

## SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT is made and entered into this [REDACTED] day of [REDACTED], [REDACTED] (the "Effective Date")

BETWEEN [REDACTED] Stuart Olson Construction Ltd. ("**Stuart Olson**")

[REDACTED]  
Facsimile Number [REDACTED]  
Email Address [REDACTED]

AND [REDACTED] (the "Subcontractor")

[REDACTED]  
Facsimile Number [REDACTED]  
Email Address [REDACTED]

WHEREAS Stuart Olson entered into an agreement together with all general conditions, special conditions, plans, drawings, specifications, schedules, addenda and other documents (as developed from time to time) forming or by reference made part of such contract and as amended from time to time (the "**Prime Contract**") with [REDACTED] (together with its successors and assigns, the "**Owner**") pursuant to which Stuart Olson has agreed, among other things, to furnish services, labour, material and equipment for the construction of [REDACTED] (the "**Project**") located at [REDACTED] (the "**Project Site**");

AND WHEREAS the Prime Contract includes the Work (as defined below) to be performed under this Agreement;

AND WHEREAS the Subcontractor participated in a tender process and was identified as the successful Bidder pursuant to its bid submitted on [REDACTED] (the "**Bid**") in Stuart Olson's form 00 41 00 (the "**Bid Form**");

AND WHEREAS the Subcontractor and Stuart Olson have entered into this Agreement, which sets out the terms and conditions upon which the Subcontractor will perform the Work;

NOW THEREFORE Stuart Olson and the Subcontractor (individually referred to as a "**Party**" and collectively as the "**Parties**") agree as follows:

### ARTICLE 1: Scope of Work

The Subcontractor shall furnish all services, labour, material and equipment necessary or incidental to complete the work as described in Appendix A - Scope of Work (the "**Work**") in accordance with the terms and provisions of the Subcontract Documents (as defined herein).

### ARTICLE 2: Schedule of Work

The Subcontractor shall execute the Work in accordance with the Project Schedule (as defined herein) and, if applicable, the Work Schedule (as defined herein) to be attached upon finalization and agreement as required under this Agreement.

### ARTICLE 3: Subcontract Price

In consideration of the Subcontractor's performance of the Work and subject to the terms and conditions of this Agreement, Stuart Olson shall pay to the Subcontractor the total sum of \$ [REDACTED] (the "**Subcontract Price**"), the amount of which can only be changed in accordance with the provisions of this Agreement. The Subcontract Price is stated in Canadian funds and is inclusive of any applicable provincial sales taxes, but exclusive of GST or any applicable harmonized sales taxes.

### ARTICLE 4: Subcontract Documents

This Agreement includes the Definitions, the General Terms and Conditions and the following Appendices:

- Appendix A - Scope of Work
- Appendix B - Project Schedule
- Appendix C - Drawings & Specifications
- Appendix D - Subcontractor Progress Payment Application
- Appendix E - Form of Change Order
- Appendix F - Form of Change Directive
- Appendix G - List of Approved Sub-Subcontractors
- Appendix H - Supplementary Conditions
- Appendix I - Lien Discharge Process
- Appendix J - Work Schedule & Schedule of Values
- Appendix K - Schedule of Unit Prices

The Subcontractor acknowledges that Stuart Olson has made copies of the Prime Contract available to the Subcontractor. The Subcontractor further acknowledges that it has reviewed the Prime Contract to the extent necessary to understand and agree to all of the obligations in the Prime Contract required to be incorporated into this Agreement. As such, the Subcontractor has full knowledge of the terms, conditions and obligations in the Prime Contract which apply to the Work. The Subcontractor agrees that:

1. To the extent that Stuart Olson is required under the Prime Contract to obtain rights, powers or remedies for the direct benefit of the Owner as against the Subcontractor, the Subcontractor hereby grants such rights, powers and remedies to the Owner.
2. Except for rights, powers and remedies granted by the Subcontractor in favour of the Owner pursuant to this Agreement, nothing herein shall be construed as creating privity of contract between the Subcontractor and the Owner.
3. To the extent that Stuart Olson is required under the Prime Contract to include certain terms and conditions in this Agreement: (i) such terms and conditions shall be deemed to be so incorporated, such that both the Owner and Stuart Olson shall have the right to enforce any rights intended to be granted to them; and (ii) the Subcontractor shall incorporate the terms of the Prime Contract into any agreements with its Sub-Subcontractors.
4. With respect to the performance of the Work, except as expressly provided to the contrary herein:
  - .1 the Subcontractor shall assume and perform all duties, responsibilities, obligations and liabilities of Stuart Olson under the Prime Contract;

- .2 Stuart Olson shall have at least the same rights, powers and remedies against the Subcontractor under this Agreement as the Owner has against Stuart Olson under the Prime Contract; and
- .3 the Subcontractor shall be bound by all rulings of the Consultant, Payment Certifier and Owner, to the same extent that Stuart Olson is bound.
- 5. The Subcontractor will execute, complete, and maintain the Work such that no act or omission of the Subcontractor in relation thereto shall constitute, cause or contribute to any breach by Stuart Olson of any obligation under the Prime Contract.
- 6. The designated business hours of the Project Site are the hours of [ ] am to [ ] pm on Business Days or as otherwise established by Stuart Olson.

Except to the extent otherwise expressly stated herein, in the event of any inconsistency, discrepancy or contradiction in the following documents and instruments, the provisions requiring the higher quality, more stringent performance of the Work, or least amount of risk to Stuart Olson shall apply. If there is any conflict in the provisions of this Agreement, the order of paramountcy, from highest to lowest, shall be:

- 1. Subcontract Agreement (Articles 1 - 4)
- 2. Definitions
- 3. Appendix H - Supplementary Conditions
- 4. General Terms & Conditions
- 5. Appendix C - Drawings & Specifications
- 6. Subcontract Documents
- 7. Remaining Appendices in descending order from Appendix A

Any terms and conditions included within any documents submitted by the Subcontractor (including any quotation or tender) which are appended hereto, and are in contradiction with or are inconsistent with this Agreement, shall, as to such contradiction or inconsistency, be of no force and effect and shall not form part of this Agreement.

IN ACCEPTANCE HEREOF the Parties have duly executed this Agreement as of the Effective Date as set forth herein.

**Stuart Olson Construction Ltd.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Position/Title: \_\_\_\_\_

Position/Title: \_\_\_\_\_

## DEFINITIONS

**Agreement:** The Agreement consists only of the Subcontract Agreement, the Appendices listed in Article 4 of the Subcontract Agreement, these Definitions, the attached General Terms and Conditions and the Subcontract Documents.

**Artifacts and Fossils:** Any fossils, coins, articles of value or antiquity, structures or other remains or things of scientific or historical interest discovered at the Project Site.

**Bid Confirmation Meeting:** Any meeting or meetings between Stuart Olson and the Subcontractor held in connection with the Subcontractor's submission of its Bid Form, pursuant to which the scope of the Work, pricing, or any other aspects of the Subcontractor's Bid were discussed.

**Business Day:** A day other than a Saturday, Sunday or any statutory holiday that is observed in the jurisdiction of the Project Site.

**Change:** Any modification, addition, deletion, or other variation to, in or from the Agreement as approved or directed in accordance with the provisions of Section 6, which modification, addition, deletion or variation affects the Subcontract Price, scope of Work, Project Schedule and/or Work Schedule, but shall not be inconsistent with any terms contained in this Agreement.

**Change Directive:** A written instruction issued by Stuart Olson, in a format consistent with the sample provided in Appendix F - Form of Change Directive, and incorporated into this Agreement directing the Subcontractor to proceed with a Change prior to the issuance of a Change Order.

**Change Order:** A written instruction issued by Stuart Olson, in a format consistent with the sample provided in Appendix E - Form of Change Order, that is incorporated into and forming part of this Agreement authorizing a Change.

**Claim:** Any claim, demand, loss, cost, damages, including liquidated damages, actions suits or proceeds arising out of or in relation to this Agreement.

**Confidential Information:** Any information of a non-public, confidential or proprietary nature, whether of a commercial, financial or technical nature, exchanged between the Parties including, without limitation, analyses, compilations, studies, computer-aided design materials, electronic data files and other documentation used in the performance of the Work.

**Consequential Loss:** Loss of product or production, loss of revenue, loss of profits, loss of use, loss of business, loss of opportunity, loss of contract, interest or indirect loss or consequential loss of any kind.

**Consultant:** The individual or entity appointed by the Owner in connection with the Project as identified in the Prime Contract, or, in the absence of such individual or entity, Stuart Olson.

**Design Services:** Any professional services including but not limited to, design, architecture, engineering, testing, surveying or similar services used directly or indirectly in the performance of the Work.

**Disclosing Party:** Has the meaning ascribed to it in Section 14.

**Environmental Services:** The performance of Work or any portion thereof that may involve actual or potential exposure to any Hazardous Material, either directly or indirectly, including but not limited to abatement, removal, remediation, transportation or disposal of a Hazardous Material.

**Equipment Rates:** If applicable, the equipment rates identified as such in the Bid Form.

**Final Progress Payment:** The last progress payment made by Stuart Olson to the Subcontractor in respect of the Work, which, for greater certainty shall be the last payment prior to the final payment of any Holdback.

**Force Labour Rates:** If applicable, the labour rates identified as such in the Bid Form.

**Hazardous Material:** Hazardous Material means asbestos, asbestos containing material, lead, lead-based paint, PCB, silica, silica dust, molds and microbial matter, any other chemical, material, or other substance subject to regulation as a hazardous material, hazardous substance, toxic substance, or otherwise, under applicable federal, provincial, or local law; and any other chemical, material or substance that may have adverse effects on human health or the environment.

**Holdback:** The amount deducted and retained from payments to the Subcontractor in accordance with the applicable lien legislation in the jurisdiction of the Project Site.

**Hot Work:** The performance of any Work involving open flames or producing heat or sparks including but not limited to brazing, cutting, grinding, soldering, thawing applications, torch applied roofing or welding.

**Liens:** Any public works registrations, builders lien, mechanics lien, possessory lien or similar registration or encumbrance whether arising or pursuant to any legislation or otherwise.

**Notice:** A written communication, including but not limited to demands, instructions, claims, approvals and disputes, between the Parties as required to be issued as stated herein and transmitted in accordance with Section 15.

**Payment Certifier:** An individual or entity appointed by the Owner as stated in the Prime Contract, or as otherwise defined by the applicable lien legislation in the jurisdiction of the Project Site, with the authority to certify payments on behalf of the Owner. If there is no individual or entity appointed as described above, the Owner and Stuart Olson acting together shall have the authority to certify amounts due to the Subcontractor.

**Project Schedule:** The schedule, set out in Appendix B - Project Schedule, outlining the dates by which the various stages of the Work must be performed so as to satisfy Stuart Olson's obligations to the Owner as outlined in the Prime Contract.

**Receiving Party:** Has the meaning ascribed to it in Section 14.

**Schedule of Values:** A document prepared by the Subcontractor and, if applicable, included in Appendix J - Work Schedule & Schedule of Values containing a detailed breakdown of the different components of the Work into individual activities, tasks or unit rates and their associated costs.

**Shop Drawings:** All drawings, diagrams, illustrations, schedules, performance charts, trial assemblies, mock ups, brochures, product data and other submittals required to perform the Work.

**Subcontract Dispute:** Any claim, dispute or other matter in question between Stuart Olson and the Subcontractor in any way pertaining to this Agreement including any dispute in respect of the Work, Changes to the Work, the Subcontract Price or the Project Schedule.

**Subcontract Documents:** The Subcontract Documents consist of those terms and conditions of the Prime Contract which are explicitly stated, or by their nature are required to be incorporated into this Agreement and, if applicable, the Bid Form and the minutes recorded by Stuart Olson from any Bid Confirmation Meeting.

**Subcontractor Default Insurance:** A form of subcontract security, administered and maintained by Stuart Olson which is used to secure the Subcontractor's obligations under this Agreement.

**Subcontractor Progress Payment Application:** The documentation required to be submitted by the Subcontractor in order to make an application for payment to Stuart Olson, which shall include in each instance:

- .1 a copy of the Subcontractor's invoice in a format consistent with Appendix D - Subcontractor Progress Payment Application;
- .2 an executed statutory declaration, in a format consistent with Statutory Declaration of Progress Payment Distribution by the Subcontractor (CCDC 9B), expressly stating that all amounts payable by the Subcontractor relating to this Agreement have been paid in full up to and including the date of the most recent Progress Payment Application;
- .3 a current clearance from the applicable workers compensation authority in the jurisdiction of the Project Site evidencing that the Subcontractor's account is in good standing;
- .4 if requested by Stuart Olson, a valid certificate of insurance evidencing compliance with all insurance requirements as stated herein;
- .5 if requested by Stuart Olson, evidence that the subcontract security as required pursuant to Section 10 is in place; and
- .6 if requested by Stuart Olson, a list of all Sub-Subcontractors who have completed or are expected to complete, any portion of the Work.

**Sub-Subcontractors:** Any person or entity engaged by the Subcontractor to provide services, labour, material and equipment in the performance of the Work or any portion thereof on behalf of the Subcontractor.

**Substantial Performance:** Unless otherwise defined in the Prime Contract and, if applicable, in accordance with the applicable lien legislation in the jurisdiction of the Project Site, the point at which the Work performed on the Project is ready for use or is being used for the purpose intended and is so certified by the Consultant if the conditions of the Prime Contract require the Consultant to issue such certificate.

**Turnover Documentation:** The Shop Drawings together with all operations and maintenance manuals, spare parts, test certificates, drawings, personnel training, warranty certificates and any other items required for the use of the Work.

**Unauthorized Work:** Any Work or portion thereof performed by or on behalf of the Subcontractor that constitutes a Change without a Change Directive authorizing such Change, or if a Change Order has been issued, without such Change Order having been accepted by the Subcontractor.

**Warranty Period:** Has the meaning ascribed to it in Section 13.

**Work Schedule:** A schedule prepared by the Subcontractor and, if applicable, outlined in Appendix J - Work Schedule & Schedule of Values, containing a detailed breakdown of the sequence and duration of all activities to be completed by the Subcontractor necessary for the execution Work.

**Work Site:** The designated area on the Project Site where the Work is performed.

## GENERAL TERMS AND CONDITIONS

### 1. Performance of the Work

- 1.1 The Subcontractor represents and warrants that it is experienced and knowledgeable in performing work of a similar nature to the Work and has the required ability, skills, qualifications, capability, manpower and financial resources to perform the Work in a timely manner in accordance with the requirements of this Agreement.
- 1.2 The Subcontractor agrees to furnish all necessary services, labour, material and equipment required to safely, diligently and completely perform the Work in strict compliance with this Agreement. The Subcontractor shall employ qualified workers to execute the Work in a skillful and workmanlike manner as would be expected of an experienced, competent subcontractor providing similar services, and shall furnish new materials and equipment of proper and expected quality, free from all defects.
- 1.3 The Subcontractor shall appoint a competent and qualified individual, with the authority to represent the Subcontractor in all aspects of the Work, to supervise the performance of the Work on the Project Site at all times while the Work is being performed. The Subcontractor shall not remove any of the appointed personnel throughout the length of the Project without the prior written consent of Stuart Olson, such consent not to be unreasonably withheld or delayed.
- 1.4 The Subcontractor shall perform other tasks and acts that, even if not expressly set out in this Agreement, are reasonably necessary for a prudent subcontractor to perform the Work or work of similar nature in a safe and professional manner.
- 1.5 Prior to starting the Work, the Subcontractor shall fully examine the Project Site and review all existing drawings, specifications, surveys, test reports and schedules furnished by or on behalf of Stuart Olson or the Owner and shall promptly provide Notice to Stuart Olson upon discovering any errors, inconsistencies or omissions that may or will adversely impact the Work. If drawings, specifications, surveys, test reports and schedules are provided to the Subcontractor after it starts the Work, the Subcontractor shall review such drawings, specifications, surveys, test reports and schedules and within two (2) Business Days of receipt of such documents provide Notice to Stuart Olson of any errors, inconsistencies or omissions that may or will adversely impact the Work. If the Subcontractor fails to provide such Notice or fails to discover any errors, inconsistencies or omissions prior to starting the Work, the Subcontractor shall not be entitled to any adjustments to the Subcontract Price or Work Schedule or any other form of compensation or damages for any such errors, inconsistencies or omissions.
- 1.6 As required, the Subcontractor shall cooperate and provide safe access to the Work or any portion thereof for inspection by Stuart Olson, the Owner or its representative under the Prime Contract.
- 1.7 The Subcontractor shall cooperate with Stuart Olson and other contractors, subcontractors or suppliers performing work on the Project and shall participate in the preparation of coordinated drawings and schedules in areas of congestion related to the Project Site. The Subcontractor shall provide Notice to Stuart Olson within two (2) Business Days of any conditions or interference that may or will adversely impact the Work. If: (i) the Subcontractor fails to cooperate with Stuart Olson and other contractors, subcontractors or suppliers performing work on the Project, the Subcontractor shall be liable for all costs resulting in any delays, changes or corrections to the Work and the work of other contractors, subcontractors or suppliers resulting from such failure; or (ii) fails to provide the required Notice of any interference, then the Subcontractor shall not be entitled to any relief for such interference.
- 1.8 The Subcontractor is responsible for all risk of loss or damage to the Work not fully or finally accepted by Stuart Olson, the Owner or the Payment Certifier, if applicable, and shall take necessary precautions to protect the Work and the property of others performing work on the Project from damage and, failing to do so, the Subcontractor shall, at its own expense, promptly remedy such damage to the satisfaction of Stuart Olson, acting reasonably.
- 1.9 The Subcontractor shall, at its own cost, ensure that all permits, licenses, inspections and certificates required for the performance of the Work are satisfactorily completed so as not to delay the Work Schedule and the Project Schedule. At the request of Stuart Olson, the Subcontractor shall furnish evidence of such permits, licenses, inspections and certificates to Stuart Olson.
- 1.10 The Subcontractor shall comply with all federal, provincial and municipal laws, statutes, ordinances, codes and regulations applicable to the Work and, failing to do so, shall be responsible for all costs resulting from any delays, changes or corrections to the Work and the work of other contractors, subcontractors or suppliers performing work on the Project.
- 1.11 In the event that the Subcontractor's Work or a portion thereof does not conform to the requirements of this Agreement, the Subcontractor shall immediately correct such non-conforming Work to the satisfaction of Stuart Olson and shall be liable for any costs arising out of any delays, changes or corrections to the Work and the work of other contractors, subcontractors or suppliers resulting therefrom.
- 1.12 At Substantial Performance of the Work and prior to Stuart Olson issuing the Final Progress Payment to the Subcontractor, the Subcontractor shall submit all Turnover Documentation to Stuart Olson. If the Subcontractor fails to provide the required Turnover Documentation, Stuart Olson has the right to retain the Final Progress Payment to the Subcontractor and any additional funds otherwise owed to the Subcontractor an amount equivalent to the estimated cost to obtain such Turnover Documentation. In the event that the costs to correct the defective Work exceed the amount retained, the Subcontractor shall be liable for such additional costs.
- 1.13 Without limiting the rights of Stuart Olson under this Agreement, title to the Work and the Turnover Documentation or any portions thereof shall pass to Stuart Olson on the earlier of:
  - .1 the date of delivery of such Work to or at the Project Site or to such other location as may be directed by Stuart Olson;
  - .2 the date of payment by Stuart Olson to the Subcontractor for such Work; or
  - .3 as otherwise stated in the Prime Contract.The Subcontractor agrees to execute and deliver such documents as Stuart Olson may reasonably require to evidence the transfer of such title.
- 1.14 To the extent permitted by the law applicable to the Work, the Subcontractor hereby waives any rights it has to possessory liens in respect of any aspect of the Work, including under the Repair and Storage Liens Act (Ontario), the Possessory Liens Act (Alberta) or similar legislation in any other jurisdiction.
- 1.15 In the event that the Subcontractor is required to provide Design Services in the performance of the Work, the Subcontractor shall ensure that such Design Services are procured from qualified professionals holding valid licenses in the jurisdiction of the Project Site.
- 1.16 The Subcontractor shall not perform any Hot Work on the Project Site without the prior written consent of Stuart Olson and, where consent is given, the Subcontractor shall comply with all the instructions and requirements provided by Stuart Olson to perform Hot Work.
- 1.17 In the event that the Subcontractor becomes aware of or reasonably suspects the presence of any Artifacts and Fossils on or in the vicinity of the Project Site, the Subcontractor shall immediately provide Notice to Stuart Olson of such Artifacts and Fossils and take reasonable precautions to prevent removal or damage to such Artifacts and Fossils.
- 1.18 Notwithstanding any Subcontract Dispute, the Subcontractor shall continue to diligently perform all of its obligations under this Agreement, but without prejudice to its rights to resolve such Subcontract Dispute in accordance with Section 16.

### 2. Execution of the Work and Scheduling

- 2.1 The Subcontractor shall perform the Work in a prompt and diligent manner and warrants that all labour, material and equipment used in the performance of the Work shall be furnished in sufficient timeliness and quantities to enable the Subcontractor to complete the Work in

accordance with the Work Schedule, if applicable, and the Project Schedule. As necessary to ensure compliance with the Owner's schedule requirements in the Prime Contract, Stuart Olson may reasonably adjust the Project Schedule and the Work Schedule.

2.2 The Subcontractor shall:

- .1 participate in any start up meeting requested by Stuart Olson prior to mobilization on the Project Site and any subsequent Project Site meetings as required by Stuart Olson while the Subcontractor is performing Work on the Project Site;
- .2 prepare and submit to Stuart Olson, all Shop Drawings in formats and quantities acceptable to Stuart Olson so as not to delay the Work Schedule or Project Schedule, as applicable and shall ensure that such Shop Drawings are stamped, dated and signed by an authorized representative of the Subcontractor or, as required, by a qualified, licensed professional having the authority to approve such Shop Drawings;
- .3 submit to Stuart Olson for review the Subcontractor's manpower forecast pursuant to which the Subcontractor shall be deemed to covenant to provide the minimum amount of manpower resources on the Project Site to execute the Work. Stuart Olson's review of such manpower forecast shall not relieve the Subcontractor from its obligations to ensure strict compliance with the Work Schedule and Project Schedule including but not limited to acceleration of the Work as directed by Stuart Olson. No review or approval by Stuart Olson of such manpower forecast shall entitle the Subcontractor to any adjustments to the Subcontract Price for additional costs the Subcontractor may incur to ensure compliance with the Work Schedule or Project Schedule, and any such adjustment shall only be enforceable if made through a Change Order or Change Directive;
- .4 provide all layouts, field measurements, verifications and engineering from control points established by Stuart Olson required for the performance of the Work and shall be responsible for all costs arising from any errors or omissions in such layouts, field measurements, verifications and engineering;
- .5 be responsible for the receipt, delivery, storage, unloading, hoisting and placement of all materials and equipment used in the performance of the Work and schedule the Work such that Stuart Olson has a reasonable amount of time to approve all deliveries to the Project Site;
- .6 provide adequate distribution and task lighting required for the performance of the Work;
- .7 not perform Work on the Project Site when Stuart Olson's supervisor is not present at the Project Site or outside of the designated business hours as determined by this Agreement;
- .8 secure and reasonably protect the Work from damage caused by others performing work on the Project Site after completion of the Work; and
- .9 ensure that all tools, equipment, material, temporary structures, debris and waste relating to or resulting from the performance of the Work are removed from the Project Site after completion of the Work.

2.3 On request, and in accordance with the Work Schedule and the Project Schedule, the Subcontractor shall promptly submit to Stuart Olson for review and approval all required Turnover Documentation, in formats and quantities acceptable to Stuart Olson, so as to meet each milestone in the Work Schedule and Project Schedule. In the event that any Turnover Documentation does not conform to the Subcontract Documents, the Subcontractor shall be responsible to promptly correct such Turnover Documentation, and if applicable, the Work to the satisfaction of Stuart Olson and shall be liable for all costs arising out of any delays, changes or corrections as a result of such non-conformance. Stuart Olson's acceptance or approval of Turnover Documentation shall not relieve the Subcontractor of responsibility for any:

- .1 errors or omissions in the Turnover Documentation or the Work; or
- .2 deviations from the requirements of the Subcontract Documents unless the Subcontractor has specifically and clearly provided Notice to Stuart Olson of such deviation at the time of submitting the Turnover Documentation and Stuart Olson has provided a Change Order accepting the deviation.

2.4 At the request of Stuart Olson, the Subcontractor shall promptly submit to Stuart Olson for review and approval a Work Schedule and Schedule of Values in form acceptable to Stuart Olson, and that strictly conforms to the Project Schedule. Stuart Olson's approval of the Work Schedule or the Schedule of Values shall not relieve the Subcontractor of responsibility for any deviations from the requirements of this Agreement unless the Subcontractor has obtained a Change Order or Change Directive.

2.5 The Subcontractor shall perform the Work in accordance with the Project Schedule so as not to interfere with or delay the work of Stuart Olson and other contractors, subcontractors or suppliers performing work on the Project. If a Work Schedule has been agreed to, the Subcontractor shall perform all Work in accordance with, and by the dates and milestones as may be set out in the Work Schedule.

2.6 If: (i) the Subcontractor fails to meet any date or milestone in the Work Schedule; (ii) Stuart Olson otherwise reasonably believes that the Subcontractor is late in completing the Work such that the Work Schedule or Project Schedule will be delayed, or (iii) if the Subcontractor otherwise fails to comply with the Work Schedule or Project Schedule, in each case, the Subcontractor shall, as directed by Stuart Olson, at its own expense, accelerate the Work. In the event that the Subcontractor causes delays to the Project, the Subcontractor shall be liable to Stuart Olson for all costs, damages or other penalties incurred by Stuart Olson under the Prime Contract, in connection with any other subcontractor to the Project, or otherwise resulting therefrom.

2.7 In the event that the Subcontractor fails to meet any milestone in the Work Schedule, if applicable, or the Project Schedule and there is a subsequent delay in the Project Schedule to work or tasks reliant on completion of the Work, then unless the Subcontractor can prove otherwise to the satisfaction of Stuart Olson, acting reasonably, the Subcontractor shall be deemed to have caused such delay.

2.8 The Subcontractor shall provide Stuart Olson with weekly updates of its progress in relation to the Work Schedule and the Project Schedule. As and when requested by Stuart Olson, the Subcontractor shall furnish adequate evidence to substantiate its ability to meet the Work Schedule, if applicable, and the Project Schedule and planned progress of the Work, including periodic reports setting forth the status of the Work.

2.9 If the Subcontractor is delayed in the performance or completion of the Work by the act, neglect or default of any other person on the Project Site, and provided that the Subcontractor has in no way contributed to such delay, the Subcontractor shall only be entitled to consideration of relief from its obligations or compensation if it has provided Notice to Stuart Olson within two (2) Business Days of the occurrence of such delay. Notwithstanding any other provision in this Agreement and on account of such delay:

- .1 no adjustments to the Subcontract Price shall be allowed unless and to the extent that Stuart Olson receives compensation from the Owner on behalf of the Subcontractor; and
- .2 no extensions to the Work Schedule will be allowed unless and to the extent that the Project Schedule is extended.

2.10 The Subcontractor shall provide Notice to Stuart Olson on the last day that the Subcontractor provides services at the Project Site. If the Subcontractor fails to do so, Stuart Olson's books and records shall be used to determine such date.

2.11 To the extent that the Project Schedule dictates an earlier completion date for any task or milestone than is set forth in the Work Schedule, the terms of the Project Schedule shall govern and be paramount.

**3. Sub-Subcontractors**

3.1 The Subcontractor shall not assign or subcontract this Agreement, any of the Work or any portion thereof without prior written consent of Stuart Olson. Stuart Olson's consent to assignment or sub-subcontracting of any portion of the Work shall not relieve the Subcontractor of its

responsibilities under this Agreement or create any privity of contract between Stuart Olson and any Sub-Subcontractor performing such assigned Work, except for Stuart Olson's right to enforce certain provisions of this Agreement against a Sub-Subcontractor as set forth herein. If applicable, Appendix G - List of Approved Sub-Subcontractors sets out the list of Sub-Subcontractors Stuart Olson has approved, and any changes thereto shall be subject to Stuart Olson's approval using the Change Order process in Section 6.

- 3.2 The Subcontractor shall bind each of its Sub-Subcontractors to the provisions of the Agreement to the extent that the Subcontractor is bound to Stuart Olson.
- 3.3 The Subcontractor shall at all times be responsible for the performance or non-performance of all Sub-Subcontractors and shall coordinate all Sub-Subcontractor activities to ensure compliance of the Subcontractor's obligations with the Agreement.
- 3.4
  - .1 The Subcontractor shall not permit any Lien to exist or be filed or registered by any Sub-Subcontractor in respect of the Work. If a Lien is filed by any Sub-Subcontractor, the Subcontractor shall, at its cost, immediately take the steps set forth in Appendix I - Lien Discharge Process to discharge such Lien, failing which Stuart Olson may, on giving the Subcontractor Notice, take such steps and set off any and all costs incurred in respect thereto against the Subcontractor. Any and all amounts paid by Stuart Olson to release, vacate or discharge any Lien filed by a Sub-Subcontractor or otherwise through the Subcontractor, including legal costs on a solicitor-client basis, shall be a debt owed by the Subcontractor to Stuart Olson and may be set-off by Stuart Olson against any amounts owed to the Subcontractor.
  - .2 If the Subcontractor files a Lien on the Project then, upon Stuart Olson performing the applicable steps set out in Appendix I - Lien Discharge Process, the Subcontractor shall be deemed to have agreed to discharge its Lien.
- 3.5 When requested by Stuart Olson, the Subcontractor shall furnish Stuart Olson with a statutory declaration prepared by any Sub-Subcontractor setting out such statements as Stuart Olson may reasonably require, including but not limited to: (i) the amounts paid to, and/or owed to Sub-Subcontractor by the Subcontractor in connection with the Work; (ii) whether or not Sub-Subcontractor will be able to meet any milestone or date in the Work Schedule or Project Schedule as applicable; or (iii) or whether or not there are or Sub-Subcontractor is aware of any claims between it and the Subcontractor.
- 3.6 In the event of any unpaid amounts or unfulfilled obligations between the Subcontractor and any Sub-Subcontractor, Stuart Olson shall have the right, upon giving Notice to the Subcontractor to deal directly with, and settle or pay such outstanding obligations with the Sub-Subcontractor, in the manner it determines in its sole discretion is in the best interests of the Project, and the Subcontractor shall be liable to Stuart Olson for any costs incurred in connection therewith.
- 3.7 When requested, the Subcontractor shall provide to Stuart Olson a copy of each agreement entered into it with any Sub-Subcontractor, each of which agreements shall contain explicit provisions requiring the Sub-Subcontractor to acknowledge and comply with the terms of this Section 3, and any other terms or conditions which require the cooperation or compliance of Sub-Subcontractors.

#### **4. Safety & Environmental Protection**

- 4.1 The Subcontractor shall perform the Work in a safe manner to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of such performance.
- 4.2 The Subcontractor shall comply with all rules, regulations, practices, procedures and precautions as required by all laws (including in respect of construction, health, safety and environment) in the jurisdiction of the Project Site and as set out in Stuart Olson's Health, Safety & Environmental Manual or as otherwise required to ensure compliance with the Agreement.
- 4.3 Unless Stuart Olson has otherwise provided written agreement, prior to the commencement of Work on the Project Site, and as a precondition to any payment under this Agreement, the Subcontractor shall submit to Stuart Olson:
  - .1 a copy of the Subcontractor's health and safety program;
  - .2 a copy of the Subcontractor's written safe work procedures related to the performance of the Work;
  - .3 a current clearance from the applicable workers' compensation authority in the jurisdiction of the Project Site evidencing that the Subcontractor's account is in good standing;
  - .4 copies of attendance sheets and minutes for the Subcontractor's weekly safety meetings; and
  - .5 evidence satisfactory to Stuart Olson that all individuals involved in the performance of the Work have the appropriate and current training or certification.
- 4.4 The Subcontractor shall, at its sole cost, maintain the Work Site in a safe and tidy condition and free from the accumulation of waste and debris resulting from the performance of the Work. If the Subcontractor fails to maintain a safe and tidy Work Site, Stuart Olson shall provide Notice to the Subcontractor to have the accumulated waste and debris removed from the Work Site within twenty-four (24) hours of receiving such Notice. Notwithstanding the foregoing, Stuart Olson may at any time it believes that the safety of any person visiting the Project Site is in jeopardy, arrange to have any waste or debris removed from the Work Site and the Subcontractor shall be liable for the costs of such removal.
- 4.5 The Subcontractor shall not, without the prior written consent of Stuart Olson, bring or store any Hazardous Material on or in the vicinity of the Project Site. In the event that the Subcontractor becomes aware of or reasonably suspects the presence of any Hazardous Material on or in the vicinity of the Project Site, the Subcontractor shall immediately provide Notice to Stuart Olson, and shall take reasonable precautions to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of the presence of such Hazardous Material.

#### **5. Payment**

- 5.1 The Subcontractor shall not be entitled to any payment hereunder unless and until the Subcontractor has provided to Stuart Olson:
  - .1 an executed copy of this Agreement, with any changes or qualifications thereto agreed to by Stuart Olson;
  - .2 proof of all insurance required under Section 9;
  - .3 subcontract security required under Section 10, if applicable; and
  - .4 all health and safety materials identified in Section 4.
- 5.2 The Subcontractor shall not be entitled to payment of any amount unless such amount is submitted in a completed Subcontractor Progress Payment Application.
- 5.3 On or before the 20th day of each month, the Subcontractor shall submit a Subcontractor Progress Payment Application to Stuart Olson for Work completed in that month, itemizing thereon, if applicable, any amounts attributable to each approved Change Order or Change Directive. The period covered by the Subcontractor Progress Payment Application shall be for one calendar month ending on the last day of the month in which the Subcontractor Progress Payment Application is submitted.
- 5.4 Unless otherwise stated herein, Stuart Olson shall pay to the Subcontractor all undisputed amounts set forth in a Subcontractor Progress Payment Application and approved by the Payment Certifier and Stuart Olson, less Holdback, deductions or set-off amounts on the earlier of:
  - .1 seven (7) Business Days after the date Stuart Olson is paid by the Owner, to the extent that such payment includes payment for the Work specified in the Subcontractor Progress Payment Application; or
  - .2 sixty (60) days after the Subcontractor Progress Payment Application is approved by the Payment Certifier.

- 5.5 The aggregate payments made to the Subcontractor under this Agreement shall not exceed the Subcontract Price as adjusted by any approved Change Orders.
- 5.6 At Substantial Performance or as otherwise stated in the Subcontract Documents, the Subcontractor may submit to Stuart Olson a Subcontractor Progress Payment Application for payment of the Final Progress Payment.
- 5.7 It shall be a precondition of Stuart Olson making the Final Progress Payment that the Subcontractor has provided all of the Turnover Documentation.
- 5.8 Unless otherwise stated herein, after receipt of the Subcontractor Progress Payment Application for payment of Holdback, and provided that there are no outstanding disputes or claims between Stuart Olson and the Subcontractor, and provided that the Owner is not holding back funds attributable to the Work, Stuart Olson shall make payment of the Holdback to the Subcontractor seven (7) Business Days after the date Stuart Olson is paid by the Owner.
- 5.9 No payment made to the Subcontractor by Stuart Olson shall constitute acceptance of the Work or relieve the Subcontractor from its obligations or responsibilities pursuant to this Agreement including but not limited to the Subcontractor's liability for Work that does not comply with the requirements of the Subcontract Documents.
- 5.10 The Subcontractor shall be solely and exclusively responsible for the administration, remittance and payment of all contributions, assessments and deductions in respect of the Work, required by any applicable law.
- 5.11 The Subcontractor hereby represents to Stuart Olson that it is not a non-resident of Canada for the purposes of the Income Tax Act (Canada). At the request of Stuart Olson, the Subcontractor shall immediately provide proof thereof. If the Subcontractor fails to provide such proof, Stuart Olson shall be entitled to withhold and remit the applicable withholding tax to Canada Revenue Agency in accordance with the Income Tax Regulations (Canada) (such withholding and remittance to constitute payment to the Subcontractor hereunder) unless Stuart Olson has received authorization directly from Canada Revenue Agency to waive such withholding tax, and the Subcontractor shall not be entitled to gross up the amount of any invoice or the Subcontract Price in respect of any such withholdings.
- 5.12 Stuart Olson, acting reasonably, may withhold payments from the Subcontractor of any amounts that Stuart Olson reasonably considers necessary to protect Stuart Olson from loss on account of non-conforming Work not remedied, or the failure of the Subcontractor to make payments for Sub-Subcontractors, material, labour or otherwise under this Agreement, or the failure of the Subcontractor to perform any of its obligations hereunder, or claims asserted by the Owner or any third party in respect of acts or omissions of the Subcontractor.
- 5.13 Stuart Olson shall have the right to suspend payments under this Agreement in the event that the Subcontractor has not complied with the provisions of Section 3.5, or as may be required to provide for any underpayments or disputes identified pursuant to Section 3.5.
- 5.14 The Subcontractor hereby authorizes Stuart Olson to pay any or all of the Subcontractor's unpaid obligations, including to Sub-Subcontractors, whether or not such unpaid obligations have been disclosed by the Subcontractor to Stuart Olson, and to reduce the amount owing to the Subcontractor by the amount or amounts so paid, plus a reasonable allowance for Stuart Olson's overhead and administration. The amount of any obligations in dispute, plus a reasonable allowance for Stuart Olson's overhead and administration costs, may be retained by Stuart Olson pending determination of the dispute.
- 5.15 The Subcontractor hereby acknowledges and agrees that Stuart Olson may set-off any payment owed to Stuart Olson by the Subcontractor or any of its affiliates, against any amount owed by Stuart Olson to the Subcontractor.

## **6. Changes in the Work**

- 6.1 In the event a Change is required, Stuart Olson will issue a Notice in writing to the Subcontractor outlining the details of the Change. Within ten (10) Business Days from the date of Notice or other such period of time as may be stated in the Notice, the Subcontractor shall, in a form acceptable to Stuart Olson propose in writing to Stuart Olson for review and approval, any reasonable and necessary adjustments to the Subcontract Price, Work Schedule and Project Schedule to perform the Change. On approval of such proposed adjustments, Stuart Olson shall issue a Change Order. Such Change Order shall be the Subcontractor's sole entitlement to adjustments to the Subcontract Price, Work Schedule or Project Schedule, as applicable for such Change, including any claim for delay, disruption, interference, inefficiency, or productivity. Any adjustments to the Subcontract Price, the Project Schedule or the Work Schedule, if applicable, shall be determined on the basis of the actual cost and savings incurred by the Subcontractor as a result of the Change Order, provided that, for the purpose of calculating such actual cost, the Force Labour Rates and Equipment Rates and Schedule of Values shall be used.
- 6.2 If Stuart Olson requires the Subcontractor to proceed with a Change before a Change Order is agreed upon, Stuart Olson shall issue a Change Directive and, upon receipt of such Change Directive, the Subcontractor shall promptly and diligently proceed with the Work as changed. Any adjustments to the Subcontract Price, the Project Schedule or the Work Schedule, if applicable, shall be determined on the basis of the actual cost and savings incurred by the Subcontractor as a result of the Change Directive, provided that, for the purpose of calculating such actual cost, the Force Labour Rates and Equipment Rates and Schedule of Values shall be used. The Subcontractor shall keep detailed records and documentation to evidence the actual impact to the schedule changes and expenditures and savings and, at the request of Stuart Olson, shall submit such records and documents to Stuart Olson for review and approval. On approval of such schedule changes, expenditures and savings, the Change Directive shall be recorded as a Change Order. Such Change Order shall be the Subcontractor's sole entitlement to adjustments to the Subcontract Price, the Project Schedule or the Work Schedule for such Change, including any claim for delay, disruption, interference, inefficiency, or productivity as a result of the Change. The Subcontractor shall be liable to Stuart Olson for any cost resulting from the failure on the part of the Subcontractor to exercise reasonable care and diligence in the performance of the changes attributable to the Change Directive.
- 6.2 If Stuart Olson requires the Subcontractor to proceed with a Change before a Change Order is agreed upon, Stuart Olson shall issue a Change Directive and, upon receipt of such Change Directive, the Subcontractor shall promptly and diligently proceed with the Work as changed. Any adjustments to the Subcontract Price, the Project Schedule or the Work Schedule, if applicable, shall be determined on the basis of the actual cost and savings incurred by the Subcontractor as a result of the Change Directive, provided that, for the purpose of calculating such actual cost, the Force Labour Rates and Equipment Rates and Schedule of Values shall be used. The Subcontractor shall keep detailed records and documentation to evidence the actual impact to the schedule changes, expenditures and savings and, at the request of Stuart Olson, shall submit such records and documents to Stuart Olson for review and approval. On approval of such schedule changes, expenditures and savings, the Change Directive shall be recorded as a Change Order. Such Change Order shall be the Subcontractor's sole entitlement to adjustments to the Subcontract Price, the Project Schedule or the Work Schedule for such Change, including any claim for delay, disruption, interference, inefficiency, or productivity as a result of the Change. The Subcontractor shall be liable to Stuart Olson for any cost resulting from the failure on the part of the Subcontractor to exercise reasonable care and diligence in the performance of the changes attributable to the Change Directive.
- 6.3 If the Subcontractor becomes aware of any circumstances that may necessitate a Change, the Subcontractor shall, as a precondition to entitlement to any claim for adjustment to the Subcontract Price, Project Schedule and Work Schedule, within two (2) Business Days after becoming aware of such circumstances, provide Notice to Stuart Olson requesting a Change Order. Such Notice shall include supporting documentation in sufficient detail to enable Stuart Olson to determine:
  - .1 the factors necessitating the Change;
  - .2 the potential impact on the Subcontract Price and Work Schedule; and



.3 such other information which Stuart Olson may request in connection with the Change.

In the event that Stuart Olson agrees that such circumstances justify a Change and on approval of any proposed adjustments to the Subcontract Price, the Project Schedule or the Work Schedule, if applicable, Stuart Olson will issue a Change Order. Failure by the Subcontractor to provide Notice as required by this section, shall be deemed to be a waiver by the Subcontractor of its right to claim for any adjustment to the Subcontract Price, Project Schedule and Work Schedule.

- 6.4 Any Unauthorized Work performed by the Subcontractor shall be at the sole risk, cost and expense of the Subcontractor. The Subcontractor waives the right to payment for such Unauthorized Work and shall be liable to Stuart Olson for any additional costs incurred by Stuart Olson as a result of, or in connection with, any Unauthorized Work.
- 6.5 The Subcontractor will not be entitled to any rights, entitlements or relief in respect of the Subcontract Price, Project Schedule or Work Schedule against Stuart Olson, unless Stuart Olson receives corresponding relief from the Owner under the Prime Contract.
- 6.6 In the event of a Subcontract Dispute between the Parties relating to any Change, the Subcontractor shall continue to perform the Work including any Changes resulting from a Change Order or Change Directive, in a prompt and diligent manner so as not to delay the Project Schedule. The Subcontract Dispute shall be resolved in accordance with Section 16.

## **7. Default & Termination**

- 7.1 In the event that the Subcontractor is adjudged bankrupt; files for reorganization under bankruptcy; makes an assignment for the benefit of its creditors; or if a receiver is appointed due to the Subcontractor's insolvency, Stuart Olson may, without prejudice, immediately terminate this Agreement by providing Notice to the Subcontractor to that effect.
- 7.2 If the Subcontractor fails to comply with the requirements of this Agreement, Stuart Olson may, without prejudice to its other rights herein, give the Subcontractor Notice of such default and instruct the Subcontractor to remedy the default to the satisfaction of Stuart Olson within three (3) Business Days from the date of Notice or other such period of time as stated in the Notice.
- 7.3 If the Subcontractor fails to remedy the default to the satisfaction of Stuart Olson within the time set forth in the Notice, Stuart Olson may, without prejudice to any other rights it may have, and at the cost of the Subcontractor, remedy the default, and Stuart Olson may withhold all further payments due or that become due to the Subcontractor until the default has been remedied and all consequences of the default have been identified, and their financial and schedule impacts known, or may issue a Change Order or Change Directive to do any of the following:
  - .1 take possession, control or conduct of the Subcontractor's Work;
  - .2 suspend or terminate the Subcontractor's right to perform the Work or any portion thereof;
  - .3 complete or arrange to have others complete the Work or any portion thereof;
  - .4 instruct the Subcontractor to replace a Sub-Subcontractor with another Sub-Subcontractor approved by Stuart Olson;
  - .5 instruct the Subcontractor to assign to Stuart Olson any subcontract, purchase order or other agreement between the Subcontractor and a Sub-Subcontractor in connection to the Work; and
  - .6 terminate this Agreement.
- 7.4 In the event that the costs or damages resulting from the Subcontractor's failure to comply with the requirements of this Agreement exceed the amount retained from payments otherwise due to the Subcontractor, the Subcontractor shall be liable to Stuart Olson for such additional costs or damages.
- 7.5 If the Prime Contract or any portion of the Prime Contract relating to the Work is suspended or terminated, Stuart Olson may, without prejudice to any of its other rights, immediately suspend or terminate this Agreement by providing Notice to the Subcontractor to that effect. The Subcontractor shall be compensated for such suspension or termination to the extent that Stuart Olson receives corresponding compensation under the Prime Contract.

## **8. Claims by the Subcontractor**

- 8.1 Subject to any other provision hereof setting out a notice period within which the Subcontractor is required to make a claim to Stuart Olson, the Subcontractor expressly and unconditionally agrees that it shall have no Claim against Stuart Olson in respect of any event or occurrence unless the Subcontractor provides Notice to Stuart Olson of the possibility of such Claim or possible Claim by the earlier of:
  - .1 five (5) Business Days from the date of such event or occurrence; or
  - .2 two (2) Business Days immediately preceding the day that Stuart Olson is required to provide similar notice to the Owner pursuant to the Prime Contract.
- 8.2 In order to remain entitled to proceed with the Claim, the Subcontractor shall, within a further seven (7) calendar days, provide a second Notice to Stuart Olson including an outline of the circumstances and financial and schedule impacts of such Claim or possible Claim.

## **9. Insurance**

- 9.1 The Subcontractor shall, at its own expense, maintain in effect at all times during the performance of the Work, workers' compensation insurance or similar coverage for all its employees engaged in the performance of the Work in accordance with the statutory requirements of the jurisdiction of the Project Site. At the request of Stuart Olson, the Subcontractor shall provide evidence of compliance with such workers' compensation insurance.
- 9.2 The Subcontractor shall, at its own expense, maintain in effect at all times during the performance of the Work and for a period of six (6) years following Substantial Performance of the Work, the following insurance coverage:
  - .1 Commercial general liability insurance, including coverage for products liability and completed operations hazards, for loss or damage arising out of any work performed by or on behalf of the Subcontractor, with a limit of liability not less than \$5,000,000 per occurrence and such insurance policy shall be endorsed to include Stuart Olson and Owner as additional insureds and shall include a provision to provide thirty (30) days prior written notice of cancellation to Stuart Olson and the Owner;
  - .2 Automobile liability insurance coverage for loss or damage arising out of any licensed vehicles owned, leased or operated by the Subcontractor with a limit of liability not less than \$5,000,000 per occurrence; and
  - .3 Equipment insurance covering all construction machinery, temporary buildings, equipment and tools used in the performance of the Work and such insurance policy shall be endorsed to waive any right of subrogation against Stuart Olson and the Owner and shall include a provision to provide thirty (30) days prior written notice of cancellation to Stuart Olson and the Owner.
- 9.3 To the extent that such activities relate to the performance of Work, the Subcontractor shall, at its own expense, maintain in effect at all times during the performance of the Work and for a period of six (6) years following Substantial Performance of the Work, the following insurance coverage:
  - .1 Professional liability insurance coverage for damages arising out of any professional services, including but not limited to, design, architecture, engineering, testing, surveying, or design/build services on the Project, performed by or on behalf of the Subcontractor with a limit of liability not less than \$2,000,000 per occurrence;
  - .2 Pollution liability insurance coverage for damages arising out of Environmental Services performed by or on behalf of the Subcontractor with a limit of liability not less than \$2,000,000 per occurrence;

- .3 Aircraft liability insurance for bodily injury and property damage arising out of any owned, non-owned, leased, chartered or hired aircraft used directly or indirectly in the performance of the Work with a limit of liability not less than \$5,000,000 per occurrence; and
  - .4 Watercraft liability insurance for bodily injury and property damage arising out of any owned, non-owned, leased, chartered or hired watercraft used directly or indirectly in the performance of the Work with a limit of liability not less than \$5,000,000 per occurrence.
- 9.4 All insurance policies shall be issued by an insurance company licensed to transact business in the jurisdiction of the Project Site.
- 9.5 The Subcontractor shall provide Stuart Olson with a certificate of insurance evidencing compliance with all insurance requirements stated herein prior to commencing Work.
- 9.6 At the request of Stuart Olson, the Subcontractor shall obtain and provide to Stuart Olson, a certificate of insurance from all Sub-Subcontractors evidencing compliance with all insurance requirements as set forth herein prior to the Sub-Subcontractor commencing Work.
- 9.7 In the event of a claim under any other project specific insurance policies, any deductibles that may apply shall be the obligation of the Party causing the damage or the injury. If no responsible Party can be established, the deductible shall be borne by the Party or Parties whose work has been damaged.
- 9.8 The Subcontractor's liability to Stuart Olson under this Agreement shall not be limited to any amount of insurance coverage or expression of coverage limit herein.

#### 10. Subcontract Security

- 10.1 In the event that Stuart Olson requires the Subcontractor to provide and maintain subcontract security to guarantee the faithful performance of the Subcontractor's obligations under this Agreement, the Subcontractor shall:
- .1 comply with the Subcontractor Default Insurance prequalification and program requirements; or
  - .2 submit to Stuart Olson an executed performance bond, in form consistent with the Headstart Subcontractor Performance Bond (Surety Association of Canada), and an executed labour and materials payment bond in form consistent with Labour & Material Payment Bond (CCDC 222), each in the amount of 50% of the Subcontract Price (collectively, the "Bonds") within ten (10) Business Days of Stuart Olson's request. The Bonds shall:
    - .1 be issued by a surety company licensed to transact business in the jurisdiction of the Project Site;
    - .2 name Stuart Olson and the Owner as obligees; and
    - .3 remain in good standing until the expiration of the Warranty Period.
- 10.2 If a Change Order results in an increase in the Subcontract Price, the Subcontractor shall provide evidence that the amount of the Bonds have been increased to 50% of the adjusted Subcontract Price.
- 10.3 Evidence of subcontract security requirements as stated herein shall be delivered to Stuart Olson prior to commencement of the Work and in any event as a precondition to any payment by Stuart Olson as otherwise provided for under this Agreement.

#### 11. Indemnification

- 11.1 The Subcontractor shall indemnify, defend and hold harmless Stuart Olson, the Owner, and other subcontractors on the Project, their affiliates, and each of such entities' officers, directors, shareholders, agents and employees from and against all Claims in respect of losses suffered by them as a result of claims by third parties for:
- .1 any alleged or actual infringement or violation of any patent, trademark, copyright or other intellectual property or industrial property right arising in connection with this Agreement and anything done in respect thereof by Subcontractor or Sub-Subcontractor;
  - .2 damage to property, injuries to persons including death, and from any other Claims on account of any negligent act or omission of the Subcontractor, or any of its directors, officers, agents, employees, material suppliers, Sub-Subcontractors or assignees; and
  - .3 any breach by the Subcontractor of any of its obligations under this Agreement.
- 11.2 Stuart Olson shall, to the extent caused by its own breach or negligence, indemnify, defend and hold harmless the Subcontractor, and each of its officers, directors, shareholders and employees from and against all Claims whether in respect of losses suffered by them directly or as a result of claims by third parties on account of:
- .1 damage to property, injuries to persons including death, and from any other Claims on account of any negligent act or omission of Stuart Olson, or any of its directors, officers, or employees; and
  - .2 any breach by Stuart Olson of any of its obligations under this Agreement.
- 11.3 The obligations by either Party pursuant to this Agreement to defend, indemnify or save harmless the other or any other person or entity shall:
- .1 survive the termination of this Agreement and shall be without limitation to any other right or remedy that may be available to the particular Party; and
  - .2 include the obligation to indemnify the other Party or such other person or entity from and against all costs, expenses and fees, including legal fees and disbursements on a solicitor-client basis. Any entity or personnel entitled to indemnification hereunder shall, at its option, have the right to undertake its own defense and to recover from the other Party all costs, expenses and fees in relation thereto.
- 11.4 The right to claim indemnity pursuant to Section 11.2 of this Agreement, and the Subcontractor's rights under applicable lien legislation, shall be the sole and exclusive remedies of the Subcontractor against Stuart Olson in connection with the Work, whether in contract, tort or otherwise.
- 11.5 To the extent permitted under applicable laws, the Subcontractor agrees that the limitations period under any applicable legislation is hereby extended such that Stuart Olson may make any claim against the Subcontractor, whether in contract, indemnity or otherwise, provided that such claim is made within six (6) months of the last date on which any claim may be made, or is made against Stuart Olson under the Prime Contract.

#### 12. Consequential Damages

- 12.1 Notwithstanding anything else in this Agreement, in no event shall either Party be liable to the other Party for any Consequential Loss. This limitation shall not apply:
- .1 where the Consequential Loss is caused by a Party's gross negligence, willful misconduct, fraud or liability to a third party;
  - .2 to a breach of the intellectual property rights of third party or confidentiality obligations hereunder; or
  - .3 where Stuart Olson must seek indemnity for reimbursement of liquidated damages or third party claims under any of the other Subcontract Documents.

#### 13. Warranty

- 13.1 The Subcontractor warrants that the Work shall be free of any defects or deficiencies for the longer of: (i) any warranty period provided by a supplier or Sub-Subcontractor; and (ii) a period of one year from Substantial Performance or such other period of time as required by this Agreement (the "Warranty Period") and the Subcontractor shall be liable for the cost of any delays, changes or corrections to the Work required to correct such defects or deficiencies during the Warranty Period. For greater certainty, the Warranty Period for the Work shall extend at

least for the time period required of Stuart Olson under the Prime Contract and shall apply to any remedial work performed under the warranty to fix, remedy, repair or replace any defective Work.

- 13.2 At all times during completion of the Work, and during the Warranty Period, the Subcontractor shall, upon Notice from Stuart Olson, immediately or within the time provided in the Notice, correct at its own expense any part of the Work which is defective or not in accordance with this Agreement.

#### **14. Confidential Information**

- 14.1 The rights and obligations outlined herein are in addition to any confidentiality or non-disclosure obligations that may exist between the Parties through separate and express agreement related to the Project.
- 14.2 In order to fulfill the obligations of this Agreement, it may be necessary for one Party (the "Disclosing Party") to furnish Confidential Information to the other Party (the "Receiving Party"). The Receiving Party shall not use Confidential Information provided by the Disclosing Party for purposes other than the performance of the Work or as required under the Prime Contract. The Receiving Party shall treat the Confidential Information of the Disclosing Party with at least the same degree of care as it would use to protect its own proprietary information, but in any event with a reasonable level of care.
- 14.3 The restrictions and obligations in this Agreement shall not apply to the Confidential Information of the Disclosing Party, which:
- .1 the Disclosing Party confirms in writing is not required to be treated as Confidential Information;
  - .2 is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its representatives;
  - .3 was received by the Receiving Party from a third party, provided that to the best of the Receiving Party's knowledge, such third party was not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party; or
  - .4 was in the possession of the Receiving Party prior to disclosure or was developed independently from such Confidential Information, as is shown by competent evidence.
- 14.4 In case Confidential Information is required to be disclosed by the Receiving Party by virtue of a court order or statutory duty, the Receiving Party shall be allowed to do so, provided that it shall promptly provide Notice to the Disclosing Party upon becoming aware of such court order or statutory duty.
- 14.5 The Confidential Information may only be disclosed to other parties who strictly require such information for the performance of this Agreement, provided that the Subcontractor binds such other parties to all of the confidentiality provisions stated herein in the same manner as the Subcontractor is bound to Stuart Olson.
- 14.6 The Subcontractor expressly agrees that it will not permit any of its directors, officers, agents, or employees to make any statements to the media, or publish or publically announce any comments, opinions, facts or news related to the Project or the relationship between Stuart Olson and the Subcontractor. In the event that any media source approaches the Subcontractor regarding any issue, directly or indirectly, related to the Project, it will refer the media source to Stuart Olson to comment.
- 14.7 In the event that Stuart Olson is obligated to provide any employee personal information (as generally defined within the privacy laws of the applicable jurisdiction), the Subcontractor shall safeguard the provided information adequately to protect the unlawful disclosure of the information, and will further prevent any and all misuse of the information. The Subcontractor will indemnify and defend Stuart Olson from and against any and all liabilities, costs, damages, expenses and claims of whatever kind or nature, causes of action, legal or administrative proceedings arising from the disclosure, misuse, or inappropriate collection of the confidential employee information provided by Stuart Olson to the Subcontractor related to this Agreement.

#### **15. Notices**

- 15.1 Notices shall be addressed to the recipient at the address stated herein and shall be delivered to the recipient at the addresses set forth in this Agreement. Notices shall be deemed to have been received on the first Business Day after the date of actual delivery, provided that Notice by email shall not be effective if acknowledged only by an automatically generated response. An address for the Party may be changed by providing Notice to the other Party setting out the new address.

#### **16. Dispute Resolution**

- 16.1 Any Subcontract Dispute shall, if possible, be resolved by negotiation between the designated representatives appointed by Stuart Olson and the Subcontractor for the Project. Both Parties shall commit to seeking resolution of such matters in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Project.
- 16.2 If a Subcontract Dispute cannot be resolved by the Parties' designated representatives within thirty (30) days after either Party submits same in writing for resolution, representatives from executive management of Stuart Olson and the Subcontractor shall attempt to resolve the matter through additional good faith negotiations. If resolution cannot be reached within sixty (60) days by the Parties' executive management, each Party shall be entitled to pursue any other right or remedy that may be available to it.
- 16.3 In the event that Stuart Olson is involved in a separate dispute or claim that involves the Subcontractor's obligations related to this Agreement, the Subcontractor agrees to be joined in such dispute or claim if requested by Stuart Olson.
- 16.4 Notwithstanding any Subcontract Dispute, the Subcontractor shall not suspend, delay or interfere with the performance of the Work or otherwise contribute to any delays to the Project Schedule, and shall diligently continue to perform all of its obligations hereunder in accordance with the Project Schedule and the Work Schedule, if applicable, but without prejudice to its rights to continue with the Subcontract Dispute.
- 16.5 Stuart Olson shall have the right to abridge or accelerate any time period referred to in this Section 16.

#### **17. Miscellaneous Provisions**

- 17.1 This Agreement represents the entire agreement between the Parties and supersedes any proposals, bids, correspondence or agreements dated, made or alleged to have been made between the Parties prior to the Effective Date unless specifically identified and incorporated in writing herein. In the event of any inconsistency, discrepancy or contradiction between any submittal documents, proposals, bids, correspondence or agreements incorporated in herein and this Agreement, the provisions of this Agreement shall apply.
- 17.2 The Subcontractor acknowledges that it has not entered into this Agreement on the basis of, and has not relied upon, any statement, representation, whether or not negligently made, whether oral, written, express or implied, except as expressly set forth in this Agreement.
- 17.3 The Parties are independent contractors. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency or fiduciary relationship between the Parties and no Party shall have any authority to act for or bind the other Party in any way or to represent that it has such authority.
- 17.4 The Subcontractor agrees that for a period of one (1) year from the date of Substantial Performance or termination of this Agreement, the Subcontractor shall not, in any capacity or manner whatsoever:
- .1 induce or encourage any employee of Stuart Olson to leave his or her employment; or
  - .2 authorize, assist, approve, or encourage any such action by any other party; or

.3 hire, attempt to hire, or otherwise solicit any employee of Stuart Olson, or authorize, assist, approve, or encourage any such action by any other party.

For the purposes of the above paragraph, the term "solicit" shall not include solicitation of a general nature pursuant to a newspaper advertisement or online service.

- 17.5 The headings used herein are for convenience purposes only and do not affect the interpretation of this Agreement.
- 17.6 Except as otherwise stated in this Agreement, neither Party shall have the right to modify, or amend this Agreement or any portion thereof without the written consent of the other Party.
- 17.7 All remedies set out in this Agreement are cumulative and in addition to any and all other statutory, common law and equitable remedies available to a Party.
- 17.8 The delay or failure of Stuart Olson to exercise a right or remedy under this Agreement shall not operate as a waiver of that right or remedy. No single or partial exercise of any right or remedy precludes subsequent exercise of that or any other right or remedy.
- 17.9 If any provision of this Agreement is found to be invalid or unenforceable, neither the validity nor enforceability of any other provision of this Agreement shall be affected or impaired. The invalid or unenforceable provision shall be severed and replaced with a valid or enforceable provision that accomplishes the same intent to the greatest extent possible.
- 17.10 This Agreement and all disputes and matters arising directly or indirectly from it shall be governed and resolved exclusively by the laws and courts in the jurisdiction of the Project Site.
- 17.11 The provisions of Article 4 and those provisions of the General Terms and Conditions, which expressly or by their nature are intended to survive, shall survive termination or expiry of this Agreement.
- 17.12 Stuart Olson may assign its rights and obligations under this Agreement to any affiliate of Stuart Olson.
- 17.13 Time is of the essence of this Agreement and any time specified for the completion of the Agreement, the Work or any portion thereof is a material portion of this Agreement.
- 17.14 Each Party shall do all things and execute all further documents necessary to give effect to this Agreement.
- 17.15 In this Agreement, the word "including" shall mean "including, without limitation," and the words "include" and "includes" shall have corresponding meanings.
- 17.16 This Agreement shall be interpreted neutrally and no rule of construction shall be applied that resolve an ambiguity herein with reference to which Party drafted this Agreement.