the rights and responsibilities of each.

NTCCC endorses and encourages the use of CCA 1-2021.

USING THE GUIDE

The terms and conditions of CCA 1-2021 itself are reproduced on the left-hand pages of the Guide. On the opposing right-hand pages are commentary on specific key provisions.

Legend:
The commentary is colour-coded as follows:

Black is explanatory, seeking to state the essential meaning of the clause.

Blue is advisory note, seeking to provide background information and advice on selected clauses.

Red is cautionary note, alerting the reader to matters where particular care and attention must be taken.

DISCLAIMER

This Guide is provided as a service to the industry for the general information of its readers only. It is not intended that anything in this Guide constitute legal advice, and the reader must not use the Guide for that purpose. Qualified legal counsel should always be consulted in connection with any specific questions or concerns arising in the particular circumstances of each case. Neither NTCCC nor McMillan LLP will be responsible for any errors or omissions.

CCA
STANDARD
CONSTRUCTION
DOCUMENT

CCA
1

2021

Stipulated price subcontract

[Name of Project]

[Sub-contractor Work]

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The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of the CCA 1-2021 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

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CCA 1 STIPULATED PRICE SUBCONTRACT

TABLE OF CONTENTS

AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR
1A Work to be Performed
2A Conflict Between the Prime Contract and Subcontract
3A Subcontract Documents
1B Work to be Performed
2B Conflict Between the Prime Contract and Subcontract
3B Subcontract Documents
4 Schedule
5 Subcontract Price
6 Payment
7 Receipt of and Addresses for Notices in Writing
8 Language of the Subcontract

DEFINITIONS
Change Directive
Change Order
Construction Equipment
Drawings
Notice in Writing
Other Subcontractor
Owner, Consultant, Contractor, and Subcontractor
Payment Legislation
Place of the Work
Prime Contract
Prime Contract Documents
Product
Project
Ready-for-Takeover
Shop Drawings
Specifications
Subcontract
Subcontract Documents
Subcontract Price
Subcontract Time
Subcontract Work
Substantial Performance of the Work
Sub-Subcontractor
Supplemental Instruction
Temporary Work
Value Added Taxes
Work
Working Day

SUBCONTRACT CONDITIONS

PART 1 GENERAL PROVISIONS
SCC 1.1 Subcontract Documents
SCC 1.2 Assignment

PART 2 ADMINISTRATION OF THE SUBCONTRACT
SCC 2.1 Supplemental Instructions
SCC 2.2 Review and Inspection of the Subcontract Work
SCC 2.3 Defective Work

PART 3 EXECUTION OF THE SUBCONTRACT WORK
SCC 3.1 Construction by Contractor or Other Subcontractors
SCC 3.2 Temporary Work
SCC 3.3 Supervision
SCC 3.4 Sub-Subcontractors
SCC 3.5 Shop Drawings
SCC 3.6 Payment of Accounts

PART 4 ALLOWANCES
SCC 4.1 Cash Allowances

PART 5 PAYMENT
SCC 5.1 Applications for Payment
SCC 5.2 Deferred Work
SCC 5.3 Non-conforming Work

PART 6 CHANGES IN THE SUBCONTRACT WORK
SCC 6.1 Contractor's Right to Make Changes
SCC 6.2 Change Order
SCC 6.3 Change Directive
SCC 6.4 Concealed or Unknown Conditions
SCC 6.5 Delays
SCC 6.6 Claims for a Change in Subcontract Price

PART 7 DEFAULT NOTICE
SCC 7.1 Contractor's Right to Perform the Subcontract Work, Terminate the Subcontractor's Right to Continue with the Subcontract Work or Terminate the Subcontract
SCC 7.2 Subcontractor's Right to Suspend the Subcontract Work or Terminate the Subcontract

PART 8 DISPUTE RESOLUTION
SCC 8.1 Interpretation and Instruction of the Contractor
SCC 8.2 Adjudication
SCC 8.3 Negotiation, Mediation and Arbitration
SCC 8.4 Retention of Rights

PART 9 PROTECTION OF PERSONS AND PROPERTY
SCC 9.1 Protection of Subcontract Work and Property
SCC 9.2 Toxic and Hazardous Substances
SCC 9.3 Artifacts and Fossils
SCC 9.4 Construction Safety
SCC 9.5 Mould

PART 10 GOVERNING REGULATIONS
SCC 10.1 Taxes and Duties
SCC 10.2 Laws, Notices, Permits, and Fees
SCC 10.3 Patent Fees
SCC 10.4 Workers' Compensation

PART 11 INSURANCE
SCC 11.1 Insurance

PART 12 OWNER TAKEOVER
SCC 12.1 Ready-for-Takeover
SCC 12.2 Early Occupancy by the Owner
SCC 12.3 Warranty

PART 13 INDEMNIFICATION AND WAIVER
SCC 13.1 Indemnification
SCC 13.2 Waiver of Claims

CCA 1 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. The CCA does not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCA 1.

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AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR
For use when a stipulated price is the basis of payment.

This Subcontract Agreement made on day of in the year .
by and between the parties

hereinafter called the "*Contractor"*

and

hereinafter called the *"Subcontractor"*

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

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

hereinafter called the "*Project*";

And whereas the *Subcontract Work* is included within the *Work* to be performed under the *Prime Contract* in accordance with the *Prime Contract Documents* for which

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

And whereas the *Subcontractor* has agreed with the *Contractor* to perform the *Subcontract Work* required by the *Subcontract Documents*;

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

NOW THEREFORE THE SUBCONTRACT AGREEMENT WITNESSES as follows:

(Note: The parties shall complete Articles of the Subcontract Agreement 1A, 2A and 3A and discard Articles of the Subcontract Agreement 1B, 2B and 3B if:

- *there is a Prime Contract in writing between the Owner and the Contractor, and*
- *it is the intention of the Contractor and the Subcontractor that the conditions of such Prime Contract are to be incorporated into this Subcontract and shall govern in the event of a conflict.)*

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COMMENTARY

This page 1 identifies:
- the parties to the Subcontract;
- the Owner and the Consultant, who are not parties to the subcontract but are essential members of the construction team;
- the Prime Contract between Owner and Contractor; and
- the Project, being the overall construction of which the Subcontract is a part.

Ensure that the proper corporate names of the parties are inserted here. For example, use "ABC Mechanical Inc." if that is the proper corporate name, not "ABC", "ABC Mechanical", or some other variation.

Note the *italicized* words used throughout CCA 1-2021. Each italicized word or phrase is a term expressly defined in the Definitions section of the contract, and defined terms are intended to have a consistent meaning throughout the contract. For example, "Contractor" always means the general contractor, "Subcontractor" always means the trade or subcontractor who is in direct contract with the general contractor, and so on.

In normal design-bid-build construction, the Consultant here will be the Consultant named in the Prime Contract.

Note that the Consultant, though not a party to the Subcontract, will have considerable authority over the Subcontractor, particularly concerning approval of payments (see Article 6.1.1). Subcontractors should, however, be mindful of prompt payment legislation which impacts upon this. Under Ontario's Construction Act, for example, consultant certification is expressly not a condition precedent to rendering a proper invoice.

Pay close attention to the contract's "Note" here, which contains an important instruction to users.

The CCA 1-2021 Subcontract will typically cover a portion of the work which is otherwise within the overall scope of the Prime Contract between the Owner and the General Contractor. CCA 1-2021 allows the parties to choose which of those contracts shall govern their relationship in the event of a conflict between them. If the Prime Contract is to govern, the parties use page 2 (containing Articles 1A, 2A and 3A), and if the Subcontract is to govern, the parties use page 3 (containing Articles 1B, 2B and 3B). The unused page is discarded or simply left blank.

Be sure that the final agreement as executed bears the CCA 1 copyright seal to avoid any infringement of CCA's copyright. Seals may be obtained at nominal cost from various sources, including most local construction association offices.

ARTICLE 1A WORK TO BE PERFORMED

1.1 The *Subcontractor* shall perform the *Subcontract Work* in a proper and workmanlike manner pertaining to:
[Insert full description of all Subcontract Work to be performed with reference to specification section as described by number and heading if applicable]

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

ARTICLE 2A CONFLICT BETWEEN THE PRIME CONTRACT AND SUBCONTRACT

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

- Supplementary conditions of the *Subcontract*, if any

[Insert here, attaching additional pages if required, a list identifying all other agreed exceptions to paragraph 2.1]

2.2 Paragraphs 10.2.3 and 10.2.4 of SCC 10.2 – LAWS, NOTICES, PERMITS, AND FEES and SCC 13.1 – INDEMNIFICATION shall be individually inoperative and considered as deleted from this contract in the event that conditions of identical wording or effect as they relate to each of these articles are not set out in the *Prime Contract*.

ARTICLE 3A SUBCONTRACT DOCUMENTS

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

- *Prime Contract* Agreement between *Owner* and *Contractor*
- Definitions of the *Prime Contract*
- The General Conditions of the *Prime Contract*
- *Subcontract* Agreement between *Contractor* and *Subcontractor*
- Definitions of the *Subcontract*
- The Subcontract Conditions of the *Subcontract*
- *

**[Insert here, attaching additional pages if required, a list identifying all other Subcontract Documents e.g. supplementary conditions; Division 01 of the Specifications – GENERAL REQUIREMENTS; Project information that the Subcontractor may rely upon; technical Specifications, giving a list of contents with section numbers and titles, number of pages and date; material finishing schedules; Drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date; time schedule]*

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If the Prime Contract is in writing and is intended to flow down to the Subcontractor, use this page and discard the next page.

Article 1A, para. 1.1: this is the scope clause, setting out the scope of the Subcontractor's work under the Subcontract.

Ambiguities, errors and omissions in scope clauses are a particularly common source of disputes. They are also relatively easy to avoid! When describing scope, be precise, thorough and complete. If more space be needed than what the standard form allows, use a Schedule attached at the back of the form – and be sure to include a description of the Schedule as a Subcontract Document under Article 3A or 3B, as the case will be. The Schedule could be entitled "Schedule – Scope of Subcontract Work", and its description under Article 3A or 3B could be "Schedule – Scope of Subcontract Work".

Article 2A, para. 2.1: This is the flow-down clause, and it has been revised in CCA 1-2021.

It prescribes that in the event of any conflict between the Prime Contract and the Subcontract, the Prime Contract governs. However, the form now allows the parties to specify exceptions to this principle. In practice, there can be numerous exceptions to the flow-down principle depending upon the circumstances. For example, while the Prime Contract may stipulate liquidated damages in the event of a delay, the parties to the Subcontract may negotiate differing liquidated damages for any delay caused by the Subcontractor, or no liquidated damages at all. The Subcontract parties might also negotiate more restricted indemnity obligations than a broad, open-ended indemnity which may exist in the Prime Contract.

It is important that the parties to the Subcontract consider carefully those exceptions to the general flow-down of Prime Contract obligations which CCA 1-2021 now permits, and that they express them in supplementary conditions or as additions to the form in para. 2.1 where indicated.

As part of this exercise, it is important that the Subcontractor become thoroughly familiar with the Prime Contract terms and conditions affecting its work and note all instances in which those Prime Contract terms differ from those found in the Subcontract. In all instances, the Subcontractor should ask for production of the Prime Contract, including all Schedules and other documents forming part of that Prime Contract, and the General Contractor should have no hesitation in providing that access (although the version produced may be redacted to conceal the commercial terms of the Owner-General Contractor relationship which are of no concern to the Subcontractor.) If the General Contractor refuses to provide the Prime Contract, the Subcontractor should not sign a Subcontract using this page.

Article 3A, para. 3.1: This is the list of documents comprising the Subcontract. All of the documents listed will collectively comprise the Subcontract, all will have contractual effect, and all will be read together in determining the parties' rights and obligations.

Note that the Prime Contract Agreement, Definitions and General Conditions are included as part of the Subcontract Documents. Again, it is important that the Subcontractor have access to these documents prior to signing the Subcontract.

Note the instruction at the end of para. 3.1 and take it most seriously! In general, it is essential that all documents intended to have contractual effect be listed in para. 3.1, including all governing specifications, drawings, addenda, schedule, etc. Any document not expressly listed cannot be assured to be part of the Subcontract, and the party wishing to rely upon it risks being unable to do so.

(Note: The parties shall complete Articles of the Subcontract Agreement 1B, 2B and 3B and discard Articles of the Subcontract Agreement 1A, 2A and 3A if:

- *there is no written Prime Contract between the Owner and the Contractor, or*
- *it is the intention of the Contractor and the Subcontractor that this Subcontract represents the full scope of the Subcontract Work and shall govern in the event of a conflict.)*

ARTICLE 1B WORK TO BE PERFORMED

1.1 The *Subcontractor* shall perform the *Subcontract Work* in a proper and workmanlike manner pertaining to:

*

**[Insert full description of all Subcontract Work to be performed with reference to specification section as described by number and heading if applicable]*

1.2 The *Subcontractor* shall perform the *Subcontract Work* as required by the *Subcontract Documents*. Any amendments to the *Prime Contract Documents* that relate to the *Subcontract Work* after time of the submission of subcontract bids to the *Contractor* and prior to execution of the *Subcontract*, shall be agreed in writing by the *Contractor* and *Subcontractor* in order to have binding effect to the *Subcontract*.

ARTICLE 2B CONFLICT BETWEEN THE PRIME CONTRACT AND SUBCONTRACT

2.1 In the event of any conflict between the terms of this *Subcontract* and the *Prime Contract*, this *Subcontract* shall govern.

ARTICLE 3B SUBCONTRACT DOCUMENTS

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

- *Subcontract* Agreement between *Contractor* and *Subcontractor*
- Definitions of the *Subcontract*
- The Subcontract Conditions of the *Subcontract*
- *Prime Contract* Agreement between *Owner* and *Contractor*, if any
- Definitions of the *Prime Contract*, if any
- The General Conditions of the *Prime Contract*, if any

*

**[Insert here, attaching additional pages if required, a list identifying all other Subcontract Documents e.g. supplementary conditions; Division 01 of the Specifications – GENERAL REQUIREMENTS; Project information that the Subcontractor may rely upon; technical Specifications, giving a list of contents with section numbers and titles, number of pages and date; material finishing schedules; Drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date; time schedule]*

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Per this instruction, use this page and discard the preceding page if:

1. in the unlikely event there is no Prime Contract in writing; or

2. this CCA 1-2021 Subcontract Agreement is to define the full scope of the Subcontract Work and is to take priority in the event of any conflict between it and the Prime Contract.

Article 1B, para. 1.1: This is the scope clause, setting out the scope of the Subcontractor's work under this agreement.

Ambiguities, errors and omissions in scope clauses are a particularly common source of disputes. They are also relatively easy to avoid! When describing scope, be precise, thorough and complete. If more space be needed than what the standard form allows, use a Schedule attached at the back of the form – and be sure to include a description of the Schedule as a Subcontract Document under Article 3A or 3B, as the case will be. The Schedule could be entitled "Schedule – Scope of Subcontract Work", and its description under Article 3A or 3B could be "Schedule – Scope of Subcontract Work".

Article 1B, para. 1.2: Since the Subcontract Documents include the Prime Contract documents, the parties need a mechanism to record the Subcontractor's agreement to deal with any Prime Contract amendments after bid that relate to the Subcontract Work. This is the mechanism. The Prime Contractor and the Subcontractor must agree to such amendments in writing, otherwise those Prime Contract amendments do not apply to the Subcontract.

Article 2B, para. 2.1: This confirms that the Subcontract governs in the event of any conflict between it and the Prime Contract.

Article 3B, para. 3.1: This is the list of documents comprising the Subcontract. All of the documents listed will collectively comprise the Subcontract, all will have contractual effect, and all will be read together in determining the parties' rights and obligations.

Note that the Prime Contract Agreement, Definitions and General Conditions are included as part of the Subcontract Documents, even though the Subcontract takes precedence in the event of a conflict.

There may be terms and conditions in the Prime Contract that affect the Subcontractor's work which are not otherwise picked up in this Subcontract. Article 2B only deals with conflicts between the Prime Contract terms and the Subcontract terms. Where the Prime Contract contains terms which affect the Subcontract Work and the Subcontract is silent on those issues, those Prime Contract terms will govern.

Even when using this option, therefore, it remains important that the Subcontractor review the Prime Contract documents, note any and all terms and conditions that might affect its work, and if necessary, negotiate any such Prime Contract terms and conditions which may not be acceptable and record the agreement using supplementary conditions.

Note the instruction at the end of para. 3.1 and take it most seriously! In general, it is essential that all documents intended to have contractual effect be listed in para. 3.1, including all governing specifications, drawings, addenda, schedule, etc. Any document not expressly listed cannot be assured to be part of the Subcontract, and the party wishing to rely upon it risks being unable to do so.

ARTICLE 4 SCHEDULE

4.1 The *Subcontractor* shall perform the *Subcontract Work*:

.1 in accordance with a schedule provided by the *Contractor* at the time of signing this *Subcontract*; or

.2 in accordance with a schedule mutually agreed if provided by the *Contractor* after the signing of this *Subcontract*; or

.3 commence the *Subcontract Work* by the day of in the year and, subject to adjustment in contract time as provided for in the *Prime Contract Documents*, substantially perform the *Subcontract Work*, by the day of in the year , and as applicable do all things required by the *Subcontract Documents* so as to achieve *Ready-for-Takeover* by the day of in the year .

The *Contractor* may reasonably adjust any schedule or specified timing during the course of the *Subcontract Work* provided it is mutually agreed by the *Subcontractor*.

ARTICLE 5 SUBCONTRACT PRICE

5.1 The *Subcontract Price*, which excludes *Value Added Taxes*, is:

/100 dollars $

5.2 *Value Added Taxes* (of _____ %) payable by the *Contractor* to the *Subcontractor* are:

/100 dollars $

5.3 Total amount payable by the *Contractor* to the *Subcontractor* for the *Subcontract Work* is:

/100 dollars $

5.4 These amounts shall be subject to adjustments as provided in the *Subcontract Documents*.

5.5 All amounts are in Canadian funds.

ARTICLE 6 PAYMENT

6.1 Subject to the provisions of the *Subcontract Documents* and *Payment Legislation*, and in accordance with legislation and statutory regulations respecting holdback percentages, the *Contractor* shall:

.1 make progress payments to the *Subcontractor* on account of the *Subcontract Price* in accordance with paragraph 6.2 of this Article. The amounts of such payments shall be as certified by the *Consultant* unless otherwise prescribed by *Payment Legislation* together with such *Value Added Taxes* as may be applicable to such payments,

.2 upon *Substantial Performance of the Work*, pay to the *Subcontractor* the percentage of the *Subcontract Price* which has been held back from the preceding progress payments when due together with such *Value Added Taxes* as may be applicable to such payment, and

.3 upon the issuance of the *Consultant*'s certificate of payment that incorporates final payment of the *Subcontract Work*, pay to the *Subcontractor* the unpaid balance of the *Subcontract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

6.2 The *Subcontractor* shall make applications for payment together with supporting sworn statements and other documents that are required by the *Subcontract Documents* on or before the day of each month (herein called the Submission Date) to the *Contractor* for approval and due processing. The amount claimed shall be for the value, proportionate to the amount of the *Subcontract*, of *Subcontract Work* performed and *Products* delivered to the *Place of the Work* up to the day of the month. The *Contractor* shall pay the *Subcontractor*, no later than 30 calendar days after the Submission Date or 10 calendar days after the date of a *Consultant*'s certificate for payment whichever is later or as required by the *Payment Legislation*, percent of the amount applied for or such other amount as the *Contractor* or the *Consultant* determines to be properly due. If the *Contractor* or the *Consultant* makes any changes to the amount of the applications for payment, or rejects the application or part thereof, the *Contractor* shall promptly issue a written notice to the *Subcontractor* giving reasons for the revision or rejection.

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

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

.2 Should the *Owner* not remedy the default within the time prescribed by the *Prime Contract*, the *Contractor* shall:

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Article 4: **This deals with the Subcontractor's schedule for performance of the Subcontract Work. Note that there are 3 possible options. Only one of them would apply in any given Subcontract.**

Note as well that in 4.1.3, the reference date is now to Ready-for-Takeover, not substantial performance of the Subcontract Work as was in the previous version of CCA 1. See the comments under Definition - Ready-for-Takeover and under SCC 12.1.

If the schedule is one provided by the Contractor and 4.1.1 therefore applies, that schedule should be listed as one of the Subcontract Documents in Article 3A or 3B, as the case will be.
If the schedule is provided by the Contractor after the Subcontract Agreement is signed and therefore 4.1.2 applies, that schedule governs only upon the Subcontractor's agreement. CCA 1-2021 does not stipulate how that agreement is to be recorded, but prudence dictates some written record verifying agreement, if only the initials of both the Contractor and the Subcontractor on that schedule.

The Contractor controls the schedule. But the Contractor must consult with the Subcontractor about any adjustments to the schedule.

Article 5: The Subcontract Price is inserted here, in both words and numbers.

This form is intended to cover stipulated price payment arrangements. If payment is to be made in some other way (e.g. cost reimbursable; unit prices), this Article 5 must be amended by a supplementary condition which strikes this Article 5 and replaces it with wording which covers that alternative pricing arrangement.

Article 6 generally: **This is the payment clause, stipulating both the frequency of billing and the timing of payment.**

The default is monthly billing and 30 day payments. Note, however, that this is subject to such variations as may be set out in the Subcontract Documents (likely in supplementary conditions), and in Payment Legislation (prompt payment legislation). In the event of any conflict between the Subcontract and Payment Legislation, the Payment Legislation will take precedence.

Subcontractors in those provinces in which Payment Legislation has been implemented should take careful note of the requirements of that legislation. In Ontario, for example, the Construction Act's prompt payment provisions stipulate 28 day payment terms between Owner and General Contractor, with 7 day payment terms from the General Contractor's receipt of Owner payment governing its payment obligations to the Subcontractor. Also, Consultant certification of payment is expressly excluded from the requirement to issue any proper invoice under the Ontario legislation. Payment Legislation will typically include other provisions for disputing any payment and submitting such dispute to adjudication, all of which will override any conflicting provisions in CCA 1-2021.

Article 6, para. 6.3: **This is the "pay when provision" in CCA 1-2021. If the Contractor wishes to obtain pay when paid protection in the event of non-payment by the Owner, the Contractor must follow the process set out in 6.3. The Subcontractor is nonetheless entitled to interest in the event of delayed payment.**

Note, however, that prompt payment legislation may also provide pay when paid protection to the General Contractor, having differing requirements and timelines for action. Para. 6.3 is not expressly subject to Payment Legislation, and it is not clear which of these requirements, those in the Subcontract and those in Payment Legislation, are to take precedence.

(1) within the time stipulated in the applicable lien legislation, take such steps as are required to enforce all of the *Contractor*'s lien rights to recover all amounts unpaid on the *Subcontract*; and
(2) provide the *Subcontractor* prompt *Notice in Writing* of all steps taken to enforce payment.

.3 In the event that the *Contractor* has complied with all the provisions of this paragraph 6.3, the time for payment provided for in paragraph 6.2 of this Article shall be extended to *[ ]** calendar days from that otherwise provided for in paragraph 6.2 of this Article and the amount of the payment so suspended shall be deemed to be a holdback authorised pursuant to the terms of this *Subcontract* and shall be payable at the time provided for in this subparagraph. ***(*NOTE: the suspension time shall be 60 days or as otherwise agreed by the Contractor and the Subcontractor.)***

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

6.4 If no claims exist against the *Subcontract Work* and the *Subcontractor* has submitted to the *Contractor* a fully executed and sworn CCDC 9B 'Statutory Declaration', except for holdback amounts to be payable out of the funds to be paid to the *Subcontractor* pursuant to this paragraph 6.4 or as an identified amount in dispute, the amount withheld from progress payments made pursuant to paragraph 6.1.1 of this Article and which is payable pursuant to paragraph 6.1.2 of this Article is due and payable, subject to the requirements of any *Payment Legislation*, no later than 10 *Working Days* following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*.

6.5 Interest

.1 Should either party fail to make payments as they become due under the terms of the *Subcontract* or in an award by adjudication, arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
(1) 2% per annum above the prime rate for the first 60 days.
(2) 4% per annum above the prime rate after the first 60 days.
Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by
[Insert name of chartered lending institution whose prime rate is to be used]

for prime business loans as it may change from time to time.

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

ARTICLE 7 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

7.1 *Notices in Writing* will be addressed to the recipient at the address set out below.

7.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.

7.3 A *Notice in Writing* delivered by one party in accordance with this *Subcontract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it will be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* will be deemed to have been received on the *Working Day* next following such day.

7.4 A *Notice in Writing* sent by any form of electronic communication will be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it will be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.

7.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

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Article 6, para. 6.4: This deals with holdback release. Note, however, that this too is subject to Payment Legislation, and the requirements of that legislation will take precedence.

The requirement to deliver an executed CCDC 9B Statutory Declaration is now expressly set out.

Article 6, para. 6.5: This deals with interest on overdue payment obligations, as well as interest on amounts payable upon an arbitration or court award.

It is always open to the parties to stipulate a different interest rate by supplementary condition drafted to suit. Be sure to include the name of the bank whose prime rate is to be used in calculating interest.

This interest rate is a double-edge sword! Not only does it apply to late payments by the Contractor, but also to any liabilities which may be found owing by the Subcontractor to the Contractor, for example, reimbursement of the costs of correcting defective work. The contract strongly encourages prompt settlement of claims and disputes.

Article 7: This prescribes how Notices in Writing are to be delivered. Note that electronic delivery (email) is permissable.

CCA 1-2021 contemplates Notices in Writing in numerous instances, including:

Article 6.3.2.3 - Contractor notice to Subcontractor of steps taken to enforce payment from Owner
SCC 3.6 - Contractor notice to Subcontractor to settle downstream accounts
SCC 6.4.1 - notice of concealed or unknown conditions
SCC 6.5.4 - Subcontractor notice of delay
SCC 6.6.1 - notice of change in contract price or intent to claim
SCC 6.6.5 - response to notice of change in contract price or intent to claim
SCC 7.1.1 -termination by Contractor due to insolvency of Subcontractor
SCC 7.1.2 -Contractor notice of default to Subcontractor
SCC 7.1.4 - Contractor notice of correcting default or termination
SCC 7.2.1 - termination by Subcontractor due to insolvency by Contractor
SCC 7.2.2 - Subcontractor termination due to delay or suspension of work
SCC 7.2.3 - Subcontractor notice of default by Contractor
SCC 8.3.1 - Subcontractor notice of dispute to Contractor
SCC 8.3.1 - Contractor reply to Subcontractor notice of dispute
SCC 8.3.4 - Project Mediator termination of mediated negotiations
SCC 8.3.5 - notice to arbitrate
SCC 12.3.3 -Contractor notice of warranty claim
SCC 13.1.2 - claim for indemnification
SCC 13.2.1 - Subcontractor notice of claim to Contractor, prior to Ready-for-Takeover
SCC 13.2.2 - Subcontractor notice of claim to Contractor, following Ready-for-Takeover
SCC 13.2.3 - Contractor notice of claim to Subcontractor, prior to Ready-for-Takeover
SCC 13.2.4 - Contractor's notice of claim, substantial defects or deficiencies
SCC 13.2.5 - Contractor notice of claim, following Ready-for-Takeover

Contractor

*name of Contractor**

address

email address

Subcontractor

*name of Subcontractor**

address

email address

** If it is intended that a specific individual must receive the notice, that individual's name shall be indicated.*

ARTICLE 8 LANGUAGE OF THE SUBCONTRACT

8.1 When the *Subcontract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English / French # language shall prevail.
 # Complete this statement by striking out inapplicable term.

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

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In witness whereof the parties hereto have executed this Subcontract Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

WITNESS

_____
signature

_____
name of person signing

CONTRACTOR

_____
name of Contractor

_____
signature

_____
name and title of person signing

WITNESS

_____
signature

_____
name of person signing

SUBCONTRACTOR

_____
name of Subcontractor

_____
signature

_____
name and title of person signing

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

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DEFINITIONS

The following Definitions shall apply to all *Subcontract Documents*.

Change Directive

A *Change Directive* is a written instruction signed by the *Contractor* directing the *Subcontractor* to proceed with a change in the *Subcontract Work* within the general scope of the *Subcontract Documents* prior to the *Contractor* and the *Subcontractor* agreeing upon adjustments in the *Subcontract Price* and the *Subcontract Time*.

Change Order

A *Change Order* is a written amendment to the *Subcontract* signed by the *Contractor* and the *Subcontractor* stating their agreement upon:

- a change in the *Subcontract Work*;
- the method of adjustment or the amount of the adjustment in the *Subcontract Price*, if any; and
- the extent of the adjustment in the *Subcontract Time*, if any.

Construction Equipment

Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Subcontract Work* but is not incorporated into the *Subcontract Work*.

Drawings

The *Drawings* are the graphic and pictorial portions of the *Subcontract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Subcontract Work*, generally including plans, elevations, sections, details, and diagrams.

Notice in Writing

A *Notice in Writing*, where identified in the *Subcontract Documents*, is a written communication between the parties that is transmitted in accordance with the provisions of Article 7 of the Subcontract Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Other Subcontractor

Other Subcontractor means a contractor, other than the *Subcontractor* or a *Sub-Subcontractor*, engaged by the *Contractor* for the *Project*.

Owner, Consultant, Contractor, and Subcontractor

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

Payment Legislation

Payment Legislation means such legislation, if any, in effect at the *Place of the Work* which governs payment under construction contracts.

Place of the Work

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

Prime Contract

The *Prime Contract* is the undertaking by the *Owner* and the *Contractor* to perform their respective duties, responsibilities and obligations as prescribed in the *Prime Contract Documents* and represents the entire agreement between the *Owner* and the *Contractor*.

Prime Contract Documents

The *Prime Contract Documents* are those documents comprising the *Prime Contract* between the *Owner* and the *Contractor* and defined therein.

Product

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

Project

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

Ready-for-Takeover

Ready-for-Takeover of the *Work* shall have been attained when the conditions set out in the *Prime Contract Documents* have been met. In the event that the *Prime Contract Documents* do not include the *Ready-for-Takeover*, then references to *Ready-for-Takeover* in this *Subcontract* shall be deemed to be references to *Substantial Performance of the Work*.

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DEFINITIONS generally: This is the list of defined terms used consistently throughout CCA 1-2021.These Definitions essentially flow through the Definitions found in the CCDC 2-2020 stipulated price contract between Owner and Contractor, with changes where necessary to suit the Contractor-Subcontractor relationship.

Definition - "Change Directive": Change Directive work is work which is otherwise "within the general scope of the Subcontract Documents".

It is impermissible to order changed work which is outside the general scope of the Subcontract (as defined by the Subcontract Documents) using a Change Directive.

Definition - "Change Order": a Change Order must be signed by both the Contractor and the Subcontractor in order to be effective.

Definition - "Payment Legislation": This new Definition covers prompt payment legislation in effect in some, though not all, provinces in Canada as at the date of this writing.

Definition - "Project": The Project is the total construction. The Prime Contract work may be the whole of the Project, or just a portion of it. In turn, the Subcontract Work will be a portion of the Prime Contract work.

Definition - "Ready-for-Takeover": This new Definition picks up the Ready-for-Takeover milestone introduced in CCDC 2-2020.

Ready-for-Takeover was introduced in an effort to bring greater certainty to the rights of the parties at the end of the work and to prescribe reasonable standards which the Contractor must meet. As used in CCDC 2-2020, Ready-for-Takeover includes the following prerequisites:
- substantial performance must be certified
- the requirements for occupancy must be met
- final cleaning and waste removal has been done
- Owner has received such operations and maintenance documents reasonably necessary for immediate operation and maintenance
- a copy of the as-built drawings completed to date must be available on site
- startup, testing required for immediate occupancy is complete.
- the Owner has been provided with ability to secure access to the Work
- demonstration and training is scheduled by the Contractor, acting reasonably.

Since Ready-for-Takeover may now be stipulated as the end date for the Subcontractor's work under Article 4.1.3, it is imperative that the Subcontractor become thoroughly familiar with such Ready-for-Takeover requirments as may be set out in the Prime Contract.

Note that if Ready-for-Takeover is not included within the Prime Contract, the "substantial performance" milestone will continue to operate for all purposes of the Subcontract.

Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Subcontractor* provides to illustrate details of portions of the *Subcontract Work*.

Specifications

The *Specifications* are that portion of the *Subcontract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Subcontract Work*.

Subcontract

The *Subcontract* is the undertaking by the *Contractor* and the *Subcontractor* to perform their respective duties, responsibilities and obligations as prescribed in the *Subcontract Documents* and represents the entire agreement between the *Contractor* and the *Subcontractor*.

Subcontract Documents

The *Subcontract Documents* consist of those documents listed in Article 3A or Article 3B of the Subcontract Agreement – SUBCONTRACT DOCUMENTS and amendments agreed upon between the *Contractor* and the *Subcontractor*.

Subcontract Price

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

Subcontract Time

The *Subcontract Time* is the time stipulated in Article 4 of the Subcontract Agreement – SCHEDULE within which the *Subcontract Work* is to be performed.

Subcontract Work

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

Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*.

Sub-Subcontractor

A *Sub-Subcontractor* is a person or entity having a direct contract with the *Subcontractor* to perform a part or parts of the *Subcontract Work*.

Supplemental Instruction

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Subcontract Price* or *Subcontract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models, or written instructions, consistent with the intent of the *Subcontract Documents*. It is to be issued by the *Contractor* to supplement the *Subcontract Documents* as required for the performance of the *Subcontract Work*.

Temporary Work

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

Value Added Taxes

Value Added Taxes means such sum as shall be levied upon the *Subcontract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Subcontract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Subcontractor* by tax legislation.

Work

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

Working Day

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

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Definition - "Subcontract": **Note the "entire agreement" language in this Definition.**

This reinforces the point that the subcontract terms and conditions must be set out in writing and all the documents intended to have contractual effect must be listed in Article 3A or 3B, as the case may be.

Definition, "Supplemental Instruction": Note that a Supplemental Instruction is, by definition, one not involving adjustment in either the Subcontract Price or Subcontract Time.

Definition - "Work": Note that "Work" does not mean the work required under the Subcontract, but rather the work required under the Prime Contract. The work required under the Subcontract has its own definition - "Subcontract Work" above.

SUBCONTRACT CONDITIONS

PART 1 GENERAL PROVISIONS

SCC 1.1 SUBCONTRACT DOCUMENTS

1.1.1 The intent of the *Subcontract Documents* is to include the labour, *Products* and services necessary for the performance of the *Subcontract Work* by the *Subcontractor* in accordance with these documents. It is not intended, however, that the *Subcontractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Subcontract Documents*.

1.1.2 The *Subcontract Documents* are complementary, and what is required by one shall be as binding as if required by all. Performance by the *Subcontractor* shall be required only to the extent consistent with the *Subcontract Documents*.

1.1.3 The *Subcontractor* shall review the *Subcontract Documents* for the purpose of facilitating co-ordination and execution of the *Subcontract Work* by the *Subcontractor*.

1.1.4 The *Subcontractor* is not responsible for errors, omissions or inconsistencies in the *Subcontract Documents.* If there are perceived errors, omissions or inconsistencies discovered by or made known to the *Subcontractor*, the *Subcontractor* shall promptly report to the *Contractor* and shall not proceed with the work affected until the *Subcontractor* has received corrected or additional information from the *Contractor*.

1.1.5 If there is a conflict within the *Subcontract Documents*:

.1 the order of priority of documents listed in Article 3A or the Subcontract Agreement – SUBCONTRACT DOCUMENTS, from highest to lowest, shall be

- the Agreement of the *Prime Contract*,
- the Definitions of the *Prime Contract*,
- Supplementary Conditions of the *Prime Contract*,
- the General Conditions of the *Prime Contract*,
- the Agreement of the *Subcontract*,
- the Definitions of the *Subcontract*,
- Supplementary Conditions of the *Subcontract*,
- the Subcontract Conditions of the *Subcontract*,
- Division 01 of the *Specifications*,
- technical *Specifications*,
- material and finishing schedules,
- the *Drawings*.

.2 the order of priority of documents listed in Article 3B or the Subcontract Agreement – SUBCONTRACT DOCUMENTS, from highest to lowest, shall be

- the Agreement of the *Subcontract*,
- the Definitions of the *Subcontract*,
- Supplementary Conditions of the *Subcontract*,
- the Subcontract Conditions of the *Subcontract*,
- the Agreement of the *Prime Contract*,
- the Definitions of the *Prime Contract*,
- Supplementary Conditions of the *Prime Contract*,
- the General Conditions of the *Prime Contract*,
- Division 01 of the *Specifications*,
- technical *Specifications*,
- material and finishing schedules,
- the *Drawings*.

.3 *Drawings* of larger scale shall govern over those of smaller scale of the same date.

.4 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.

.5 amended or later dated documents shall govern over earlier documents of the same type.

.6 noted materials and annotations shall govern over graphic indications.

1.1.6 Nothing contained in the *Subcontract Documents* shall create any contractual relationship between the *Contractor* and a *Sub-Subcontractor* or their agent, employee, or other person performing any portion of the *Subcontract Work*.

1.1.7 Words and abbreviations which have well known technical or trade meanings are used in the *Subcontract Documents* in accordance with such recognized meanings.

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SCC 1.1.1: This is the "intent" clause, essentially identical to that found in CCDC 2-2020. It stipulates that the Subcontractor's obligation is to include everything necessary to perform its work in accordance with the Subcontract Documents. The Subcontractor is not obliged to perform work which is inconsistent with what is set out in the Subcontract Documents, or is not covered by them, or is not properly inferable from them.

This language in SCC 1.1.1 comes from a long body of case law, and is probably as close as language can come to dealing with the basic fact that no set of Subcontract Documents could ever completely include each and every item of work or material that the Subcontractor must provide in order to perform its obligations.

While this SCC 1.1.1 should provide adequate protection in most situations, the Subcontractor should take care, for example, if the draft Subcontract Documents are ambiguous about scope definition, or if the scope of the required work is unusual, or is divided among trades in an unusual manner. There is no substitute for a clear and comprehensive set of documents setting out precisely what it is the Subcontractor has agreed to do, and the Subcontractor must review the draft documents carefully before signing.

SCC 1.1.3: Note this obligation upon the Subcontractor to review the Subcontract Documents for the purpose of facilitating the coordination of its work with that of others.

SCC 1.1.4: While the Subcontractor is not responsible for errors, omissions or inconsistencies in the Subcontract Documents, it does have an obligation to report these to the Contractor and not proceed with the work until corrected or additional information is received.

The intent here is that the Subcontractor and Contractor work together to deal with design errors, omissions or inconsistencies.

SCC 1.1.5: This is the "precedence" clause, dealing with the order of priority among the Subcontract Documents if there is a conflict within them. Note that the clause contemplates the two possible options for treatment of the Prime Contract - either the Prime Contract takes precedence (SCC 1.1.5.1) or the Subcontract takes precedence (SCC 1.1.5.2).

Before this precedence clause applies, there must be a "conflict" between the Subcontract Documents, i.e. one must address some specific point in one way, while another addresses it in a different way. If there is no conflict between Subcontract Documents, the clause does not apply and the Subcontract Documents are simply read together. See the "complementary" language in SCC 1.1.2 above.

1.1.8 References in the *Subcontract Documents* to the singular shall be considered to include the plural as the context requires.

1.1.9 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Subcontractor* in dividing the work among *Sub-Subcontractors*.

SCC 1.2 ASSIGNMENT

1.2.1 Neither party to the *Subcontract* shall assign the *Subcontract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

PART 2 ADMINISTRATION OF THE SUBCONTRACT

SCC 2.1 SUPPLEMENTAL INSTRUCTIONS

2.1.1 During the progress of the *Subcontract Work* the *Contractor* shall furnish *Supplemental Instructions* to the *Subcontractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Contractor* and the *Subcontractor*.

SCC 2.2 REVIEW AND INSPECTION OF THE SUBCONTRACT WORK

2.2.1 The *Owner*, the *Consultant* and the *Contractor* shall have access to the *Subcontract Work* at all times. The *Subcontractor* shall provide sufficient, safe and proper facilities at all times for review and inspection.

2.2.2 If work is designated for tests, inspections or approvals in the *Subcontract Documents*, by the *Consultant*'s instructions, or by the laws or ordinances of the *Place of the Work*, the *Subcontractor* shall give the *Contractor* reasonable notification of when the work will be ready for review and inspection. Inspection by the *Consultant* and the *Contractor* shall be made promptly.

2.2.3 The *Subcontractor* shall furnish promptly to the *Contractor* two copies of certificates and inspection reports relating to the *Subcontract Work*.

2.2.4 If the *Subcontractor* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Subcontractor* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Subcontractor*'s expense.

2.2.5 The *Contractor* may order any portion or portions of the *Subcontract Work* to be examined to confirm that such work is in accordance with the requirements of the *Subcontract Documents*. If the work is not in accordance with the requirements of the *Subcontract Documents*, the *Subcontractor* shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the *Subcontract Documents*, the *Contractor* shall pay the cost of examination and restoration.

2.2.6 The *Subcontractor* shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the *Subcontract Documents* to be performed by the *Subcontractor* or is required by the laws or ordinances applicable to the *Place of the Work*.

2.2.7 The *Subcontractor* shall pay the cost of samples required for any test or inspection to be performed by others if such test or inspection is designated in the *Subcontract Documents*.

SCC 2.3 DEFECTIVE WORK

2.3.1 The *Subcontractor* shall promptly correct defective work that has been rejected by the *Contractor* as failing to conform to the *Subcontract Documents* whether or not the defective work was incorporated in the *Subcontract Work* or the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Subcontractor*.

2.3.2 The *Subcontractor* shall make good promptly other work destroyed or damaged by such corrections at the *Subcontractor*'s expense.

2.3.3 If in the opinion of the *Contractor* it is not expedient to correct defective work or work not performed as provided in the *Subcontract Documents*, the *Contractor*, having obtained concurrence of such opinion from the *Consultant*, may deduct from the amount otherwise due to the *Subcontractor* the difference in value between the work as performed and that called for by the *Subcontract Documents*. If the *Subcontractor* does not agree with the difference in value, the disagreement shall be settled in accordance with Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION.

PART 3 EXECUTION OF THE SUBCONTRACT WORK

SCC 3.1 CONSTRUCTION BY CONTRACTOR OR OTHER SUBCONTRACTORS

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SCC 2.1.1.: Supplemental Instructions are not intended to impact either the Subcontract Price or the Subcontract Time.

If the Subcontractor receives a Supplemental Instruction that does impact cost or time, the Subcontractor should inform the Contractor of this before doing the work and seek either a Change Order or Change Directive. If there be a dispute about whether the Supplemental Instruction gives rise to a change in the Subcontract Work, the Subcontractor should seek a change in the Subcontract Price pursuant to SCC 6.6 and, if necessary, compensation for delay pursuant to SCC 6.5.1 and an extension of time pursuant to SCC 6.5.4. If these are refused, the Subcontractor should obtain the Contractor's written decision pursuant to SCC 8.1.2, then proceed to dispute resolution pursuant to SCC 8.3 or adjudication (assuming Payment Legislation authorizing adjudication exists at the Place of the Work).

SCC 2.2: These are the rules governing inspections of the Subcontractor's work in progress.

Where special tests, inspections or approvals are required, the Subcontractor must give timely advance notice to the Contractor, and is required to uncover work at its expense to allow such inspections to take place. The Contractor may order any of the Subcontractor's work to be examined. If the work is found not to be in accordance with the Subcontract Documents, the cost to inspect and correct is borne by the Subcontractor. If the work is found to be in accordance, those costs are for the Contractor.
If the Subcontract Documents designate certain tests or inspections, those will be at the Subcontractor's expense (since the Subcontractor's bid price presumably included those costs). The Subcontractor must also pay for tests or inspections required by law.

Except for testing and inspection ordered by the Contractor and found to be unnecessary, such costs are generally allocated to the Subcontractor. If those costs are to be allocated differently, that must be specifically addressed by supplementary condition.

The Subcontractor should never cover up work designated for special testing or inspection! It will have to pay the added costs of uncovering and making good.

SCC 2.3: The Contractor has the right to reject any of the Subcontractor's work which is defective, and the Subcontractor generally has the obligation to make good such defective work, including other work damaged or destroyed by such making good.

The Contractor - and not the Subcontractor - has the option of deducting the value of defective work from the Subcontract Price if it is not expedient to correct the work. The Consultant must agree.

3.1.1 The *Contractor* reserves the right to award separate contracts in connection with other parts of the *Work* to *Other Subcontractors* and to perform work with own forces.

3.1.2 When separate contracts are awarded for other parts of the *Work*, or when work is performed by the *Contractor*'s own forces, the *Contractor* shall:

.1 provide for the co-ordination of the activities and work of *Other Subcontractors* and the *Contractor*'s own forces with the *Subcontract Work*;

.2 enter into separate contracts with *Other Subcontractors* under conditions of contract which are compatible with the conditions of the *Subcontract*;

.3 ensure that insurance coverage is provided to the same requirements as are called for in SCC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Subcontractor* as it affects the *Subcontract Work*; and

.4 take all reasonable precautions to avoid labour disputes or other disputes on the *Work* arising from the work of *Other Subcontractors* or the *Contractor*'s own forces.

3.1.3 When separate contracts are awarded for other parts of the *Work*, or when work is performed by the *Contractor*'s own forces, the *Subcontractor* shall:

.1 afford the *Contractor* and *Other Subcontractors* reasonable opportunity to store their products and execute their work;

.2 co-ordinate and schedule the *Subcontract Work* with the work of *Other Subcontractors* or the *Contractor*'s own forces that are identified in the *Subcontract Documents*;

.3 participate with *Other Subcontractors* and the *Contractor* in reviewing their construction schedules when directed to do so; and

.4 report promptly to the *Contractor* in writing any apparent deficiencies in the work of *Other Subcontractors* or of the *Contractor*'s own forces, where such work affects the proper execution of any portion of the *Subcontract Work*, prior to proceeding with that portion of the *Subcontract Work*.

3.1.4 Where a change in the *Subcontract Work* is required as a result of the co-ordination and integration of the work of *Other Subcontractors* or *Contractor*'s own forces with the *Subcontract Work*, the changes shall be authorized and valued as provided in SCC 6.1 – CONTRACTOR'S RIGHT TO MAKE CHANGES, SCC 6.2 – CHANGE ORDER and SCC 6.3 – CHANGE DIRECTIVE.

3.1.5 Disputes and other matters in question between the *Subcontractor* and *Other Subcontractors* shall be dealt with as provided in Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION provided the *Other Subcontractors* have reciprocal obligations. The *Subcontractor* shall be deemed to have consented to arbitration of any dispute with any *Other Subcontractor* whose contract with the *Contractor* contains a similar agreement to arbitrate. In the absence of *Other Subcontractors* having reciprocal obligations, disputes and other matters in question intiated by the *Subcontractor* against *Other Subcontractors* will be considered disputes and other matters in question between the *Subcontractor* and the *Contractor*.

3.1.6 Should the *Contractor*, the *Consultant*, *Other Subcontractors*, or anyone employed by them directly or indirectly be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in SCC 6.1 – CONTRACTOR'S RIGHT TO MAKE CHANGES, SCC 6.2 – CHANGE ORDER and SCC 6.3 – CHANGE DIRECTIVE.

SCC 3.2 TEMPORARY WORK

3.2.1 Unless otherwise stipulated in the *Subcontract Documents*, the *Contractor* shall provide and pay for all temporary water, power and heat, general purpose lighting and toilet facilities but excluding those temporary services required for the *Subcontractor*'s site office.

SCC 3.3 SUPERVISION

3.3.1 The *Subcontractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while the *Subcontract Work* is being performed. The appointed representative shall not be changed except for valid reason.

3.3.2 The appointed representative shall represent the *Subcontractor* at the *Place of the Work*. Information and instructions provided to the *Subcontractor*'s appointed representative shall be deemed to have been received by the *Subcontractor*, except with respect to Article 7 of the Subcontract Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

SCC 3.4 SUB-SUBCONTRACTORS

3.4.1 The *Subcontractor* shall preserve and protect the rights of the parties under the *Subcontract* with respect to work to be performed under sub-subcontract, and shall:

.1 enter into contracts or written agreements with *Sub-Subcontractors* to require them to perform their work as provided in the *Subcontract Documents*;

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SCC 3.1: This deals with various coordination matters involving the Contractor, Subcontractor and other subcontractors, balancing the rights and responsibilities of each.

The Contractor's obligations:
- to provide for the coordination of all work
- to enter into compatible subcontract agreements with the other subcontractors
- to ensure that insurance is coordinated among the team
- to avoid labour disputes.

The Subcontractor's obligations:
- to give the others reasonable opportunity to store their materials and execute their work
- to coordinate and schedule their work with that of others
- to participate with others in reviewing their own schedules
- to report deficiencies in prior work promptly, before proceeding with its own work.

If this coordination and integration results in a change, the Subcontractor is entitled to a Change Order or Change Directive and a change in price pursuant to SCC 6.1.

The Subcontractor should take care to ensure that any change in Subcontract Work required due to this coordination be dealt with by Change Order or Change Directive before the work is done. Otherwise, the Subcontractor risks losing the right to payment and/or schedule extension.

SCC 3.2: The Contractor provides and pays for temporary water, power, heat, etc., unless the Subcontract Documents provide otherwise.

SCC 3.3: This contemplates full-time supervision by the Subcontractor. That supervisor is the Subcontractor's representative for the purposes of the Subcontract.

If the Subcontractor requires notices and instructions to be given or copied to people other than the site supervisor, that requirement should be covered in a supplementary condition.

SCC 3.4 :This is the Subcontractor's basic obligation to enter into further sub-subcontract agreements downstream in a manner consistent with the terms of the CCA 1-2021 between the Subcontractor and the Contractor. The Subcontractor is obliged to ensure that its obligations upstream to the Contractor are carried down to its own sub-subcontractors contractually, to the extent applicable.

.2 incorporate the applicable terms and conditions of the *Subcontract Documents* into all contracts or written agreements with *Sub-Subcontractors*; and

.3 be as fully responsible to the *Contractor* for acts and omissions of *Sub-Subcontractors* and any persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Subcontractor*.

3.4.2 The *Subcontractor* shall indicate in writing, if requested by the *Contractor*, those *Sub-Subcontractors* whose bids have been received by the *Subcontractor* which the *Subcontractor* would be prepared to accept for the performance of a portion of the *Subcontract Work*. Should the *Contractor* not object before signing the *Subcontract*, the *Subcontractor* shall employ those *Sub-Subcontractors* that comply with the requirements of the *Subcontract Documents* and so identified by the *Subcontractor* in writing for the performance of that portion of the *Subcontract Work* to which their bid applies.

3.4.3 The *Contractor* may, for reasonable cause, at any time before the *Contractor* has signed the *Subcontract*, object to the use of a proposed *Sub-Subcontractor* and require the *Subcontractor* to employ one of the other sub-subcontract bidders.

3.4.4 If the *Contractor* requires the *Subcontractor* to change a proposed *Sub-Subcontractor*, the *Subcontract Price* and *Subcontract Time* shall be adjusted by the difference occasioned by such required change.

3.4.5 The *Subcontractor* shall not be required to employ as a *Sub-Subcontractor*, a person or firm to which the *Subcontractor* may reasonably object.

3.4.6 The *Contractor* may provide to a *Sub-Subcontractor* information as to the percentage of the *Sub-Subcontractor*'s work which has been certified for payment.

SCC 3.5 SHOP DRAWINGS

3.5.1 The *Subcontractor* shall provide *Shop Drawings* as required in the *Subcontract Documents*.

3.5.2 The *Subcontractor* shall provide *Shop Drawings* to the *Contractor* to review in accordance with an agreed schedule, or in the absence of an agreed schedule, in orderly sequence and sufficiently in advance so as to cause no delay in the *Subcontract Work* or in the work of *Other Subcontractors* or the *Contractor*'s own forces.

3.5.3 The *Subcontractor* shall review all *Shop Drawings* before providing them to the *Contractor*. The *Subcontractor* represents by this review that:

.1 the *Subcontractor* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and

.2 the *Subcontractor* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Subcontract Work* and of the *Subcontract Documents*.

3.5.4 At the time of providing *Shop Drawings*, the *Subcontractor* shall expressly advise the *Contractor* in writing of any deviations in a *Shop Drawing* from the requirements of the *Subcontract Documents.* The *Contractor* shall indicate the acceptance or rejection of such deviation expressly in writing.

3.5.5 The *Contractor*'s review shall not relieve the *Subcontractor* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Subcontract Documents*.

3.5.6 The *Contractor* shall review and return *Shop Drawings* with reasonable promptness so as to cause no delay in the performance of the *Subcontract Work*.

SCC 3.6 PAYMENT OF ACCOUNTS

3.6.1 The *Subcontractor* shall promptly and satisfactorily settle and pay for all accounts, claims or liens with respect to the *Subcontract Work*. If, after having received 2 *Working Days Notice in Writing* from the *Contractor* to settle and pay such accounts, claims or liens, the *Subcontractor* fails or refuses to settle or pay same, the *Contractor* shall have the right to settle or pay such accounts, claims or liens for the account of the *Subcontractor* and the receipt issued to the *Contractor* with respect to such accounts, claims or liens shall be conclusive evidence as to such payments and the amount thereof. Notwithstanding the foregoing provision, the *Subcontractor* shall not be required to pay any such accounts, claims or liens if it has reasonable grounds for disputing same and the *Contractor* in these circumstances will only have the right to pay or settle such accounts, claims or liens in such manner as in its opinion, will not prejudice the *Subcontractor's* right to dispute same.

PART 4 ALLOWANCES

SCC 4.1 CASH ALLOWANCES

4.1.1 The *Subcontract Price* includes the cash allowances, if any, stated in the *Subcontract Documents*. The scope of the *Subcontract Work* or costs included in such cash allowances shall be as described in the *Subcontract Documents*.

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SCC 3.4.2 - 3.4.5: **Just as the Owner has the right to reasonably object to the use of a proposed intended Subcontractor, so too does the Contractor have a corresponding right to reasonably object to any proposed Sub-Subcontractor which the Subcontractor wishes to use. These provisions set out that right, as well as the procedure to be used.**

Note that if the Contractor requires a substitution of proposed Sub-Subcontractor to one who bid to the Subcontractor at a higher price and/or a longer schedule, the financial and schedule consequences of that fall upon the Contractor, not the Subcontractor.

SCC 3.4.6: **Subcontractor should note that the Contractor may inform a Sub-Subcontractor of the percentage of that Sub-Subcontractor's work that has been certified for payment.**

This has the obvious purpose of facilitating the orderly flow of proejct funds down the construction pyramid and avoiding unnecessary payment issues.

SCC 3.5: **This sets out the basic process for submission and approval of Shop Drawings. By definition, Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, Product data and other data which the Subcontractor provides to illustrate details of portions of the Subcontract Work.**

There is considerable responsibility on the part of the Subcontractor in connection with Shop Drawings. The Subcontractor must provide them as required in the Subcontract Documents, in orderly sequence and sufficiently in advance so as not to delay the work.

Beyond indicating acceptance or rejection of deviations, the Contractor is also obliged to review and return the Shop Drawings in accordance with the agreed schedule, or absent such a schedule, with reasonable promptness so as not to delay the work. The Subcontractor must review all Shop Drawings prior to submission to the Contractor, including verifying that all field measurements, field construction conditions, Product requirements, catalogue numbers and other required data have been confirmed, and that the Shop Drawings have been coordinated with the Subcontract Documents. If there are deviations between the Shop Drawings and the requirements of the Subcontract Documents, the Subcontractor must expressly advise the Contractor of those.

The Subcontractor should be cautious about Shop Drawings. Note the important representations contained in SCC 3.5.3, the obligation to expressly advise the Contractor in writing of any deviations, and the continuing responsibility for errors and omissions in Shop Drawings notwithstanding the Contractor's review.

SCC 3.6.1: **This records the Subcontractor's obligation to pay its downstream accounts.**

Note the Contractor's right to pay such accounts directly, but only following notice of intention to do so to the Subcontractor. If the Subcontractor disputes the direct payment, the Contractor can only make that direct payment if doing so will not prejudice the Subcontractor's right to continue to dispute that obligation to pay.

4.1.2 The *Subcontract Price*, and not the cash allowances, includes the *Subcontractor*'s overhead and profit in connection with such cash allowances.

4.1.3 Expenditures under cash allowances shall be authorized by the *Contractor*.

4.1.4 Where the actual cost of the *Subcontract Work* under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the *Contractor's* direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the *Subcontract Price* for overhead and profit. Only where the actual cost of the *Subcontract Work* under all cash allowances exceeds the total amount of all cash allowances shall the *Subcontractor* be compensated for the excess incurred and substantiated, plus an amount for overhead and profit on the excess only, as set out in the *Subcontract Documents*.

4.1.5 The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the *Subcontract Price* by *Change Order* without any adjustment for the *Subcontractor's* overhead and profit on such amount.

PART 5 PAYMENT

SCC 5.1 APPLICATIONS FOR PAYMENT

5.1.1 Applications for payment on account as provided in Article 6 of the Subcontract Agreement – PAYMENT shall be submitted monthly to the *Contractor* as the *Subcontract Work* progresses.

5.1.2 The *Subcontractor* shall submit to the *Contractor*, at least 20 calendar days before the first application for payment, a schedule of values for the parts of the *Subcontract Work*, aggregating the total amount of the *Subcontract Price*, so as to facilitate evaluation of applications for payment.

5.1.3 The schedule of values shall be made out in such form as specified in the *Subcontract* and supported by such evidence as the *Contractor* may reasonably require.

5.1.4 Applications for payment shall be based on the schedule of values accepted by the *Consultant* and shall comply with the provisions of *Payment Legislation*.

5.1.5 Each application for payment shall include evidence of compliance with workers' compensation legislation at the *Place of the Work* and after the first payment, a declaration by the *Subcontractor* as to the distribution made of the amounts previously received using document CCDC 9B 'Statutory Declaration'.

5.1.6 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Subcontract Work* shall be supported by such evidence as the *Contractor* may reasonably require to establish the value and delivery of the *Products*.

SCC 5.2 DEFERRED WORK

5.2.1 If because of climatic or other conditions reasonably beyond the control of the *Subcontractor*, or if the *Contractor* and the *Subcontractor* agree that, there are items of work that must be deferred, payment in full for that portion of the *Subcontract Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Contractor* on account thereof, but the *Contractor* may withhold, until the remaining portion of the *Subcontract Work* is finished, only such an amount that the *Contractor* determines is sufficient and reasonable to cover the cost of performing such deferred *Subcontract Work*.

5.2.2 The provisions of SCC 5.2 – DEFERRED WORK shall be effective only when the applicable lien legislation permits the release of any portion of the *Subcontract Price* which has been withheld by way of holdback under the conditions contemplated herein.

SCC 5.3 NON-CONFORMING WORK

5.3.1 No payment by the *Contractor* under the *Subcontract* nor partial or entire use or occupancy of the *Subcontract Work* by the *Contractor* shall constitute an acceptance of any portion of the *Subcontract Work* or *Products* which are not in accordance with the requirements of the *Subcontract Documents*.

PART 6 CHANGES IN THE SUBCONTRACT WORK

SCC 6.1 CONTRACTOR'S RIGHT TO MAKE CHANGES

6.1.1 The *Contractor*, without invalidating the *Subcontract*, may make:

.1 changes in the *Subcontract Work* consisting of additions, deletions or other revisions to the *Subcontract Work* by *Change Order* or *Change Directive*, and

.2 changes to the *Subcontract Time* for the *Subcontract Work*, or any part thereof, by *Change Order*.

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SCC 4.1: This clause covers the treatment of cash allowances for the Subcontract, including how cash allowance payments are authorized, and what happens if actual costs are both over and under the cash allowance amounts as stated.

Note that the Subcontractor's overhead and profit is included within the Subcontract Price, not within the cash allowances. Note also that if actual cost exceeds the amount of cash allowance, the Subcontractor gets overhead and profit on the excess, while if the actual cost is less than the amount of the cash allowance, the Subcontractor keeps the overhead and profit on the unexpended portion of the cash allowance.

SCC 5.1: Payment applications are made monthly, using a schedule of values which the Subcontractor must provide to the Contractor in advance of the first application. The Contractor has the authority to direct the form of this schedule of values, but must act reasonably. Each application for payment must be accompanied by evidence of compliance with workers' compensation legislation, and after the first application, by an executed CCDC 9B Statutory Declaration.

Note that the requirements of Payment Legislation are now referenced, and any such legislation will take precedence in the event of any conflict between the Subcontract and the legislation.

SCC 5.2: This provision protects the Subcontractor's right to receive payment for partially completed work in circumstances in which items of the work cannot be completed because of conditions beyond the Subcontractor's control. Where that payment includes holdback under lien legislation, this right to payment is effective only when the lien legislation allows the partial holdback release.

SCC 5.3: Neither payment nor occupancy by the Owner constitutes acceptance of Subcontract Work which is otherwise not in accordance with the Subcontract Documents.

The Contractor is interested in preserving its right to have the Subcontractor's work done properly and in accordance with the Subcontract Documents. The Subcontractor is interested in maintaining cash flow. This provision seeks to balance those two competing objectives.

Part 6 CHANGES IN THE WORK: These provisions essentially flow down into the Subcontract the change provisions in CCDC 2-2020, preserving the rights of the parties upstream of the Subcontractor to make changes and ensuring that the mechanism by which changes are processed is consistent throughout the contractual chain, from Owner through Subcontractor.

6.1.2 The *Subcontractor* shall not perform a change in the *Subcontract Work* without a *Change Order* or a *Change Directive*.

SCC 6.2 CHANGE ORDER

6.2.1 When a change in the *Subcontract Work* is proposed or required, the *Contractor* shall provide the *Subcontractor* with a written description of the proposed change in the *Subcontract Work*. The *Subcontractor* shall promptly present to the *Contractor*, in a form that can be reasonably evaluated, a method of adjustment or an amount of adjustment for the *Subcontract Price*, if any, and the adjustment in the *Subcontract Time*, if any, for the proposed change in the *Subcontract Work*.

6.2.2 When the *Contractor* and the *Subcontractor* agree to the adjustments in the *Subcontract Price* and *Subcontract Time* or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in the applications for progress payment.

SCC 6.3 CHANGE DIRECTIVE

6.3.1 If the *Contractor* requires the *Subcontractor* to proceed with a change in the *Subcontract Work* prior to the *Contractor* and the *Subcontractor* agreeing upon the corresponding adjustment in *Subcontract Price* and *Subcontract Time*, the *Contractor* shall issue a *Change Directive*.

6.3.2 A *Change Directive* shall only be used to direct a change in the *Subcontract Work* which is within the general scope of the *Subcontract Documents*.

6.3.3 A *Change Directive* shall not be used to direct a change in the *Subcontract Time* only.

6.3.4 Upon receipt of a *Change Directive*, the *Subcontractor* shall proceed promptly with the change in the *Subcontract Work*.

6.3.5 For the purpose of valuing *Change Directives*, changes in the *Subcontract Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.

6.3.6 The adjustment in the *Subcontract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Subcontractor*'s actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:

.1 If the change results in a net increase in the *Subcontractor*'s cost, the *Subcontract Price* shall be increased by the amount of the net increase in the *Subcontractor*'s cost, plus the *Subcontractor*'s percentage fee on such net increase.

.2 If the change results in a net decrease in the *Subcontractor*'s cost, the *Subcontract Price* shall be decreased by the amount of the net decrease in the *Subcontractor*'s cost, without adjustment for the *Subcontractor*'s percentage fee.

.3 The *Subcontractor*'s fee shall be as specified in the *Subcontract Documents* or as otherwise agreed by the parties.

6.3.7 The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following in as much as it contributes directly to the implementation of the *Change Directive*:

Labour

.1 rates that are listed in the schedule or as agreed by the *Contractor* and the *Subcontractor* including wages, benefits, compensation, contributions, assessments, or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan for:

(1) trade labour in the direct employ of the *Subcontractor*;

(2) the *Subcontractor*'s personnel when stationed at the field office;

(3) the *Subcontractor*'s personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment; and

(4) the *Subcontractor*'s office personnel engaged in a technical capacity, or other personnel identified in the *Subcontract Documents* for the time spent in the performance of the *Subcontract Work*.

Products, Construction Equipment and Temporary Work

.2 cost of all *Products* including cost of transportation thereof;

.3 in the absence of agreed rates, cost less salvage value of *Construction Equipment*, *Temporary Work* and tools, exclusive of hand tools under $1,000 owned by the *Subcontractor*;

.4 rental cost of *Construction Equipment*, *Temporary Work* and tools, exclusive of hand tools under $1,000;

.5 cost of all equipment and services required for the *Subcontractor*'s field office;

Sub-Subcontract

.6 Sub-subcontract amounts with pricing mechanism approved by the *Contractor*;

Others

.7 travel and subsistence expenses of the *Subcontractor*'s personnel described in paragraph 6.3.7.1;

.8 deposits lost provided that they are not caused by negligent acts or omissions of the *Subcontractor*;

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SCC 6.1.1 and 6.1.2: Just as the Owner may make changes to the Prime Contract by Change Order or Change Directive, so too is the Contractor authorized to make changes in the Subcontract.

SCC 6.1.2 is one of the most important provisions in this Subcontract, and the Subcontractor ignores it at its peril. Just as in CCDC 2-2020, the overall intent when dealing with changes is that either a Change Order or a Change Directive is required before any changed work is performed. To reinforce this, the Subcontractor shall not perform a change without one or the other. The Subcontractor should insist that this procedure be followed, and should not by its conduct risk a finding that it waived its contractual right to perform work unless either a Change Order or a Change Directive is issued

SCC 6.2: Sets out the process for the issuance of a Change Order and the payment for Change Order work as part of the application for payment.

The essence of a Change Order is the agreement between the Contractor and the Subcontractor concerning the adjustment in the Subcontract Price (or the method of making that adjustment), as well as the adjustment in the schedule, if any. This agreement is to be made prior to the changed work being performed. If there is no such agreement, there is no Change Order. Unlike a Change Directive, the Contractor cannot unilaterally impose a Change Order upon the Subcontractor.

SCC 6.3: Deals with Change Directives, which are intended to be used when the changed work must proceed, usually for reasons of maintaining schedule, before the necessary agreement on adjustment to the Subcontract Price and/or Subcontract Time can be achieved.

Only changes within the general scope of the Subcontract Documents can be made using Change Directives, and a Change Directive cannot be used to direct a change in the Subcontract Time only.

Upon receipt of a Change Directive, the Subcontractor must proceed with the work, and is entitled to charge for it on a cost-plus basis using the cost items set out in SCC 6.3.7. The Subcontractor must keep detailed records of its costs, and the Contractor is entitled to reasonable access to those records. The undisputed value of all Change Directive work is eligible to be included in progress payments.

When the Contractor and Subcontractor finally reach agreement on the adjustment to the Subcontract Price and/or Subcontract Time resulting from the change, that agreement is recorded in a Change Order.

Any dispute concerning the schedule impact of Change Directive work is dealt with under the dispute resolution provisions in Part 8. Although not expressly set out in SCC 6.3, it appears clear that any dispute concerning the adjustment in the Subcontract Price is to be dealt with under SCC 6.6 CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE and the dispute resolution provisions in Part 8.

The parties should take careful note of two important limitations on the use of Change Directives: (1) a Change Directive can only be used to order changes within the general scope of the Subcontract Documents. If a proposed change is outside the general scope, that change can only be made under a Change Order, i.e. there must be agreement between the Contractor and the Subcontractor as to price and schedule impacts before such outside-scope changed work can be required to be performed; and (2) a Change Directive cannot be used to direct a change in the Subcontract Time only. For example, any acceleration of the Subcontractor Work not made necessary by the Subcontractor's delay, without any other changes to the scope of that work, must be done under a Change Order, and the Contractor cannot unilaterally force the Subcontractor to accelerate in those circumstances.

.9 cost of quality assurance such as independent inspection and testing services;
.10 charges levied by authorities having jurisdiction at the *Place of the Work*;
.11 royalties, patent licence fees, and damages for infringement of patents and cost of defending suits therefor subject always to the *Subcontractor*'s obligations to indemnify the *Contractor* as provided in paragraph 10.3.1 of SCC 10.3 – PATENT FEES;
.12 premium for all contract securities and insurance for which the *Subcontractor* is required, by the *Subcontract Documents*, to provide, maintain and pay in relation to the performance of the *Subcontract Work*;
.13 losses and expenses sustained by the *Subcontractor* for matters which are the subject of insurance under the policies prescribed in SCC 11.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts or within the deductible amounts;
.14 taxes and duties, other than *Value Added Taxes*, income, capital, or property taxes, relating to the *Subcontract Work* for which the *Subcontractor* is liable;
.15 charges for voice and data communications, courier services, expressage, transmittal and reproduction of documents, and petty cash items;
.16 cost for removal and disposal of waste products and debris;
.17 legal costs, incurred by the *Subcontractor*, in relation to the performance of the *Subcontract Work* provided that they are not:
(1) relating to a dispute between the *Contractor* and the *Subcontractor* unless such costs are part of a settlement or awarded by arbitration or court,
(2) the result of the negligent acts or omissions of the *Subcontractor*, or
(3) the result of a breach of this *Subcontract* by the *Subcontractor*;
.18 cost of auditing when requested by the *Contractor*; and
.19 cost of *Project* specific information technology in accordance with the method determined by the parties.

6.3.8 Notwithstanding any other provisions contained in the Subcontract Conditions of the *Subcontract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Subcontractor* to exercise reasonable care and diligence in the *Subcontractor*'s attention to the *Subcontract Work*. Any cost due to failure on the part of the *Subcontractor* to exercise reasonable care and diligence in the *Subcontractor*'s performance of the *Subcontract Work* attributable to the *Change Directive* shall be borne by the *Subcontractor*.

6.3.9 The *Subcontractor* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the *Subcontract Work* attributable to the *Change Directive* and shall provide the *Contractor* with copies thereof.

6.3.10 For the purpose of valuing *Change Directives*, the *Contractor* shall be afforded reasonable access to all of the *Subcontractor*'s pertinent documents related to the cost of performing the *Subcontract Work* attributable to the *Change Directive* and for this purpose the *Subcontractor* shall preserve such records for a period of one year from the date of *Ready-for-Takeover* or as specified in the *Subcontract Documents*.

6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the *Subcontract Work* performed as the result of a *Change Directive* is eligible to be included in progress payments.

6.3.12 If the *Contractor* and the *Subcontractor* do not agree on the proposed adjustment in the *Subcontract Time* attributable to the change in the *Subcontract Work*, or the method of determining it, the disagreement shall be referred to Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION.

6.3.13 When the *Contractor* and the *Subcontractor* reach agreement on the adjustment to the *Subcontract Price* and to the *Subcontract Time*, this agreement shall be recorded in a *Change Order*.

SCC 6.4 CONCEALED OR UNKNOWN CONDITIONS

6.4.1 If the *Contractor* or the *Subcontractor* discover conditions at the *Place of the Work* which are:
.1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Subcontract Work* and differ materially from those indicated in the *Subcontract Documents*; or
.2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Subcontract Documents*,
then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 3 *Working Days* after first observance of the conditions.

6.4.2 The *Contractor* shall promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Subcontractor*'s cost or time to perform the *Subcontract Work*, the *Contractor* shall issue appropriate instructions for a change in the *Subcontract Work* as provided in SCC 6.2 – CHANGE ORDER or SCC 6.3 – CHANGE DIRECTIVE.

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SCC 6.3.9 and 6.3.10: The Subcontractor should take careful note of SCC 6.3.9 and 6.3.10.

By definition, Change Directive work is cost-plus work. When performing work on this basis, the law is clear that the Subcontractor performing such work must keep full and detailed records of all costs, and provide the Contractor with reasonable access to those records. Failing that, the Subcontractor runs the serious risk of not receiving compensation for that work. These two SCC's carry that legal principle into the Subcontract.

SCC 6.4: This deals with the treatment of concealed or unknown conditions, which are described as "subsurface or otherwise concealed physical conditions which existed before the commencement of the Subcontract Work which differ materially from those indicated in the Subcontract Documents" or as "physical conditions", other than weather, "that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Subcontract Documents". The party observing such conditions must give Notice in Writing before the conditions are disturbed, within 3 Working Days of first observing them. The Contractor must investigate and make a finding as to whether the conditions are in fact materially different and if so, whether that would cause a change in the price or the schedule. If so, that change is processed as a Change Order or Change Directive. If not, the Contractor must give written reasons for his finding to the Subcontractor.

This provision deals with all concealed or unknown conditions other than toxic or hazardous materials, artifacts and fossils, and mould. Those particular items are dealt with separately in the Subcontract.

Note the short 3 Working Day deadline within which such notice must be given.

SCC 6.4 does not seem to deal expressly with the possibility that there may be a dispute about the finding of concealed or unknown condition that the Contractor must make under SCC 6.4.2. Several other provisions in CCA 1-2021 do expressly contemplate a dispute and provide that the dispute resolution provisions in Part 8 shall apply, for example, SCC 6.6.6 (dealing with claims for a change in the Subcontractor Price) and SCC 9.2.5 (dealing with a dispute about the expert's finding concerning toxic or hazardous substances). To avoid potential difficulty about this, the parties may wish to add a supplementary condition which expressly provides that any dispute concerning the Contractor's finding under SCC 6.4.2 shall be resolved in accordance with the dispute resolution provisions in Part 8.

6.4.3 If the *Contractor* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Subcontract Price* or the *Subcontract Time* is justified, the *Contractor* shall promptly inform the *Subcontractor* in writing.

6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of SCC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, SCC 9.3 – ARTIFACTS AND FOSSILS and SCC 9.5 – MOULD.

SCC 6.5 DELAYS

6.5.1 If the *Subcontractor* is delayed in the performance of the *Subcontract Work* by the *Owner*, the *Consultant*, the *Contractor*, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Subcontract Documents*, then the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and the *Subcontractor* shall agree that the *Subcontract Work* was delayed. The *Subcontractor* shall be reimbursed by the *Contractor* for reasonable costs incurred by the *Subcontractor* as the result of such delay.

6.5.2 If the *Subcontractor* is delayed in the performance of the *Subcontract Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Subcontractor* or any person employed or engaged by the *Subcontractor* directly or indirectly, then the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and the *Subcontractor* shall agree that the *Subcontract Work* was delayed. The *Subcontractor* shall be reimbursed by the *Contractor* for reasonable costs incurred by the *Subcontractor* as the result of such delay.

6.5.3 If the *Subcontractor* is delayed in the performance of the *Subcontract Work* by:

.1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Subcontractor* is a member or to which the *Subcontractor* is otherwise bound),

.2 fire, unusual delay by common carriers or unavoidable casualties,

.3 abnormally adverse weather conditions, or

.4 any cause beyond the *Subcontractor*'s control other than one resulting from a default or breach of *Subcontract* by the *Subcontractor*,

then the *Subcontract Time* shall be extended for such reasonable time as the *Contractor* and the *Subcontractor* shall agree that the *Subcontract Work* was delayed. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Subcontractor* agrees to a shorter extension. The *Subcontractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, the *Consultant*, the *Contractor*, or anyone employed or engaged by them directly or indirectly.

6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Contractor* not later than 7 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.

6.5.5 If no schedule is made under SCC 2.1 – SUPPLEMENTAL INSTRUCTIONS, then no request for extension shall be made because of failure of the *Contractor* to furnish instructions until 14 *Working Days* after demand for such instructions has been made.

SCC 6.6 CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE

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

6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:

.1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and

.2 keep such records as may be necessary to support the claim.

6.6.3 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.

6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the other party may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.

6.6.5 The responding party shall reply by *Notice in Writing* within 10 *Working Days* after receipt of the claim, or within such other time period as may be agreed by the parties.

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SCC 6.5: **These are the delay provisions, and are essentially identical to those set out in CCDC 2-2020. In essence:**
(a) if the Subcontractor is delayed by the Owner, the Consultant or the Contractor, the Subcontractor gets time and money;
(b) if the Subcontractor is delayed by a stop work order, the Subcontractor gets time and money provided that the stop work order was not the Subcontractor's fault;
(c) if the Subcontractor is delayed by common "force majeure" events (labour disputes, strikes, fire, abnormally adverse weather) or by any other cause beyond the Subcontractor's control, the Subcontractor gets time but no money, provided the Subcontractor was not responsible for the delay-causing event. If the Owner, Consultant or the Contractor was responsible for that delay-causing event however, the Subcontractor retains the right to get money in addition to time.

The Subcontractor must take careful note of GC 6.5.4, and the requirement to give Notice in Writing of any delay within 7 Working Days after commencement of the delay. Where the delay is a continuing one, only one notice is required. A failure to give this Notice in Writing jeopardizes the Subcontractor's right to any schedule extension, and the Subcontractor may thereby be forced to accelerate at its own expense as well as suffer liability for delay damages.

Unless a schedule for the delivery of supplemental instructions is made, the Contractor is given a grace period of 14 Working Days after demand within which to furnish such instructions. See GC 6.5.5.

SCC 6.6: **This is intended to provide both the Contractor and the Subcontractor with greater certainty about claims, and to prevent "surprise" claims for additional payment or for backcharges at the end of the job.**

If either the Subcontractor intends to claim for an increase in the Subcontract Price or the Contractor intends to claim a credit to the Subcontract Price, that party must give "timely" Notice in Writing to the other. The claiming party must also submit a detailed account of the claim and the grounds upon which the claim is being made "within a reasonable time". Where the claim is a continuing one, this detailed account is considered an interim account only, and the other party is entitled to demand updated interim accounts at reasonable intervals. The party receiving such a notice of intent to claim must respond with 10 Working Days, or such longer period as may be agreed. If the response is insufficient to resolve the matter, the claim moves to the dispute resolution provisions in Part 8 to be settled. The party asserting the claim is obliged to mitigate its losses and to keep records.

While terms such as "timely" and "reasonable time" remain open to interpretation and may depend upon the circumstances, it is clear that any Subcontractor or Contractor who "lies in the weeds" amassing claims or backcharges for presentation only near the end of the project runs the risk of losing its right to payment upon such claims or backcharges because earlier notice was not given.

6.6.6 If such reply is not acceptable to the party making the claim, the claim shall be settled in accordance with Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION.

PART 7 DEFAULT NOTICE

SCC 7.1 CONTRACTOR'S RIGHT TO PERFORM THE SUBCONTRACT WORK, TERMINATE THE SUBCONTRACTOR'S RIGHT TO CONTINUE WITH THE SUBCONTRACT WORK OR TERMINATE THE SUBCONTRACT

7.1.1 If the *Subcontractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Subcontractor*'s insolvency, or if a receiver is appointed because of the *Subcontractor*'s insolvency, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Subcontractor*'s right to continue with the *Subcontract Work*, by giving the *Subcontractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.

7.1.2 If the *Subcontractor* neglects to perform the *Subcontract Work* properly or otherwise fails to comply with the requirements of the *Subcontract* to a substantial degree, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, give the *Subcontractor Notice in Writing*, containing particulars of the default including references to applicable provisions of the *Subcontract*, that the *Subcontractor* is in default of the *Subcontractor*'s contractual obligations and instruct the *Subcontractor* to correct the default in the 3 *Working Days* immediately following the receipt of such *Notice in Writing*.

7.1.3 If the default cannot be corrected in the 3 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Subcontractor* shall be in compliance with the *Contractor*'s instructions if the *Subcontractor*:
.1 commences the correction of the default within the specified time,
.2 provides the *Contractor* with an acceptable schedule for such correction, and
.3 corrects the default in accordance with the *Subcontract* terms and with such schedule.

7.1.4 If the *Subcontractor* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Contractor* may have, the *Contractor* may by giving *Notice in Writing*:
.1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Subcontractor* for the *Subcontract Work*, or
.2 terminate the *Subcontractor*'s right to continue with the *Subcontract Work* in whole or in part or terminate the *Subcontract*.

7.1.5 If the *Contractor* terminates the *Subcontractor*'s right to continue with the *Subcontract Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Contractor* shall be entitled to:
.1 take possession of the *Subcontract Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Subcontract Work* by whatever method the *Contractor* may consider expedient, but without undue delay or expense,
.2 withhold further payment to the *Subcontractor* until a final certificate for payment is issued,
.3 charge the *Subcontractor* the amount by which the full cost of finishing the *Subcontract Work* and a reasonable allowance to cover the cost of corrections to work performed by the *Subcontractor* that may be required under SCC 12.3 – WARRANTY, exceeds the unpaid balance of the *Subcontract Price*; however, if such cost of finishing the *Subcontract Work* is less than the unpaid balance of the *Subcontract Price*, the *Contractor* shall pay the *Subcontractor* the difference, and
.4 on expiry of the warranty period, charge the *Subcontractor* the amount by which the cost of corrections to the *Subcontractor*'s work under SCC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Subcontractor* the difference.

7.1.6 The *Subcontractor*'s obligation under the *Subcontract* as to quality, correction and warranty of the work performed by the *Subcontractor* up to the time of termination shall continue in force after such termination of the *Subcontract*.

SCC 7.2 SUBCONTRACTOR'S RIGHT TO SUSPEND THE SUBCONTRACT WORK OR TERMINATE THE SUBCONTRACT

7.2.1 If the *Contractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Contractor*'s insolvency, or if a receiver is appointed because of the *Contractor*'s insolvency, the *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, terminate the *Subcontract* by giving the *Contractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.

7.2.2 If the *Subcontract Work* is suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Subcontractor* or of anyone directly or indirectly employed or engaged by the *Subcontractor*, the *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, terminate the *Subcontract* by giving the *Contractor Notice in Writing* to that effect.

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SCC 7.1: **These provisions, analogous to those in CCDC 2-2020, provide for the Contractor's rights in the event of a default by the Subcontractor. There are essentially two kinds of defaults contemplated: bankruptcy or insolvency; and a neglect to prosecute the work or otherwise comply with the Subcontract to a substantial degree.**

The Contractor is obliged to give 3 Working Days notice of default to the Subcontractor, and the Subcontractor has the right to cure the default either within those 3 Working Days, or if that not be possible, to provide an acceptable schedule for correction.

If the default continues, the Contractor has various options, being correction of the default at the Subcontractor's expense, termination of the Subcontractor's right to continue with the work, or termination of the Subcontract. If the Contractor terminates the Subcontractor's right to continue with the work or terminates the Subcontract, the Contractor is entitled to take possession of the Subcontract Work and Products, withhold further payment until the final payment certificate is issued, and charge the Subcontractor for the costs of completion by others plus an additional amount to cover warranty claims.

In practice, a formal notice of default from the Contractor to the Subcontractor under this GC 7.1 will likely not be a surprise in most cases. A Subcontractor receiving such a notice should nonetheless be mindful of the 3 Working Day period stipulated within which the default must be corrected, or an acceptable schedule for correction must be given if the time required to correct exceeds 3 Working Days.

SCC 7.2: **These provide for the Subcontractor's corresponding default rights against the Contractor. In addition to bankruptcy or insolvency, the Subcontractor may terminate the Subcontract in two other instances: a suspension or other delay in the Subcontract Work for 20 Working Days or more under an order of a court or other public authority (provided the order was not issued due to the fault of the Subcontractor); and failure to pay or failure to comply with the requirements of the Subcontract to a substantial degree.**

In the case of failure to pay or failure to comply with the Subcontract, the Subcontractor must provide the Contractor with Notice in Writing, and the Contractor has 5 Working Days to correct the payment default. If the default remains after those 5 Working Days, the Subcontractor may suspend the work or terminate the Subcontract.

Note that there is no possibility of extension beyond the 5 Working Day notice within which the Contractor must cure its default.

If the Subcontractor terminates, it is entitled to be paid for all work to date, as well as any other damages suffered by the Subcontractor as a result of the termination including lost profit.

The Subcontractor should take care to provide the required Notice in Writing of any payment default by the Contractor, giving the Contractor the 5 Working Days to cure, before suspending work or demobilizing upon any project. A failure to do so risks a finding that the Contractor was denied its right to cure the default, and a finding that the Subcontractor was itself in breach of the Subcontract because of its precipitous action.

7.2.3 The *Subcontractor* may give *Notice in Writing* to the *Contractor* that the *Contractor* is in default of the *Contractor*'s contractual obligations if:

.1 the *Contractor* fails to pay the *Subcontractor* in accordance with the time for payment stated in Article 6 of the Subcontract Agreement – PAYMENT, or

.2 the *Contractor* fails to comply with the requirements of the *Subcontract* to a substantial degree.

7.2.4 The *Subcontractor*'s *Notice in Writing* to the *Contractor* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Subcontractor* may, without prejudice to any other right or remedy the *Subcontractor* may have, suspend the *Subcontract Work* or terminate the *Subcontract*.

7.2.5 If the *Subcontractor* terminates the *Subcontract* by giving a *Notice in Writing* to the *Contractor* under the conditions set out above, the *Subcontractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Subcontractor* may have sustained as a result of the termination of the *Subcontract*.

PART 8 DISPUTE RESOLUTION

SCC 8.1 INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR

8.1.1 The *Contractor*, in the first instance, shall decide on questions arising under the *Subcontract* and interpret the requirements therein. Such decisions shall be given in writing. The *Contractor* shall use the *Contractor*'s contractual rights and remedies under the *Subcontract* to enforce its faithful performance by both parties hereto.

8.1.2 Differences between the parties to the *Subcontract* as to the interpretation, application or administration of the *Subcontract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by decisions of the *Contractor* as provided in paragraph 8.1.1, shall be settled in accordance with the requirements of Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION.

8.1.3 If a dispute is not resolved promptly, the *Contractor* shall give instructions for the proper performance of the *Subcontract Work* and to prevent delays pending settlement of the dispute. The *Subcontractor* shall act immediately according to such instructions, it being understood that by so doing the *Subcontractor* will not jeopardize any claim the *Subcontractor* may have. If it is subsequently determined that such instructions were in error or at variance with the *Subcontract Documents*, the *Contractor* shall pay the *Subcontractor* costs incurred by the *Subcontractor* in carrying out such instructions which the *Subcontractor* was required to do beyond what the *Subcontract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Subcontract Work*.

SCC 8.2 ADJUDICATION

8.2.1 Nothing in this *Subcontract* shall be deemed to affect the rights of the parties to resolve any dispute by adjudication as may be prescribed by applicable legislation.

SCC 8.3 NEGOTIATION, MEDIATION AND ARBITRATION

8.3.1 The *Subcontractor* shall be conclusively deemed to have accepted a decision of the *Contractor* under paragraph 8.1.1 of SCC 8.1 – INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR and to have expressly waived and released the *Contractor* from any claims in respect of the particular matter dealt with in that finding unless, within 7 *Working Days* after receipt of that finding, the *Subcontractor* sends a *Notice in Writing* of dispute to the *Contractor*, which contains the particulars of the matter in dispute and the relevant provisions of the *Subcontract Documents*. The *Contractor* shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Subcontract Documents*.

8.3.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

8.3.3 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.3.1, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the rules for mediation as provided in CCDC 40 'Rules for Mediation and Arbitration of Construction Industry Disputes' in effect at the time of bid closing.

8.3.4 If the dispute has not been resolved at the mediation or within such further period as is agreed by the parties, the Project Mediator will terminate the mediated negotiations by giving *Notice in Writing* to both parties.

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SCC 7.1 and 7.2 generally: **Note that the provisions in the previous version of CCA 1 which entitled either party to terminate the Subcontract if the Prime Contract was itself terminated for any reason are now removed from CCA 1-2021.**

Subcontractors can expect Contractors to re-introduce this right to terminate by supplementary condition, particularly if the Prime Contract contains a termination for convenience right of the Owner. Absent that, the Contractor risks liability to the Subcontractor for its lost profit in circumstances in which the Contractor is prevented from recovering that amount from the Owner.

Part 8 DISPUTE RESOLUTION: **This is the stepped dispute resolution mechanism originally embodied in CCDC 2-2020 and carried forward into CCA 1-2021, with appropriate changes to suit.**

In essence, the Contractor is first authorized to decide on any questions arising under the Subcontract and to interpret its requirements. If there is a dispute following that initial determination by the Contractor, the parties proceed to negotiation, followed by mediation, followed by arbitration or litigation. While the dispute is pending, the Contractor may issue instructions for the proper performance of the Subcontract Work, and the Subcontractor must comply, without prejudice to the right of the Subcontractor to recover additional costs if the dispute is eventually resolved in the Subcontractor's favour.

There are a number of very important notice provisions in these dispute resolution provisions however, and these are mentioned immediately below.

GC 8.3.1 should be carefully read by all users of the document. As is the case with CCDC 2, this dispute resolution provision is intended to bring finality to disputes at an early point unless the dissatisfied party takes timely steps to continue the dispute. Under GC 8.1.1, the Contractor is authorized to decide on any question and to render its decision to the Subcontractor in writing. Under GC 8.3.1, the Subcontractor who disagrees with that decision must send a Notice in Writing of its dispute to the Contractor within 7 Working Days after receiving the Contractor's decision, containing the particulars of the matter in dispute and referring to the relevant provisions of the Subcontract Documents, failing which the Subcontractor is "conclusively deemed to have accepted" the Contractor's decision and to have "expressly waived and released the Contractor from any claims in respect of the particular matter dealt with in that decision". It is imperative that the Subcontractor give timely notice of any disagreement or dispute with the Contractor in respect of any decision made by the Contractor upon any question arising under the Subcontract with which the Subcontractor disagrees.

SCC 8.2: **This provision makes clear that nothing in the Subcontract shall affect the rights of the parties to proceed to adjudication of any dispute, as may be prescribed by Payment Legislation.**

Where adjudication is available under Payment Legislation, parties are encouraged to seriously consider that process in the interests of quick and efficient resolution of payment issues as compared to lien, arbitration or litigation in court.

8.3.5 By giving a *Notice in Writing* to the other party, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.3.4, either party may refer the dispute to be finally resolved by arbitration under the rules of arbitration as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.

8.3.6 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.3.5 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.3.5 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.

8.3.7 Should the dispute be as between the *Contractor* and the *Subcontractor* only, arbitration proceedings shall not take place, unless otherwise agreed by the parties, until after the performance or alleged performance of the *Subcontract Work* except:
.1 when the dispute concerns a payment alleged by the *Subcontractor* to be due; or
.2 when either party can show that the matter in dispute requires immediate consideration while evidence which would otherwise be lost is available.

8.3.8 Except to the extent that any dispute between the *Contractor* and the *Subcontractor* is a part of or relates to a dispute between the *Owner* and the *Contractor*, all disputes between the *Contractor* and the *Subcontractor* shall be consolidated into a single arbitration.

8.3.9 Should any dispute or portion of any dispute between the *Contractor* and the *Subcontractor* relate to a dispute between the *Owner* and the *Contractor*, such dispute or portion thereof as between the *Contractor* and *Subcontractor* shall be disposed of at the same time in the same proceedings and by the same arbitral panel as is appointed to resolve the dispute between the *Owner* and the *Contractor*, provided that the agreement between the *Owner* and the *Contractor* permits such resolution.

8.3.10 Should no Project Mediator have been appointed by the parties to the *Prime Contract*, and if no mediator is agreed to between the parties within 5 calendar days of a mediator being required under paragraph 8.3.3, the provisions of paragraphs 8.3.3 and 8.3.4 shall be inapplicable and the notice required under paragraph 8.3.5 shall be given within 10 *Working Days* after the receipt of the *Contractor*'s *Notice in Writing* of reply under paragraph 8.3.1.

SCC 8.4 RETENTION OF RIGHTS

8.4.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of SCC 8.1 – INTERPRETATION AND INSTRUCTION OF THE CONTRACTOR.

8.4.2 Nothing in Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.3.5 of SCC 8.3 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

PART 9 PROTECTION OF PERSONS AND PROPERTY

SCC 9.1 PROTECTION OF SUBCONTRACT WORK AND PROPERTY

9.1.1 The *Subcontractor* shall protect the *Subcontract Work* and shall take all reasonable precautions to protect the *Work* and others' work and property during the performance of the *Subcontract Work*.

9.1.2 Before commencing any work, the *Subcontractor*, in collaboration with the *Contractor*, shall determine the location of all underground utilities and structures indicated in the *Subcontract Documents* or that are reasonably apparent in an inspection of the *Place of the Work*.

9.1.3 The *Contractor* shall be responsible for the overall protection of the *Work*. If the *Subcontract Work*, the *Work* or others' work and property is damaged, the *Contractor* shall assess the responsibility for, extent of and value of such damage and if there is any disagreement to the *Contractor*'s assessment, the dispute shall be resolved in accordance with Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION.

SCC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

9.2.1 The *Contractor* shall inform the *Subcontractor* of all steps taken by the *Owner*, in accordance with the applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless any toxic or hazardous substance which was present at the *Place of the Work* prior to the *Subcontractor* commencing the *Subcontract Work*.

9.2.2 If the *Subcontractor*
.1 encounters toxic or hazardous substances at the *Place of the Work*, or

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SCC 8.3.5: **This is the arbitration clause in the Subcontract. Arbitration is optional, at the election of either party by Notice in Writing delivered within 10 Working Days of the termination of mediated negotiations. If neither party delivers timely notice to arbitrate, they must litigate in court unless they later agree to some other dispute resolution method.**

A Subcontractor engaged in a dispute with a Contractor may wish to have the matter arbitrated rather than litigated in court for reasons of privacy, efficiency, speed, and the opportunity to select an arbitrator experienced in construction. The right to arbitrate is not absolute however - timely Notice in Writing indicating an intention to arbitrate must be given under GC 8.3.5 and if the Subcontractor fails to give this timely notice to arbitrate, the right to compel arbitration is lost unless the Contractor thereafter consents to arbitrate anyway.

SCC 8.3.9: While some disputes will be only as between the Contractor and the Subcontractor, others will necessarily involve the Owner. GC 8.3.9 provides that in those cases in which the Owner is also involved, the dispute between the Contractor and Subcontractor shall be resolved at the same time in the same proceedings and before the same arbitral panel as is appointed to resolve the dispute between the Owner and the Contractor, provided that the Prime Contract permits this.

A Subcontractor should confirm that the Prime Contract contains provisions that will in fact allow this process to take place, including the express agreement between the Owner and the Contractor to allow for such multi-party arbitration proceedings to take place. Without appropriate language in the Prime Contract, the intent of GC 8.39 may be frustrated, and the Contractor and Subcontractor may be left without any effective mechanism to force the Owner, who may bear ultimate responsibility, into their arbitration proceedings with one another.

SCC 8.4.1: This provides that no act constitutes any waiver of any rights or recourse, provided that the required Notice in Writing under Part 8 is given, and provided that the Subcontractor complies with the Contractor's instructions for the continued performance of the work pending resolution of the dispute.

This reinforces the critical importance of the Subcontractor providing timely notice of any dispute or disagreement it may have with any Contractor decision. Absent that timely notice, the Subcontractor may be found to have waived its rights: see SCC 8.3.1.

SCC 8.4.2: This provision makes clear that nothing in the Subcontract prevents a party from liening the project, and that doing so is not a waiver of any right to proceed to arbitration under SCC 8.3.5.

SCC 9.1: These are the protection of work clauses. The Subcontractor must protect its own work and take reasonable precautions to protect the work and property of others. The Contractor has overall responsibility for protection of the project work. If there is damage to either the Subcontract Work or other work, the Contractor may determine responsibility for that damage, but the Subcontractor retains the right to dispute any finding by the Contractor with which it disagrees. The Subcontractor is responsible to locate all underground utilities and structures indicated in the Subcontract Documents or are otherwise reasonably apparent in an inspection of the site.

.2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible and which were not disclosed by the *Contractor* or which were disclosed but have not been dealt with by the *Contractor* or the *Owner* in accordance with applicable legislation related to toxic and hazardous substances, the *Subcontractor* shall

.3 take all reasonable steps, including stopping the *Subcontract Work*, to ensure that no person's exposure to any toxic or hazardous substance exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and

.4 immediately report the circumstances to the *Contractor* in writing.

9.2.3 If the *Contractor* and the *Subcontractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible, the *Contractor* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Contractor* and the *Subcontractor*.

9.2.4 If the *Contractor* and the *Subcontractor* agree or if the expert referred to in paragraph 9.2.3 determines that the toxic or hazardous substances were not brought onto the *Place of the Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible, the *Contractor* shall promptly at the *Contractor's* own expense:

.1 take all reasonable and necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless any toxic or hazardous substance which was present at the *Place of the Work*;

.2 reimburse the *Subcontractor* for the costs of all steps taken pursuant to paragraph 9.2.2;

.3 extend the *Subcontract Time* for such reasonable time in consultation with the *Subcontractor* and the expert referred to in 9.2.3 and reimburse the *Subcontractor* for reasonable costs incurred as a result of the delay; and

.4 indemnify the *Subcontractor* as required by SCC 13.1 – INDEMNIFICATION.

9.2.5 If the *Contractor* and the *Subcontractor* agree or if the expert referred to in paragraph 9.2.3 determines that the toxic or hazardous substances were brought onto the *Place of the Work* by the *Subcontractor* or anyone for whom the *Subcontractor* is responsible, the *Subcontractor* shall promptly at the *Subcontractor's* own expense:

.1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances;

.2 make good any damage to the *Subcontract Work*, the *Work* or others' work and property as provided in paragraph 9.1.3 of SCC 9.1 – PROTECTION OF SUBCONTRACT WORK AND PROPERTY;

.3 reimburse the *Contractor* for reasonable costs incurred under paragraph 9.2.3; and

.4 indemnify the *Contractor* as required by SCC 13.1 – INDEMNIFICATION.

9.2.6 If either party does not accept the expert's findings under paragraph 9.2.3, the disagreement shall be settled in accordance with Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.4 or 9.2.5 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by SCC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

SCC 9.3 ARTIFACTS AND FOSSILS

9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place or Work* shall, as between the *Contractor* and the *Subcontractor*, be deemed to be the absolute property of the *Contractor*.

9.3.2 The *Subcontractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Contractor* upon discovery of such items.

9.3.3 The *Contractor* shall investigate the impact on the *Subcontract Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Subcontractor's* cost or time to perform the *Subcontract Work*, the *Contractor* shall issue appropriate instructions for a change in the *Subcontract Work* as provided in SCC 6.2 – CHANGE ORDER or SCC 6.3 – CHANGE DIRECTIVE.

SCC 9.4 CONSTRUCTION SAFETY

9.4.1 The *Contractor* and the *Subcontractor* shall comply with all health and safety precautions and programs established at the *Place of the Work*.

9.4.2 The *Contractor* and the *Subcontractor* shall comply with the rules, regulations and practices required by the applicable health and safety legislation.

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SCC 9.2: **These provisions govern toxic and hazardous substances at the project site, other than those which the Subcontractor itself introduces to the site.**

Basically, if the Subcontractor encounters toxic or hazardous substances, or has reasonable grounds to believe they are there, it must take reasonable steps to protect people against exposure and must immediately report to the Contractor in writing. If there is no controversy that such substances are present, the Contractor must deal with the problem, reimburse the Subcontractor for any costs it may have incurred, extend the schedule as required, and indemnify the Subcontractor against any loss or damage which the Subcontractor may suffer.

If there is controversy about the existence or severity of any toxic or hazardous substances or about whether those substances were pre-existing at the project site or brought there by the Subcontractor itself, the Contractor must then retain an independent qualified expert to investigate and render a report. If the expert determines that the toxic or hazardous substances were not pre-existing but rather were brought to the project site by the Subcontractor, the Subcontractor must deal with the problem, and must reimburse the Contractor for any costs and indemnify the Contractor. If there is any disagreement about the expert's finding, the parties remain free to resolve the matter under the dispute resolution provisions in Part 8, but the parties must take such immediate steps as the expert considers necessary to protect persons and property without any jeopardy to their right to claim.

The Subcontractor must take care to immediately report the presence of toxic or hazardous substances to the Contractor, and to take all reasonable steps to protect people and property until the problem is assessed or remediated. A failure to do so exposes the Subcontractor to liability to anyone who suffers harm as a result.

SCC 9.3: **If the Subcontractor discovers fossils, coins, articles of value or antiquity or other remains, it must advise the Contractor and take reasonable precautions to protect these discoveries.**

These findings are deemed to be the absolute property of the Contractor.

The Contractor must investigate the impact of that event upon the Subcontractor's costs and/or schedule, and deal with such impacts by way of Change Order or Change Directive.

SCC 9.4: **These set out in very basic fashion the safety obligations of the Subcontractor.**

In essence, the Subcontractor must comply with applicable health and safety legislation, and must abide all safety precautions and programs of the Contractor.

Many Contractors go further than this, for example, appending a copy of their safety program to the contract and incorporating that as a Subcontract Document.

SCC 9.5 MOULD

9.5.1 If the *Contractor* or the *Subcontractor* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Subcontract Work*,
.1 the observing party shall promptly report the circumstances to the other party in writing,
.2 the *Contractor* and the *Subcontractor* shall promptly take all reasonable steps, including stopping the *Subcontract Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
.3 if the *Contractor* and the *Subcontractor* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Contractor* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Contractor* and the *Subcontractor*.

9.5.2 If the *Contractor* and the *Subcontractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Subcontractor*'s operations under the *Subcontract*, the *Subcontractor* shall promptly, at the *Subcontractor*'s own expense:
.1 take all reasonable and necessary steps to safely remediate or dispose of the mould,
.2 make good any damage to the *Subcontract Work*, the *Work* or others' work and property as provided in paragraph 9.1.3 of SCC 9.1 – PROTECTION OF SUBCONTRACT WORK AND PROPERTY,
.3 reimburse the *Contractor* for reasonable costs incurred under paragraph 9.5.1.3, and
.4 indemnify the *Contractor* as required by SCC 13.1 – INDEMNIFICATION.

9.5.3 If the *Contractor* and the *Subcontractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Subcontractor*'s operations under the *Subcontract*, the *Contractor* shall promptly, at the *Contractor*'s own expense:
.1 take all reasonable and necessary steps to safely remediate or dispose of the mould,
.2 reimburse the *Subcontractor* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Subcontract Work* as provided in paragraph 9.1.3 of SCC 9.1 – PROTECTION OF SUBCONTRACT WORK AND PROPERTY,
.3 extend the *Subcontract Time* for such reasonable time in consultation with the *Subcontractor* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Subcontractor* for reasonable costs incurred as a result of the delay, and
.4 indemnify the *Subcontractor* as required by SCC 13.1 – INDEMNIFICATION.

9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the Subcontract Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by SCC 9.5 – MOULD.

PART 10 GOVERNING REGULATIONS

SCC 10.1 TAXES AND DUTIES

10.1.1 The *Subcontract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Contractor* to the *Subcontractor* as stipulated in Article 5 of the *Subcontract* Agreement – SUBCONTRACT PRICE.

10.1.2 Any increase or decrease in costs to the *Subcontractor* due to changes in taxes and duties after the time of the bid closing shall increase or decrease the *Subcontract Price* accordingly.

SCC 10.2 LAWS, NOTICES, PERMITS, AND FEES

10.2.1 The laws of the *Place of the Work* shall govern the *Subcontract Work*.

10.2.2 The *Subcontractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Subcontract Work* and customarily obtained by subcontractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Subcontract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.

10.2.3 The *Subcontractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Subcontract Work* and which relate to the *Subcontract Work*, to the preservation of the public health, and to construction safety.

10.2.4 The *Subcontractor* shall not be responsible for verifying that the *Subcontract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Subcontract Work*. If the *Subcontract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or

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SCC 9.5: **These are the provisions dealing with mould at the project site. They are very similar to the provisions governing toxic and hazardous substances.**

If either the Contractor or Subcontractor discovers mould, that party must promptly report the circumstances to the other party, and both Contractor and Subcontractor must take reasonable steps to prevent injury to people or property.

If there is no controversy that the mould was not caused by the Subcontractor's operations, the Contractor must take all reasonable and necessary steps to remediate or dispose of the mould, reimburse the Subcontractor for any of its costs, extend the schedule as necessary and indemnify the Subcontractor against any loss or damage. If there is controversy about the existence, severity or cause of the mould, the Contractor must then retain an independent qualified expert to investigate and render a report. If the expert determines that the mould was caused by the Subcontractor's operations, all those obligations set out above to deal with the problem, reimburse for any costs and indemnify, fall upon the Subcontractor.

If there is any disagreement about the expert's finding, the parties remain free to resolve the matter under the dispute resolution provisions in Part 8, but the parties must take such immediate steps as the expert considers necessary to protect persons and property without any jeopardy to their right to claim.

The Subcontractor must take care to immediately report the presence of mould to the Contractor, and to take all reasonable steps to protect people and property until the problem is assessed or remediated. A failure to do so exposes the Subcontractor to liability to anyone who suffers harm as a result.

SCC 10.1: **the Subcontract Price includes all taxes and duties in effect at the time of bid closing, except for Value Added Taxes. If the Subcontractor's costs change because of any change in taxes or duties after bid closing, the Subcontract Price is increased or decreased accordingly.**

The Subcontractor should be careful to note that it may have a right to receive an adjustment to the Subcontract Price under this GC 10.1 if its material costs have increased due to the imposition of new taxes or duties.

SCC 10.2.2, 10.2.3 and 10.2.4: **these are the permitting and notice obligations.**

The Subcontractor is responsible for all permits, licenses, inspections and certificates pertaining to its own work, and the Subcontract Price includes the costs of these permits and inspections. The Subcontractor is responsible for giving notices relating to its own work and for complying with all laws governing that work, as well as public health and safety.

The Subcontractor is not responsible for verifying that the Subcontract Documents comply with applicable law, but if those documents do not, or if changes in law are made after bid closing, the Subcontractor must advise the Contractor and the Contractor must issue a Change Order or Change Directive to account for the consequences of that change.

codes which require modification to the *Subcontract Documents*, the *Subcontractor* shall advise the *Contractor* in writing requesting direction immediately upon such variance or change becoming known. The *Contractor* shall issue the changes required to the *Subcontract Documents* as provided in SCC 6.1 – CONTRACTOR'S RIGHT TO MAKE CHANGES, SCC 6.2 – CHANGE ORDER and SCC 6.3 – CHANGE DIRECTIVE.

10.2.5 If the *Subcontractor* fails to advise the *Contractor* in writing; fails to obtain direction as required in paragraph 10.2.4; and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the *Subcontractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.

10.2.6 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Subcontract Work*, either party may submit a claim in accordance with the requirements of SCC 6.6 – CLAIMS FOR A CHANGE IN SUBCONTRACT PRICE.

SCC 10.3 PATENT FEES

10.3.1 The *Subcontractor* shall pay the royalties and patent licence fees required for the performance of the *Subcontract*. The *Subcontractor* shall hold the *Contractor* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Subcontractor*'s performance of the *Subcontract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Subcontractor* or anyone for whose acts the *Subcontractor* may be liable.

10.3.2 The *Contractor* shall hold the *Subcontractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Subcontractor*'s performance of the *Subcontract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Subcontract*, the physical model, plan or design of which was supplied to the *Subcontractor* as part of the *Subcontract*.

SCC 10.4 WORKERS' COMPENSATION

10.4.1 Prior to commencing the *Subcontract Work*, and again with the *Subcontractor*'s applications for payment, the *Subcontractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*.

PART 11 INSURANCE

SCC 11.1 INSURANCE

11.1.1 Without restricting the generality of SCC 13.1 – INDEMNIFICATION, the *Subcontractor* shall provide, maintain and pay for the following insurance coverages, the requirements of which are specified in CCDC 41 'CCDC Insurance Requirements' in effect at the time of bid closing except as hereinafter provided:

.1 General liability insurance in the name of the *Subcontractor* and include, or in the case of a single, blanket policy, be endorsed to name, the *Contractor* as insureds but only with respect to liability, other than legal liability arising out of the *Contractor*'s sole negligence, arising out of the operations of the *Subcontractor* with regard to the *Subcontract Work*. General liability insurance shall be maintained from the date of commencement of the *Subcontract Work* until one year from the date of *Ready-for-Takeover*. Liability coverage shall be provided for completed operations hazards from the date of *Ready-for-Takeover*, as set out in the certificate of *Ready-for-Takeover*, on an ongoing basis for a period of 6 years following *Ready-for-Takeover*.

.2 Automobile Liability Insurance from the date of commencement of the *Subcontract Work* until one year after the date of *Ready-for-Takeover*.

.3 Unmanned aerial vehicle aircraft, manned aircraft or watercraft Liability Insurance when owned or non-owned manned or unmanned aircraft or watercraft are used directly or indirectly in the performance of the *Subcontract Work*.

.4 Contractors' Equipment Insurance from the date of commencement of the *Subcontract Work* until one year after the date of *Ready-for-Takeover*.

11.1.2 The *Contractor* shall provide, maintain and pay for the following insurance coverages, the requirements of which are specified in CCDC 41 'CCDC Insurance Requirements' in effect at the time of bid closing except as hereinafter provided:

.1 "Broad form" property insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include the *Subcontractor* as insured. The "Broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:

(1) 10 calendar days after the date of *Ready-for-Takeover*;

(2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; and

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SCC 10.2.5: **If the Subcontractor fails to advise the Contractor of any change in law, or fails to obtain direction and performs work in contravention of law, the Subcontractor bears the costs attributable to that failure.**

While this may be unlikely in practice, the Subcontractor should be careful not to proceed with any work in circumstances in which it knows that doing so will violate some applicable law, ordinance, rule, regulation or code. It should instead advise the Contractor, obtain direction, and seek either a Change Order or Change Directive to cover any cost and/or schedule impacts.

SCC 10.2.6: **if changes are made to laws, ordinances, rules, regulations or codes after bid closing, either party is entitled to claim for a change in Contract Price pursuant to SCC 6.6**

SCC 10.3: **The Subcontractor is responsible to pay royalties and patent licence fees required for the performance of the Subcontract, and is responsible to indemnify the Contractor against any claims for infringement of any patent by the Subcontractor. The Contractor is responsible to indemnify the Subcontractor against any claims for infringement of any other patent, as well as infringement claims arising from use of the model, plan or design provided to the Subcontractor.**

SCC 11.1: **These are the extensive insurance provisions in the Subcontract.**

These insurance clauses have been developed in consultation with the construction insurance industry and are updated periodically. The CCDC 41-CCDC INSURANCE REQUIREMENTS document referenced sets out the minimum requirements from time to time, and that version of CCDC 41 in effect at the time of bid closing should be consulted. A detailed commentary on the fine points of the various coverages required is beyond the scope of this Guide.

As a best practice generally, the Subcontractor should establish a good ongoing working relationship with a qualified insurance broker, and consult with that broker regularly to ensure that the required coverages remain available and are in place at all times.

(3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.

.2 Boiler and machinery insurance in the joint names of the *Contractor*, the *Owner*, and the *Consultant*. The policy shall include as insured the *Subcontractor*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Ready-for-Takeover*.

11.1.3 The "Broad form" property policies shall provide that, in the case of a loss or damage, payment shall be made to the *Contractor* and the *Owner* as their respective interests may appear. In the event of loss or damage:

.1 the *Contractor* shall act on behalf of the *Subcontractor* and the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Subcontractor* shall proceed to restore the *Subcontract Work*. Loss or damage shall not affect the rights and obligations of either party under the *Subcontract* except that the *Subcontractor* shall be entitled to such reasonable extension of *Subcontract Time* agreed between the *Contractor* and the *Subcontractor* in consideration of the extent of the loss or damage;

.2 the *Subcontractor* shall be entitled to receive from the *Contractor*, in addition to the amount due under the *Subcontract*, the amount which the *Contractor*'s interest in restoration of the *Subcontract Work* has been appraised, such amount to be paid as the restoration of the *Subcontract Work* proceeds in accordance with the progress payment provisions. In addition the *Subcontractor* shall be entitled to receive from the payments made by the insurer the amount of the *Subcontractor*'s interest in the restoration of the *Subcontract Work*; and

.3 to the *Subcontract Work* arising from the work of the *Contractor* or *Other Subcontractors*, the *Contractor* shall, in accordance with the *Contractor*'s obligations under the provisions relating to construction by the *Contractor* or *Other Subcontractors*, pay the *Subcontractor* the cost of restoring the *Subcontract Work* as the restoration of the *Subcontract Work* proceeds and as in accordance with the progress payment provisions.

11.1.4 Prior to commencement of the *Subcontract Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Contractor* and the *Subcontractor* shall promptly provide each other with confirmation of coverage that they are responsible for and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Subcontract Work*.

11.1.5 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Subcontract*.

11.1.6 If the *Subcontractor* fails to provide or maintain insurance as required by the *Subcontract Documents*, then the *Contractor* shall have the right to provide and maintain such insurance and give evidence to the *Subcontractor*. The *Subcontractor* shall pay the cost thereof to the *Contractor* on demand or the *Contractor* may deduct the cost from the amount which is due or may become due to the *Subcontractor*.

11.1.7 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.

11.1.8 If a revised version of CCDC 41 is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Subcontractor*'s insurance policy becoming due for renewal, and record any agreement in a *Change Order*.

11.1.9 If a revised version of CCDC 41 is published, which specifies increased insurance requirements, the *Contractor* may request the increased coverage from the *Subcontractor* by way of a *Change Order*.

11.1.10 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41.

PART 12 OWNER TAKEOVER

SCC 12.1 READY-FOR-TAKEOVER

12.1.1 The prerequisites to attaining *Ready-for-Takeover* of the *Work* are as specified in the *Prime Contract Documents*.

12.1.2 If any prerequisites set forth in the *Prime Contract Documents* must be deferred because of conditions reasonably beyond the control of the *Contractor*, or by agreement between the *Owner* and the *Contractor* to do so, *Ready-for-Takeover* shall not be delayed.

12.1.3 The provision of SCC 12.1 – READY-FOR-TAKEOVER shall be subject to SCC 12.2 – EARLY OCCUPANCY BY THE OWNER.

SCC 12.2 EARLY OCCUPANCY BY THE OWNER

12.2.1 The *Subcontractor* acknowledges that the *Owner* may take occupancy of a part or the entirety of the *Work* before *Ready-for-Takeover* has been attained, that this is subject to agreement as between the *Owner* and the *Contractor*, and that the agreement of the *Contractor* shall not be unreasonably withheld.

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SCC 12.1: This provisions incorporates into CCA 1-2021 the Ready-for-Takeover concept introduced in CCDC 2-2020. See the comments earlier, under Definition - Ready-for-Takeover.

The Ready-for-Takeover prerequisites, if any, are set out in the Prime Contract.

The Subcontractor should familiarize itself with any Ready-for-Takeover requirements in the Prime Contract. Any failure to do so which adversely affects the Contractor in its ability to achieve Ready-for-Takeover may expose the Subcontractor to liability for delay.

SCC 12.2: The Owner may take early occupancy of part or the whole of the work prior to Ready-for-Takeover, subject to agreement by the Contractor, not to be unreasonably withheld.

12.2.2 Prior to making the agreement with the *Owner* as described in paragraph 12.2.1, the *Contractor* shall consult with and obtain the agreement of the *Subcontractor*, such agreement by the *Subcontractor* shall not be unreasonably withheld.

12.2.3 If the *Owner* takes occupancy of a part of the *Work* before *Ready-for-Takeover* has been attained:
.1 The part of the *Work* which is occupied shall be deemed to have been taken over by the *Owner* as from the date on which it is occupied.
.2 The *Subcontractor* shall cease to be liable for the care of such part of the *Subcontract Work* completed or otherwise being used as from this date.
.3 The warranty period specified in paragraph 12.3.1 of SCC 12.3 – WARRANTY for that part of the *Subcontract Work* completed or otherwise being used shall start from the date on which it is occupied.

12.2.4 If the *Owner* takes occupancy of the entirety of the *Work* before all the prerequisites are met as described in paragraph 12.1.1 of SCC 12.1 – READY-FOR-TAKEOVER, the *Work* shall, subject to the requirements of the applicable lien legislation, be deemed to achieve *Ready-for-Takeover*. This shall not relieve the *Subcontractor*'s responsibility to complete the *Subcontract Work* in a timely manner.

SCC 12.3 WARRANTY

12.3.1 Except for extended warranties as described in paragraph 12.3.6 and subject to paragraph 12.2.3.3 of GC 12.2 – EARLY OCCUPANCY BY THE OWNER, the warranty period under the *Subcontract* is one year from the date when *Ready-for-Takeover* has been attained.

12.3.2 The *Subcontractor* shall be responsible for the proper performance of the *Subcontract Work* to the extent that the design and *Subcontract Documents* permit such performance.

12.3.3 The *Contractor* shall promptly give the *Subcontractor Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.

12.3.4 Subject to paragraph 12.3.2, the *Subcontractor* shall correct promptly, at the *Subcontractor*'s expense, defects or deficiencies in the *Subcontract Work* which appear prior to and during the one year warranty period.

12.3.5 The *Subcontractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.

12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Subcontract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Subcontractor*'s responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

PART 13 INDEMNIFICATION AND WAIVER

SCC 13.1 INDEMNIFICATION

13.1.1 Without restricting the parties' obligation to indemnify respecting toxic and hazardous substances, patent fees and defect in title claims all as described in paragraphs 13.1.4 and 13.1.5, the *Contractor* and the *Subcontractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Subcontract*, provided such claims are:
.1 caused by:
(1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose negligent acts or omissions that party is liable, or
(2) a failure of the party to the *Subcontract* from whom indemnification is sought to fulfill its terms or conditions; and
.2 made by *Notice in Writing* within a period of 6 years from the *Ready-for-Takeover* date or within such shorter period as may be prescribed by any limitation statute of the Province or Territory of the *Place of the Work*.
The parties expressly waive the right to indemnity for claims other than those provided for in this *Subcontract*.

13.1.2 The obligation of either party to indemnify as set forth in paragraph 13.1.1 shall be limited as follows:
.1 In respect to losses suffered by the *Contractor* and the *Subcontractor* for which insurance is to be provided by either party pursuant to SCC 11.1 – INSURANCE, the minimum liability insurance limit for one occurrence, of the applicable insurance policy, as referred to in CCDC 41 in effect at the time of bid closing.
.2 In respect to losses suffered by the *Contractor* and the *Subcontractor* for which insurance is not required to be provided by either party in accordance with SCC 11.1 – INSURANCE, the greater of the *Subcontract Price* as recorded in Article 5 – SUBCONTRACT PRICE or $2,000,000, but in no event shall the sum be greater than $20,000,000.
.3 In respect to indemnification by a party against the other with respect to losses suffered by them, such obligation shall be restricted to direct loss and damage, and neither party shall have any liability to the other for indirect, consequential, punitive or exemplary damages.

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SCC 12.2.2: The Contractor must consult with the Subcontractor prior to agreeing to consent to early occupancy by the Owner. The Subcontractor's agreement shall not be unreasonably withheld.

SCC 12.2.3: This outlines the consequences of early Owner occupancy. In essence:
- upon early occupany, the part so occupied is deemed to have been taken over by the Owner as of that date
- the Subcontractor ceases to be liable for the care of that part of the Subcontract Work
- the warranty period for that part of the Subcontract Work so occupied starts on the date of occupancy.

Where the Subcontractor's work covers the entirety of a project and cannot easily be separated from that portion which is occupied early from the rest (e.g., an HVAC system for the entire building), it is important for the parties to be clear about the commencement of the warranty. The Owner may consider the warranty to commence only upon final completion of the entire project, while the Subcontractor may consider that the warranty commenced on the date the system was started for use in the early occupied portion. The parties should discuss this in connection with any early occupancy and reach a clear understanding.

SCC 12.3: These are the warranty provisions.

The warranty period under the Subcontract is one year from Ready-for-Takeover. There is an exception for extended warranties, as specified in the Subcontract Documents. The Subcontractor is responsible to obtain such extended warranties for the benefit of the Owner, but that responsibility is limited to obtaining the extended warranty only, and the warranty obligations themselves are those of the warrantor giving the extended warranty.

SCC 12.3.2 confirms that the Subcontractor's responsibility for proper performance of its work is only to the extent that the design and the Subcontract Documents permit such performance. The Subcontractor is not responsible for the adequacy of the design.

SCC 13.1: These are the mutual indemnity obligations of each of the Contractor and the Subcontractor to the other.

Basically, the Contractor and Subcontractor agree to indemnify one another against all claims attributable to negligence or breach of contract which are made in writing within the limitation period applicable at the Place of the Work, with an outside time limit of 6 years from Ready-for-Takeover. All other claims for indemnity are expressly waived.

There are further limitations on these rights of indemnity:
(a) for insured losses of either party, indemnity is limited to the general liability insurance limit for one occurrence in effect at time of bid closing;
(b) for losses which are not insured, the indemnity is capped at the Prime Contract price or $2,000,000, whichever is greater, with an absolute cap of $20,000,000.

It is extremely important that the Subcontractor obtain and maintain insurance covering its likely risks in connection with the Subcontract, particularly since there is no limitation in the Subcontract to the amount of such liability for any claims by third parties. It is essential that the Subcontractor make a reasonable assessment of its outside exposure to a damage award for catastrophic personal injury, as well as property damage, and that sufficient insurance is provided to protect against that exposure.

.4 In respect to indemnification respecting claims by third parties, the obligation to indemnify is without limit.

13.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 13.1.1 and 13.1.2 shall be inclusive of interest and all legal costs.

13.1.4 The *Contractor* and the *Subcontractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in SCC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

13.1.5 The *Contractor* shall indemnify and hold harmless the *Subcontractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
.1 as described in paragraph 10.3.2 of SCC 10.3 – PATENT FEES, and
.2 arising out of the *Subcontractor*'s performance of the *Subcontract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

13.1.6 In respect to any claim for indemnity or to be held harmless by the *Contractor* or the *Subcontractor*:
.1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based become known; and
.2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

SCC 13.2 WAIVER OF CLAIMS

13.2.1 Subject to any lien legislation applicable to the *Place of the Work*, the *Subcontractor* waives and releases the *Contractor* from all claims which the *Subcontractor* has or reasonably ought to have knowledge of that could be advanced by the *Subcontractor* against the *Contractor* under the *Subcontract*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the *Ready-for-Takeover* date, except as follows:
.1 claims arising prior to or on the *Ready-for-Takeover* date for which *Notice in Writing* of claim has been received by the *Contractor* from the *Subcontractor* no later than 10 calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work* or 15 calendar days following the *Ready-for-Takeover* date, whichever is later;
.2 indemnification for claims advanced against the *Subcontractor* by third parties for which a right of indemnification may be asserted by the *Subcontractor* against the *Contractor* pursuant to the provisions of this *Subcontract*;
.3 claims respecting toxic and hazardous substances, patent fees and defect in title matters for which a right of indemnity could be asserted by the *Subcontractor* pursuant to the provisions of paragraphs 13.1.4 or 13.1.5 of SCC 13.1 – INDEMNIFICATION; and
.4 claims resulting from acts or omissions which occur after the *Ready-for-Takeover* date.

13.2.2 The *Subcontractor* waives and releases the *Contractor* from all claims resulting from acts or omissions which occurred after the *Ready-for-Takeover* date except for:
.1 indemnification respecting third party claims, and claims respecting toxic and hazardous substances, patent fees and defect in title matters, all as referred in paragraphs 13.2.1.2 and 13.2.1.3; and
.2 claims for which *Notice in Writing* of claim has been received by the *Contractor* from the *Subcontractor* within 390 calendar days following the *Ready-for-Takeover* date.

13.2.3 Subject to any lien legislation applicable to the *Place of the Work*, the *Contractor* waives and releases the *Subcontractor* from all claims which the *Contractor* has or reasonably ought to have knowledge of that could be advanced by the *Contractor* against the *Subcontractor* under the *Subcontract*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the *Ready-for-Takeover* date, except as follows:
.1 claims arising prior to or on the *Ready-for-Takeover* date for which *Notice in Writing* of claim has been received by the *Subcontractor* from the *Contractor* no later than 15 calendar days following the *Ready-for-Takeover* date;
.2 indemnification for claims advanced against the *Contractor* by third parties for which a right of indemnification may be asserted by the *Contractor* against the *Subcontractor* pursuant to the provisions of this *Subcontract*;
.3 claims respecting toxic and hazardous substances for which a right of indemnity could be asserted by the *Contractor* against the *Subcontractor* pursuant to the provisions of paragraph 13.1.4 of SCC 13.1 – INDEMNIFICATION;
.4 damages arising from the *Subcontractor*'s actions which result in substantial defects or deficiencies in the *Subcontract Work*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Subcontract Work* which affect the *Subcontract Work* to such an extent or in such a manner that a significant part or the whole of the *Subcontract Work* is unfit for the purpose intended by the *Subcontract Documents*;
.5 claims arising pursuant to SCC 12.3 – WARRANTY; and

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SCC 13.1.2.4, 13.1.4 and 13.1.5: These clauses cover indemnity obligations for which there is no limit.

These are:
- claims by third parties
- claims related to toxic or hazardous substances
- claims attributable to violation of the patent fee obligations or defect of title

SCC 12.2: These clauses deal with waiver of claims, and they are probably the most complex in the entire Subcontract. They are essentially identical to those found in CCDC 2-2020.

The basic intent is that each party is deemed to waive and release the other from claims arising under the Subcontract unless timely notice is given by the party making the claim. The timing of this notice depends upon whether the claim arises from acts or omissions prior to the date of Ready-for-Takeover, or afterwards. For claims based on acts or omissions occurring prior to Ready-for-takeover, the notice is tied to the date of expiry of the lien period. For claims arising from acts or omissions after Ready-for-Takeover, the notice is tied to that Ready-for-Takeover.

For claims by the Subcontractor against the Contractor, Notice in Writing of claims due to acts or omissions prior to Ready-for-Takeover must be given and received by the Contractor no later than the 11th calendar day before the expiry of the lien period. This time limit does not apply to claims for indemnification against third party claims, claims due to toxic or hazardous materials, patent claims, claims arising from defect in title, and claims arising after substantial performance.

For claims due to acts or omissions after Ready-for-Takeover, the Subcontractor must give timely notice and the Contractor must receive it no later than 390 calendar days after Ready-for-Takeover. Again, this time limit does not apply to third party indemnity claims, claims due to toxic or hazardous materials, patent claims and claims arising from a defect in title.

For claims by the Contractor against the Subcontractor, Notice in Writing of claim must be given and received by the Subcontractor no later than the 11th calendar day before the expiry of the lien period. This time limit does not apply to claims for indemnification against third party claims, claims due to toxic or hazardous materials, damage claims arising from "substantial defects or deficiencies in the Subcontract Work", warranty claims, and claims arising after Ready-for-Takeover.

[Commentary continues on next page]

.6 claims arising from acts or omissions which occur after the *Ready-for-Takeover* date.

13.2.4 Respecting claims arising upon substantial defects and deficiencies in the *Subcontract Work*, as referenced in paragraph 13.2.3.4, and notwithstanding paragraph 13.2.3.5, the *Contractor* waives and releases the *Subcontractor* from all claims except claims for which *Notice in Writing* of claim has been received by the *Subcontractor* from the *Contractor* within a period of six years from the *Ready-for-Takeover* date, provided that any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, the time within which any such claim may be brought shall be such shorter period as may be prescribed by any limitation statute of the Province or Territory of the *Place of the Work*.

13.2.5 The *Contractor* waives and releases the *Subcontractor* from all claims arising from acts or omissions which occur after the *Ready-for-Takeover* date, except for:
.1 indemnification for claims advanced against the *Contractor* by third parties, as referenced in paragraph 13.2.3.2;
.2 claims respecting toxic and hazardous substances for which a right of indemnity could be asserted by the *Contractor* against the *Subcontractor*, as referenced in paragraph 13.2.3.3;
.3 claims arising under SCC 12.3 – WARRANTY; and
.4 claims for which *Notice is Writing* has been received by the *Subcontractor* from the *Contractor* within 390 calendar days following the *Ready-for-Takeover* date.

13.2.6 "*Notice in Writing* of claim" as provided for in SCC 13.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of SCC 13.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
.1 a clear and unequivocal statement of an intention to claim;
.2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
.3 a statement of the estimated quantum of the claim.

13.2.7 A claim for lien asserted under the lien legislation prevailing at the *Place of the Work* shall qualify as notice of claim for the purposes of this *Subcontract*.

13.2.8 The party giving the *Notice in Writing* of claim as provided for in SCC 13.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.

13.2.9 Where the event or series of events giving rise to a claim made under paragraphs 13.2.1 or 13.2.3 has a continuing effect, the detailed account submitted under paragraph 13.2.8 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which such claim is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.

13.2.10 Nothing in SCC 13.2 – WAIVER OF CLAIMS shall be deemed to affect the rights of the parties under any lien legislation or limitations legislation prevailing at the *Place of the Work*.

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SCC 12.2 (cont'd):

There is an absolute limit on the Contractor's right to claim against the Subcontractor for claims arising from substantial defects or deficiencies in the Subcontract Work. This limit is 6 years from Ready-for-Takeover. If the prevailing limitations legislation prohibits an agreement to extend the limitation period to this 6 years, the absolute limit will be whatever shorter period is prescribed in the limitations legislation.

For claims due to acts or omissions after Ready-for-Takeover, the Contractor must give timely notice and the Subcontractor must receive it no later than 390 calendar days after Ready-for-Takeover. This time limit does not apply to third party indemnity claims, claims due to toxic or hazardous materials and warranty claims.

Note that if the Prime Contract does not contain any provision for Ready-for-Takeover, all references to Ready-for-Takeover shall be deemed to be references to Substantial Performance of the Work (i.e., substantial performance of the Prime Contract): see Definition, Ready-for-Takeover.

It is essential that timely notice in writing of claims be submitted, otherwise the right to claim will be lost. While the details of this waiver clause are complex, the Subcontractor should follow this simple rule of thumb: if it has any claim against the Contractor, submit notice in writing immediately. There is no particular form for this notice, but there are some requirements which must be met. See the comments on SCC 13.2.6 below.

SCC 13.2.6: This covers the requirements of any Notice in Writing of claim which must be given in order to avoid a loss of rights.

Essentially, any such notice must include a clear and unequivocal statement of intention to claim, a statement of the nature of the claim and the grounds upon which it is being made, and a statement of the estimated amount of the claim.

It is important that the Subcontractor comply with this requirement so as to avoid an argument that the Notice in Writing of claim was deficient, and therefore its right to claim was lost. In practice, it should not be difficult to comply. The notice can be any written document, for example, a letter, in which the Subcontractor clearly states that it is making a claim for some specific amount (even an estimated amount), and simply stating the nature of the claim and the grounds. An example: "This letter will confirm that we are making a claim against you for payment of $500,000 (estimated), being reimbursement for our additional costs of acceleration due to your failure to properly schedule and coordinate the work."