

MATHESON

THIS IS FOR REFERENCE PURPOSES ONLY. EVERY SUBCONTRACT WILL BE MODIFIED BASED ON THE TERMS OF THE PRIME CONTRACT. FOR ANY SPECIFIC REQUESTS, PLEASE CONTACT LEGAL TEAM.

DATE

Subtrade Name
ADDRESS
CITY, PROVINCE
POSTAL CODE

Attention: **Contact Name**

Re: **NAME OF PROJECT**

Dear **Contact Name**;

We have been retained by **OWNER NAME**, (the "Owner") as Contractor for the above-noted project (the "Project"). Please find your email copy of the Subcontract. Please execute your copy and return it by email. We will in turn execute your copy and return by email for your files. Please do not mark up this Subcontract. Should you have concerns with the content of this document please contact the Matheson project manager for this Subcontract to review your concerns.

Notwithstanding whether you do or do not execute this Subcontract, you will be deemed to have accepted the terms of the Subcontract on the earlier of:

- the date you commence the Subcontract Work, which includes commencement of the preparation of shop drawings; or
- the 4th business day after you receive the Subcontract, unless you notify us in writing, on or before the 3rd business day that the Subcontract is unacceptable to you.

Please note that the following documents are required prior to your forces arriving on site:

1. Current WSIB Clearance Certificate;
2. Current Certificate of Insurance naming Matheson Constructors Limited and the Owner as additional insureds;
3. Completed Form 1000;
4. Electronic copy of your current (dated within 1 year) Health & Safety Manual and/or Corporate Safety Policy;
5. Safety Data Sheets (SDS) for all materials brought to site under your scope of work;
6. Copy of all current valid training certificates of employees assigned to the Project;
7. Pre-Job Hazard Assessment;
8. Completed Safety Policy Acknowledgement Form (see Schedule "C")
9. Current WISR Report (Workplace Injury Summary Report).

As stated in the Subcontract:

- I. Monthly progress draw billings are to be submitted to this office by no later than five (5) business days before the last day of each month to ensure your draw will be submitted to the Consultant and reviewed for inclusion in that month's payment application. Late invoices will be processed in the following month's progress draw. The attached Application for Progress Payment Form on page 3 must be used for all progress billings – **NO EXCEPTIONS**.

The Subcontractor agrees to use GCPay for all progress and holdback draws as noted by Matheson Constructors Limited. All GCPay Terms and Conditions are available at <https://gcpay.com/terms.pdf>

ALL INVOICES MUST BE EMAILED TO: accounts@mathesonconstructors.com

- II. To allow for the processing of monthly draw payments to the Subcontractor the Contractor must be in receipt of all items listed above plus the following:
 - a) A Statutory Declaration for second and subsequent invoices;
 - b) A current WSIB Clearance Certificate;
 - c) A fully executed copy of the Subcontract; and
 - d) Surety Bond/Bonding (if required).

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

III. Additionally, copies of the following incident reports must be provided, if they occurred:

- a) First Aid;
- b) Medical Aid;
- c) Lost Time Accidents;
- d) Property and/or Utility Damage;
- e) Near Miss; and
- f) Environmental Spills.

Should you have any questions or concerns, please do not hesitate to contact the undersigned.

Yours truly,
MATHESON CONSTRUCTORS LIMITED



Mike Brown
Senior Vice President

/Encls

AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

This agreement (the "Subcontract") made on this **DATE** Day of **MONTH**, **YEAR** between:

MATHESON CONSTRUCTORS LIMITED
245 INDUSTRIAL PARKWAY N.
AURORA, ONTARIO L4G 4C4

(the "Contractor")

and:

SUBTRADE NAME
ADDRESS
CITY, PROVINCE, POSTAL CODE

(the "Subcontractor")

Whereas the Contractor has entered into an agreement (the "Prime Contract") dated the **DATE** Day of **MONTH**, **YEAR** with

OWNER'S NAME
ADDRESS
CITY, PROVINCE POSTAL CODE

(the "Owner")

For the construction of:

NAME OF THE PROJECT
ADDRESS
CITY, PROVINCE POSTAL CODE

(the "Project")

And whereas the Contract includes the work to be performed under this Subcontract (the "Subcontract Work"), including as set out in Schedules "A" and "B" attached hereto and forming part of this Subcontract and the work to be performed in accordance with the instructions and documents of:

CONSULTANT'S NAME
ADDRESS
CITY, PROVINCE POSTAL CODE

(the "Consultant")

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

WITNESSETH that the Contractor and Subcontractor agree as follows:

1. Article 1 – The Subcontract Work

- 1.1 The Subcontractor agrees to provide all labour, equipment and services necessary or incidental to perform Subcontract Work in a proper and workmanlike manner and in accordance with the terms and provisions of this Subcontract and the terms and provisions of the Prime Contract, including, without limitation, all of the Articles, General and Supplementary Conditions, Drawings, Specifications and any Addenda thereto, as prepared by the Consultant, and any other documents forming or by reference made a part of this Subcontract (the "Contract Documents"), all of which shall be considered part of this Subcontract, and the Subcontractor agrees to be bound to the Contractor by the terms and provisions thereof.
- 1.2 It is understood and agreed that the Subcontract Work provided for in this Subcontract constitutes only a part of the work being performed by the Contractor for the Owner. The Subcontractor, therefore, agrees to perform the Subcontract Work called for in this Subcontract in such a manner that the Subcontractor will not injure or damage any other work performed by the Contractor, the Owner, or any other contractor or subcontractor, and further agrees to pay the Contractor for any damage that may be caused to such other work by the Subcontractor or by his agents, employees, or sub-subcontractors.
- 1.3 Upon written request by the Contractor, the Subcontractor shall furnish to the Contractor such evidence as the Contractor may require relating to the Subcontractor's ability to fully perform this Subcontract in the manner and within the time specified herein.
- 1.4 As applicable, the Subcontractor shall provide or procure all labour, materials, equipment, machinery, and products required for the Subcontract Work, including all commissioning services required by the Subcontract and Contract Documents, and shall fully complete and construct the Subcontract Work in accordance with all laws, including those relating to occupational health and safety, and in satisfaction of any obligations, responsibilities, or duties set out in any site plan agreement or approval applicable to the Place of the Work and/or the proposed development herein. The Subcontractor shall furnish efficient business and construction administration and superintendence consistent with the requirements of the Contract Documents. The Subcontractor shall maintain at the Place of the Work at all times a sufficient, competent, skilled, reliable and honest workforce to carry out its obligations in an efficient and timely manner.
- 1.5 The Subcontractor shall perform the Subcontract Work and all other obligations under this Subcontract in a professional and diligent manner and in accordance with the Standard of Care, whether or not expressly stated in relation to a specific obligation. For purposes of this Subcontract, "Standard of Care" means the degree of care, skill, and diligence that would reasonably be expected of a professional, qualified, skilled, prudent, knowledgeable, and experienced contractor performing similar work or services in Canada for a project of similar size, magnitude, restrictions, challenges, and complexity to the Project. The Subcontractor acknowledges and agrees that its performance under this Subcontract will be assessed against the Standard of Care throughout the duration of the Project.
- 1.6 The Subcontractor represents and warrants that, prior to entering into this Subcontract and acting in accordance with the Standard of Care, it has visited and carefully examined the Place of the Work and the surrounding area, and has satisfied itself as to the scope and character of the Subcontract Work, and all site conditions and other information that could affect the performance of the Subcontract Work and related services, to the extent such conditions were reasonably observable at the time of such examination. Such conditions include, without limitation, the nature and location of the Subcontract Work, access to the site and weather conditions. Subject to Article 7.4 (Concealed or Unknown Conditions), the Subcontractor shall not be entitled to any adjustment to the Subcontract Price or the Subcontract Completion Date on account of any such conditions that were reasonably observable as of the date of this Subcontract.
- 1.7 The Subcontractor acknowledges that during the term of the Subcontract, the Place of the Work and the area in the vicinity of the Place of the Work is, and will be, occupied by the Owner, the Landlord, the Construction Manager, and other tenants of the Landlord (each as defined in the Prime Contract), and that the Owner and such tenants will continue to carry out their normal use, activities and operations in the Place of the Work and such area and the Owner and such tenants shall be allowed to maintain their services and business continuity. The Subcontractor shall perform the Work in the least intrusive manner possible. Without limiting the generality of the foregoing, in performing the Subcontract Work, the Subcontractor shall not, except with the prior written consent of the Contractor, disrupt or interfere with any of existing facilities of the Owner and such tenants in the Place of the Work and such area and the ongoing use, activities and operations in the Place of the Work and such area.
- 1.8 The Subcontractor shall be responsible for the safe on-site storage and protection of Products to be incorporated into the Subcontract Work, including any Products supplied by the Contractor or Owner for installation by the Subcontractor. Products and equipment shall only be stored at locations designated in writing by the Contractor, Owner or Consultant.

2. Article 2 – Contract Documents

- 2.1 The Contract Documents are referenced in Article 1 of this Subcontract.
- 2.2 The Subcontractor agrees to be bound by all the terms and conditions of the Prime Contract, including all plans, specifications, general and supplementary conditions and addenda thereto, and in construing the Subcontractor's obligations under the Prime Contract, the term "Owner" will be read as "Contractor" and the term "Contractor" will be read as "Subcontractor". The terms and conditions of the Prime Contract (including without limitation any guarantees or warranties there under as to performance and/or quality of the Work) and the plans, specification, general

Project Name:
Project Number:
Phase code:

Subtrade Name:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

and supplementary conditions and addenda of the Prime Contract, and the Subcontract Terms and Conditions and any appendices attached hereto, and the Contractor's schedule as hereinafter provided for shall form part of this Subcontract and the whole shall constitute the entire Subcontract between the parties and the same are hereinafter referred to as the "Subcontract Documents". By executing this Subcontract, the Subcontractor acknowledges that it has reviewed and is familiar with the Prime Contract (excluding only any commercially sensitive portions expressly redacted by the Contractor), including provisions relating to payment, change orders, claims, confidentiality, intellectual property, conflict of interest, liquidated damages, warranties, indemnities, and dispute resolution.

2.3 The Subcontractor further agrees that:

- .1 any specific reference in this Subcontract to a clause or section of the Prime Contract shall not be interpreted as limiting the incorporation of other Prime Contract provisions by reference; and
- .2 the lack of a specific reference to a provision of the Prime Contract shall not affect its binding application to this Subcontract. To the extent the Prime Contract requires the Contractor to include specific terms in its subcontracts, such terms are deemed incorporated by reference into this Subcontract. Where the Prime Contract requires that such terms be flowed down further, the Subcontractor shall include equivalent provisions in its sub-subcontracts and purchase orders to ensure compliance with the Prime Contract.

3. Article 3 – The Subcontract Completion Date

3.1 The Subcontractor shall perform the Subcontract Work:

- .1 commencing on **DATE** and to be completed by **DATE** (the "Subcontract Completion Date"); and
- .2 in accordance with the schedule prepared by the Contractor, subject to Article 3.4.

3.2 The overall schedule is pre-determined as part of the contract documents. Contractor will develop a critical path construction schedule to best suit the requirements of the Project. The Subcontractor is responsible for adhering to the Construction Schedule (as defined in the Prime Contract) and will make all reasonable efforts to achieve all schedule requirements. The Subcontractor will staff the site with sufficient manpower and equipment to maintain the Construction Schedule and all critical activities. The Subcontractor shall conform to the phasing and sequencing requirements for the work as set out in the Construction Schedule and Contract Documents. The Subcontractor shall prepare and submit to the Contractor a schedule for performance of their scope of work for incorporation into the Construction Schedule.

3.3 Time is the essence of this Subcontract. No extension of the Subcontract Completion Date shall be granted unless expressly provided for herein.

3.4 The Contractor may, for any reason, revise the Schedule during the course of the Project. Subject to Article 3.9 and notwithstanding Article 7, the Subcontractor shall comply with the revised Schedule without any increase in the Subcontract Price (described in Article 4) or Subcontract Completion Date.

3.5 The Subcontractor shall perform the Subcontract Work undertaken in a prompt and diligent manner whenever any part of the Subcontract Work becomes available, or at such other time or times as the Contractor may direct, and so as to promote the general progress of the Project, and shall not, by delay or otherwise, interfere with or hinder the work of the Contractor, the Owner, or any other contractor or subcontractor. In particular, and without limiting the generality of the foregoing, any materials that are to be furnished by the Subcontractor hereunder shall be furnished in sufficient time to enable the Subcontractor to perform and complete the Subcontract Work within the time or times provided for herein.

3.6 The Subcontractor agrees to reimburse the Contractor for any and all damages (including liquidated damages, if any) that may be assessed against or collected from the Contractor by the Owner, which are attributable to or caused by the Subcontractor's failure to perform the Subcontract Work in a timely manner, and in addition, agrees to indemnify and hold harmless the Contractor against such damages and/or any other or additional damages as the Contractor may sustain by reason of such delay by the Subcontractor. The payment of such damages shall not release the Subcontractor from the Subcontractor's obligation to otherwise fully perform this Subcontract.

3.7 If the Subcontractor delays the progress of the Project and/or the Subcontract Work, the Subcontractor shall, at its own cost, work such overtime as may be necessary to achieve schedule recovery of the Subcontract Work in accordance with the Contractor's Project schedule and avoid further delay to the Project.

3.8 In no event shall an extension of time be made to the Subcontractor on account of:

- .1 Delay by the Subcontractor in preparing drawings; or
- .2 Delay in any way resulting from the Contractor or Consultant failing to provide or secure approval of the drawings prepared by the Subcontractor, when such drawings are not properly prepared, or when the Subcontractor by the exercise of reasonable diligence and judgment could have anticipated and avoided the delay.

Project Name:
Project Number:
Phase code:

Subtrade Name:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- 3.9 Should there be delay in performance of the Subcontract Work by the act, neglect or default of the Owner, the Contractor, or another contractor or subcontractor or by any damage caused by fire or other casualty, and in no way caused by or related to an act or default on the part of the Subcontractor, then the Subcontract Completion Date shall be extended for a period equivalent to the time lost by reason of all causes aforesaid, which extended period shall be determined and fixed by the Consultant. No such extension shall be made unless a written proposed Change Order with adequate particulars is presented to the Contractor within three (3) working days from the beginning of such delay. Such extension(s) of time shall be made in accordance with Article 7 – Changes and shall discharge the Contractor from any claims the Subcontractor may have on account of any of the aforesaid causes of delay, and the Subcontractor shall not be entitled to any increase in the Subcontract Price or to any damages or other additional compensation.
- 3.10 A party shall not be liable for any delay or damage caused as a result of any causes beyond its reasonable control and which by the exercise of reasonable diligence it is not able to prevent or overcome ("Event of Force Majeure"). Any delay caused by an Event of Force Majeure shall not be deemed to be a breach of or failure to perform this Subcontract or any part thereof, provided that the party affected by the Event of Force Majeure provides notice in writing to the other party as soon as practicable detailing the circumstances surrounding the Event of Force Majeure and exercises reasonable efforts to overcome or reduce the circumstances preventing or restricting performance of its obligations. If an Event of Force Majeure continues for a period greater than twenty-one (21) calendar days, the Contractor, at its option, may by written notice to the Subcontractor, immediately terminate this Subcontract and pay the Subcontractor the actual cost of all labour, materials, equipment and services supplied by the Subcontractor at the time the Contractor exercises its election. Actual Subcontractor costs claimed pursuant to this provision shall be calculated based on Subcontractor accounting records and receipts, all of which records the Contractor may inspect upon reasonable notice to the Subcontractor.
- 3.11 Upon becoming aware of any event or circumstance that may affect the Subcontractor's ability to maintain the Contractor's Schedule, the Subcontractor shall as soon as practicable and in any event no later than two (2) working days after commencement of the event or circumstance, notify the Contractor in writing giving details of the event or condition and the Subcontractor's estimate of the anticipated effect.
- 3.12 If the Subcontractor does not maintain the progress necessary to comply with the Contractor's Schedule, or if it appears to the Contractor that the Subcontractor is not complying with the Contractor's Schedule or is likely to fall behind schedule, in addition to those rights and remedies provided by law and under the Contract Documents the Contractor may order that the Subcontractor take such actions, at the Subcontractor's expense, as the Contractor deems necessary to maintain the progress required by the Contract Documents and the Contractor's Schedule. The Contractor may also direct the Subcontractor to produce and present to the Contractor a recovery plan demonstrating how the schedule may be recovered.
- 3.13 Notwithstanding anything else in this Subcontract, and except to the extent that a delay to the Subcontract Work was caused by the act, neglect, or default of the Owner, the Contractor, or another contractor or subcontractor (other than the Subcontractor) and was not caused or contributed to by the Subcontractor, the Subcontractor shall not be entitled to any extension of the Subcontract Completion Date or other schedule relief unless and until the Contractor is entitled to, and actually receives, a corresponding extension of time under the Prime Contract in respect of the same delay. In all cases, any extension of time under this Subcontract is further conditional upon the Subcontractor satisfying any requirements of GC 6.5 of the Prime Contract in its entirety, mutatis mutandis, including, without limitation, demonstrating adverse impact on the Subcontract Completion Date, the exercise of reasonable efforts to mitigate delay impacts, and the prompt resumption and diligent performance of its affected obligations. For clarity, the Subcontractor shall not be entitled to any extension of time or compensation on account of weather conditions except to the extent such conditions constitute unusually severe adverse weather conditions.
- 3.14 The Subcontractor acknowledges that, under the Prime Contract, the Contractor must satisfy certain requirements to enable portions of the Work to achieve "Ready-for-Takeover" and "Total Completion" (as defined in the Prime Contract), including the submission of various deliverables to the Owner and Consultant. The Subcontractor shall, as a material obligation under this Subcontract:
- .1 perform all tasks, deliverables, services, and obligations required under this Subcontract that are necessary to enable the Contractor to achieve Ready-for-Takeover and Total Completion for any portion of the Work to which the Subcontract Work relates; and
 - .2 without limiting the generality of the foregoing, and in each case in form and substance satisfactory to the Contractor and suitable for delivery to the Owner and Consultant under the Prime Contract, provide the following to the Contractor (and, if required, directly to the Owner and Consultant):
 - a. Evidence that the Subcontract Work has been performed substantially in accordance with the Contract Documents, including all applicable Drawings and Specifications, to the satisfaction of the Contractor and the Consultant;
 - b. Emergency 24-hour contact information for the Subcontractor and each of its sub-subcontractors and suppliers, and
 - c. Copies of all warranties and guarantees required under this Subcontract, together with a written summary thereof.
- For clarity, Substantial Performance of the Subcontract Work shall not be deemed to have occurred unless the Subcontractor has fully complied with its obligations under this Article 3.14, including submission of all required deliverables and supporting documentation necessary to enable the Contractor to achieve Ready-for-Takeover and Total Completion under the Prime Contract.
- 3.15 Without limiting the Subcontractor's obligations under this Article 3, the Subcontractor shall:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- .1 Cooperate with the Contractor in monitoring and maintaining the Project schedule, and in identifying and responding to actual or anticipated deviations from the schedule;
 - .2 Provide, upon request, information regarding the progress of the Subcontract Work, including relevant schedules, submittals, delivery timelines, and the status of procurement for products, materials, and components;
 - .3 Ensure that its sub-subcontractors and suppliers likewise cooperate with the Contractor and provide such information upon request; and
 - .4 Comply with any scheduling, sequencing, reporting, and coordination requirements reasonably necessary to support the Contractor's obligations under the Prime Contract, the extent such obligations relate to the Subcontract Work.
- 3.16 If the Subcontractor is or may be delayed in a manner that affects the attainment of any key milestone under the Prime Contract, the Subcontractor shall provide the Contractor with a written notice of the delay in accordance with Article 7.5, which shall include the reasons for the delay, the anticipated impact on the critical path and affected key milestone(s), and the anticipated duration of the delay. The Subcontractor shall also provide such supporting information and documentation as may be reasonably required by the Contractor to enable it to comply with the Prime Contract.

4. Article 4 – Subcontract Price

- 4.1 The Subcontract Price, which excludes Value Added Taxes, is: **DOLLAR Dollars and /CENTS Cents (\$\$\$\$)**
- 4.2 Value Added Taxes (of 13 %) payable by the Contractor to the Subcontractor are: **DOLLAR Dollars and /CENTS Cents (\$\$\$\$)**
- 4.3 The total amount payable by the Contractor to the Subcontractor for the performance of the Subcontract Work is: **DOLLAR Dollars and /CENTS Cents (\$\$\$\$)**
- 4.4 All amounts are in Canadian funds.
- 4.5 The Subcontractor for the Subcontract Price accepts exclusive liability and responsibility for the payment of any royalties and duties and Federal, Provincial and Municipal taxes applicable to the Subcontract Work, including all services, labour and materials used therein.

5. Article 5 – Payment

- 5.1 The Subcontractor shall submit before its first requisition for payment (each Subcontractor requisition for payment being a "Subcontractor Invoice") a detailed schedule of values showing the breakdown of its Subcontract Price into its various parts, which breakdown, when approved by the Contractor, will be used in verifying the Subcontractor's monthly Subcontractor Invoices. The Subcontractor shall submit (one) 1 Subcontractor Invoice per month; multiple invoices will not be permitted. Subcontractor invoices for unapproved Change Orders will not be processed. In no event shall the Contractor be liable or obligated to pay the Subcontractor for work that falls outside of the Subcontract Work, unless such extra work or changes to the Subcontract Work are recorded in a mutually executed Change Order. The Contractor shall not consider and/or process Subcontractor Invoice amounts on account of unapproved or unsigned Change Orders. It is the Subcontractor's responsibility to forward signed Subcontract Change Orders to Contractor prior to invoicing.
- 5.2 The Subcontractor shall submit monthly Subcontractor Invoices to the Contractor by no later than five (5) business days before the last day of each month to ensure its draw can be reviewed for inclusion in that month's payment application to the Owner from the Contractor (the "Contractor Invoice"), if approved. Late or incomplete Subcontractor Invoices will be processed in connection with the following month's Contractor Invoice. All monthly draws will be subject to approval by the Owner / Consultant and Contractor prior to payment. Contractor reserves the right to adjust any Consultant-approved amount invoiced by the Subcontractor to reflect the value of work that remains to be completed. A Subcontractor Invoice shall show the proportionate value of the Subcontract Work performed to date from which shall be deducted a retention of TEN percent (10%) for the statutory construction lien holdback plus an additional TWO AND ONE-HALF percent (2.5%) for warranty withholding (the Warranty Withholding) and shall show all previous payments and all charges for material or services furnished by the Contractor to the Subcontractor related to the current monthly invoice. The retention shall apply to all monies related to the Subcontract value, including the Subcontract Price as increased by valid Change Orders and Change Directives. The above payment conditions and holdbacks may be altered only if noted in the Special Requirements section located in Schedule A. The Subcontractor agrees to use GCPay for all progress and holdback draws as noted by Matheson Constructors Limited All GCPay Terms and Conditions are available at <https://gcpay.com/terms.pdf>.
- 5.3 The Contractor may include the Subcontractor Invoice along with all other subcontractor requisitions for payment for each month in the Contractor Invoice, which payment requisition the Contractor shall submit to the Owner for approval, if, in its sole discretion, after review of the Subcontractor Invoice, the Contractor has determined the Subcontractor Invoice is appropriate to be forwarded to the Owner in whole or in part.
- 5.4 Where the Owner remits full payment of the Contractor Invoice within twenty-eight (28) days of receipt of same, the Contractor shall distribute payment to the Subcontractor no later than seven (7) days after receiving payment from the Owner unless the Contractor disputes, in whole or

Project Name:
Project Number:
Phase code:

Subtrade Name:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

in part, the entitlement of the Subcontractor to payment, in which case the Contractor may refuse to pay all or any portion of the Subcontractor Invoice provided that the Contractor gives the Subcontractor a notice of non-payment specifying the amount that is not being paid and detailing the reasons for non-payment no later than thirty-five (35) days after giving the Contractor Invoice to the Owner for approval.

- 5.5 Where the Owner remits payment for only a portion of the Contractor Invoice or does not remit payment for the Contractor Invoice within twenty-eight (28) days of receipt of a proper invoice as defined by the *Construction Act* (Ontario), as amended, the Contractor shall pay the Subcontractor Invoice no later than seven (7) days after receiving payment (i) on a rateable basis if more than one subcontractor including the Subcontractor is entitled to unallocated payment from the partial payment made by the Owner; or (ii) to the extent that payment has been received for the Subcontractor Invoice if amounts not paid by the Owner are specific to services or materials supplied by the Subcontractor. Further, if the Contractor disputes, in whole or in part, the entitlement of the Subcontractor to payment, the Contractor may refuse to pay all or any portion of the paid amount of the Subcontractor Invoice provided that the Contractor gives the Subcontractor a notice of non-payment specifying the amount that is not being paid and detailing the reasons for non-payment in accordance with Article 5.6, below.
- 5.6 Where the Owner does not pay some or all of the Contractor Invoice within twenty-eight (28) days of receipt of same, the Contractor shall nevertheless pay the unpaid portion of the Subcontractor Invoice no later than thirty-five (35) days after giving the Contractor Invoice to the Owner unless the Contractor gives to the Subcontractor: a notice of non-payment, stating:
- .1 (i) that some or all of the amount payable to the Subcontractor is not being paid due to non-payment by the Owner; (ii) specifying the amount not being paid; (iii) providing an undertaking to refer the matter to adjudication no later than twenty-one (21) days after giving notice to the Subcontractor; and, (iv) providing a copy of any notice of non-payment given by the Owner no later than seven (7) days after receiving a notice of non-payment from the Owner or, if no notice was given by the Owner, before the expiry of the aforementioned thirty-five (35) day payment period; or,
 - .2 the amount that is not being paid and detailing the reasons for non-payment no later than seven (7) days after receiving a notice of non-payment from the Owner or, if no notice was given by the Owner, before the expiry of the aforementioned thirty-five (35) day payment period.
- 5.7 The process of payment to the Subcontractor will only be completed after the Contractor is in receipt of a valid WSIB Clearance Certificate and a current Statutory Declaration for second and subsequent Subcontractor Invoices.
- 5.8 After the issuance of the certificate of Substantial Performance the Subcontractor shall submit:
- .1 an application for payment of the statutory construction lien holdback amount;
 - .2 a statutory declaration on the original form of Canadian Standard Construction Document ("CCDC") 9B that all accounts for labour, subcontracts, products, construction machinery and equipment, and other indebtedness which may have been incurred by the Subcontractor in the Substantial Performance of the Work and for which Contractor might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute;
 - .3 a written request for release of holdback including a declaration that no written notices of lien have been received by it;
 - .4 a current Workplace Safety and Insurance Board Clearance Certificate;
 - .5 a release by the Subcontractor in form satisfactory to the Contractor releasing the Contractor and the Owner from all claims relating to this Agreement and the Project except for claims for work performed after the date of Substantial Performance and claims made prior to Substantial Performance and which are specifically identified as remaining unresolved;
 - .6 a summary of the outstanding or incomplete Subcontract Work, if any, with reasonable particulars; and
 - .7 a written representation confirming that, as of the date of the application for payment of the holdback amount, the only adjudications commenced by the Subcontractor in relation to this Subcontract have been disclosed in writing to the Contractor.

After the receipt of an application for payment from the Subcontractor and the documents referred to above, and following the issuance of a certificate for payment of the holdback amount by the Consultant, as payment certifier under the Prime Contract, Contractor shall make payment of the holdback amount authorized by the certificate for payment of the holdback amount on the day following the expiration of the holdback period stipulated in the *Construction Act* (Ontario), subject to any rights of Contractor to holdback or set-off against such amount in accordance with this Subcontract. However, if Owner refuses to pay some or all of the amount Owner is required to pay to Contractor, Contractor may refuse to pay some or all of the amount Contractor is required to pay the Subcontractor so long as Contractor refers the matter to adjudication no later than twenty-one (21) days after giving notice to Subcontractor and notifies Subcontractor that the amount is not being paid and that the matter is being referred to adjudication. In addition, Contractor may retain out of the holdback amount any sums required by law to satisfy any liens arising out or in relation to the Work or, if permitted by the lien legislation applicable to the Project, other third-party monetary claims against the Subcontractor which are enforceable against Contractor. In addition, a reserve fund may be retained by Contractor to secure the correction of deficiencies, the amount of such reserve fund to be based on Contractor's reasonable estimate of the cost of correcting deficient items.

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- 5.9 Upon expiry of the lien period prescribed under the *Construction Act* (Ontario), provided that all drawings and specifications have been returned to the Contractor and following Total Performance of the Work the Subcontractor may apply for the release of the statutory holdback. As requirements for release of the statutory holdback, the Subcontractor shall submit the following documentation:
- .1 the Subcontractor's written request for release of finishing holdback, including a declaration that no written notices of lien have been received by it;
 - .2 the Subcontractor's Statutory Declaration on original form of CCDC 9B;
 - .3 a current Workplace Safety and Insurance Board Clearance Certificate;
 - .4 a Certificate of Search of Title from a solicitor testifying there are no liens registered relative to the Work; and
 - .5 a written statement that the Work has been performed to the requirements of this Agreement, itemizing approved changes in the Work, the Contractor's written instructions in respect thereof, and modifications required by authorities having jurisdiction.

Payment of the holdback shall be made by the Contractor as part of the final payment to the Subcontractor, and the provision of the documents required by this Article shall, to the extent of any duplication, be satisfied by the delivery the same documents referred to as requirements in relation to final payment below. In addition, the Contractor may retain out of the holdback amount any sums required by law to satisfy any liens arising out or in relation to the Work or, if permitted by the lien legislation applicable to the Project, other third-party monetary claims against the Subcontractor which are enforceable against the Contractor or which may be enforced against the Contractor. In addition, a reserve fund may be retained by Contractor to secure the correction of deficiencies, with the amount of such reserve fund to be based on Contractor's reasonable estimate of the total cost of correcting deficient items.

- 5.10 Final payment to the Subcontractor shall be made only with funds received by the Contractor from the Owner as final payment for Work under the Prime Contract. Where Owner has provided the Contractor with a notice of non-payment or has failed to pay the Contractor and the Contractor has in turn provided Subcontractor with a notice of non-payment, final payment to Contractor by the Owner shall be an express condition precedent that must occur before Contractor shall be obligated to make final payment to the Subcontractor. In addition, final payment by Contractor to the Subcontractor shall not become due and payable until the following other express conditions precedent have been met:
- .1 the completion and acceptance of the Work by Contractor and the Consultant;
 - .2 provision by the Subcontractor of evidence satisfactory to Contractor that there are no claims, obligations or liens outstanding or unsatisfied for labour, services, materials, equipment, taxes or other items performed, furnished, or incurred for or in connection with the Work;
 - .3 execution and delivery by the Subcontractor, in a form satisfactory to Contractor, of a general release running to and in favour of the Contractor and the Owner; and a Statutory Declaration on original form of CCDC 9B;
 - .4 complete and full satisfaction of all claims, demands and disputes, and all obligations and responsibilities of Subcontractor, arising out of or related to the Subcontract, including those as between Contractor and Subcontractor as well as those between Subcontractor and any third party, and
 - .5 all lien holdback periods under any applicable legislation having lapsed.

Should there be any such claim, obligation or lien or unsatisfied obligation or responsibility whether before or after final payment is made, the Subcontractor shall pay, refund or deliver to Contractor: (1) all monies that Contractor and/or the Owner must pay in satisfying, discharging or defending against any such claim, obligation or lien or any action brought or judgment recovered thereon and all costs and expenses, including legal fees and disbursements, incurred in connection therewith; and (2) such amounts as Contractor or Owner shall, in their sole discretion, determine to be an amount sufficient to protect Contractor and Owner therefrom (in lieu of payment of such amounts, Subcontractor may, at the Owner's and Contractor's sole discretion, deliver a bond satisfactory to Contractor and the Owner). Such refund and payment shall be made within ten (10) days of request by Contractor to the Subcontractor for same. The final payment shall be due within seven (7) days after final payment has been received from Owner and all of these express conditions' precedent have been met. In Ontario, the statutory finishing holdback shall be paid at the time of final payment.

- 5.11 In the event of any breach by the Subcontractor of any provision or obligation of this Subcontract, or if at any time a claim is made by any person, firm, sub-subcontractor, corporation or other entity having or asserting rights arising out of the Subcontract Work and for which the Contractor might become liable, or in the event of any occurrence or circumstance which might become the subject of a claim or a lien, the Contractor may retain out of any money due or to become due to the Subcontractor an amount sufficient to indemnify the Contractor for any damages, including damages with respect to any threatened or actual claim, loss or damages including legal expenses and costs. If insufficient money is due to the Subcontractor to cover such claim, loss or damages, the Subcontractor shall, on demand from the Contractor, pay to the Contractor the amount of such insufficiency.

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- 5.12 Payments hereunder shall not be conclusive of the performance of this Subcontract either wholly, or in part, or be construed as acceptance of the Subcontract Work, nor shall possession or occupation by the Contractor or Owner be deemed acceptance.
- 5.13 The Subcontractor shall promptly and satisfactorily pay or settle all accounts or claims in respect of the Subcontract Work. If, after having received seven (7) calendar days written notice from the Contractor to pay or settle such accounts or claims, the Subcontractor fails or refuses to settle same, the Contractor shall have the right to pay such accounts and/or claims for the account of the Subcontractor and a receipt issued to the Subcontractor with respect to such account and/or claim shall be conclusive evidence as to such payments and the amount thereof.
- 5.14 If the Subcontractor should become bankrupt or insolvent or have a receiving order made against it or if a final judgment is recovered against it and is not satisfied by it or if the Subcontractor should fail or refuse to promptly pay or settle accounts and/or claims against it with respect to the Subcontract Work, or if a lien should be claimed or filed with respect to the performance of the Subcontract Work by the Subcontractor, then and upon any such occurrence the Contractor after seven (7) calendar days' written notice to the Subcontractor in cases other than bankruptcy, insolvency or a receiving order, shall have the right to pay such sums as may be necessary to satisfy such claims and shall have the right to setoff against the sums so paid, firstly, any monies otherwise payable to the Subcontractor under this Subcontract and secondly, in respect of such sums, against any monies otherwise payable to the Subcontractor under any other agreement between the Contractor and Subcontractor.
- 5.15 Upon giving reasonable notice to the Subcontractor, the Contractor shall have the right to audit the Subcontractor's books and records in order to ensure that the Subcontractor is compliant with its trust fund duties pursuant to the *Construction Act* (Ontario). No audit by the Contractor shall relieve the Subcontractor of the cost or risk of any compliance or non-compliance with its obligations pursuant to the *Construction Act* (Ontario). Subcontractor agrees to indemnify Contractor for any costs incurred (including legal or consulting costs) as a result of any alleged or actual non-compliance by the Subcontractor with the *Construction Act* (Ontario) trust fund requirements.

6. Article 6 - Administration of the Subcontract

- 6.1 **Interpretation of Drawings and Specifications** - The Subcontract Work included in this Subcontract is to be performed under the direction of the Contractor and to the satisfaction of the Contractor, the Owner, and the Consultant, and the decision of the said Consultant as to the interpretation of the Contract Documents, including, without limitation, the drawings and specifications shall be final. Any dispute as to the interpretation of the Contract Documents shall be resolved in accordance with Article 16 – Disputes Not Subject to Interim Adjudication.
- 6.2 **Instructions and Decisions** - The Subcontractor will carry out the instructions of the Contractor relative to the Subcontract Work. Should the Subcontractor hold such instructions to be at variance with this Subcontract or to involve changes in work already built, ordered or in hand, or to be given in error, the Subcontractor shall notify the Contractor before proceeding to carry them out. If the Contractor and the Subcontractor fail to reach agreement with respect to any such instruction and the Contractor decides to have such instruction carried out, the Subcontractor shall comply with such instruction without delay, and any dispute as to the effect of such instruction on the Subcontract Price shall be resolved in accordance with Article 15 – Disputes Subject to Interim Adjudication, and any dispute as to the effect of such instruction on the Subcontract Completion Date shall be resolved in accordance with Article 16 – Disputes Not Subject to Interim Adjudication.
- 6.3 **Shop Drawings** - The Contractor shall determine the number of copies of shop drawings and other submittals as may reasonably be required, together with the procedure and schedule for submission and transfer of same. The Subcontractor shall prepare and supply all required shop drawings and submittals, at its own cost and within the Subcontract Price, in accordance with the Subcontract Documents. The Subcontractor shall review all shop drawings and submittals for completeness and compliance with the Subcontract Documents prior to submission. The Subcontractor shall also coordinate its shop drawings and submittals with those of other Subcontractors and Suppliers to identify and avoid potential conflicts in installation. The Subcontractor shall not perform any portion of the Subcontract Work covered by or affected by any shop drawings or submittals until such documents have been reviewed and accepted for construction by the Consultant in accordance with the procedures set out in the Subcontract Documents. The Subcontractor shall perform the Subcontract Work in accordance with all such reviewed and accepted shop drawings and submittals.
- 6.4 **As-Built Drawings, Maintenance Manuals etc.** - The Subcontractor shall, at its own cost, supply all as-built drawings, operating and maintenance manuals, instructions, brochures, guarantees, warranties, certificates, and other similar documents required of it by the Contract Documents, all within the Subcontract Price. Without limiting the foregoing, the Subcontractor shall: (i) maintain and deliver accurate and complete as-built drawings and specifications in accordance with the requirements of the Prime Contract, and (ii) prepare and deliver complete operating and maintenance manuals in accordance with the requirements of the Prime Contract. All such documents shall be provided in the manner and at the times stipulated by the Contractor, but in any event no later than the Subcontractor's final progress claim or fifteen (15) Working Days before the final inspection by the Contractor, the Owner, or its Consultant(s), whichever is earlier.
- 6.5 **Trial Assemblies and Samples** - As applicable to the Subcontract Work, the Subcontractor shall furnish to the Contractor such "mock-ups", trial assemblies and samples, as may reasonably be required at such times and in the manner requested by the Contractor, within the Subcontract Price.
- 6.6 **Tests and Designs** – As applicable to the Subcontract Work, the Subcontractor shall furnish to the Contractor any tests and designs related to the Subcontract Work as may be required by the Contractor or Owner in addition to tests and designs called for in the Contract Documents. If tested Subcontract Work is found to be in accordance with the Subcontract, the Contractor shall pay the costs of re-examination, testing and

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

placement. If such Subcontract Work is found not to be in accordance with the Subcontract through fault of the Subcontractor, the Subcontractor shall pay such costs.

- 6.7 **Clean up** - The Subcontractor shall at its own expense complete daily clean-up of all debris resulting from the carrying out of the Subcontract Work to ensure a safe and accessible work area is available at all times including broom cleaning of all work areas on a daily basis. Failure to perform the above will result in the Contractor having this work done at the Subcontractor's expense plus an appropriate mark-up.
- 6.8 **Inspection and Defective Work** - The Subcontractor shall provide access at all times for the inspection of the Subcontract Work by the Contractor and the Consultant. Subcontractor shall, after receipt of notice from the Contractor, and at the Contractor's option, remedy any defective services or materials or any defect caused by the performance, purported performance, or non-performance by the Subcontractor of the Subcontract Work, at no cost to the Contractor. The Subcontractor shall, within twenty-four (24) hours after receiving written notice from the Contractor, proceed to take down all portions of the Subcontract Work and remove from the premises all material which the Consultant or the Contractor shall condemn as unsound or improper, or in any way failing to meet the specifications, and the Subcontractor at its own expense shall replace all defective work, make good all work damaged, so as to render all work in conformance with the Contract Documents until such time as the work is accepted by the Consultant. The Subcontractor shall prioritize the correction of any defective Subcontract Work that, in the reasonable discretion of the Contractor, adversely affects the day-to-day operations of the Owner. The Subcontractor shall, at its sole cost and expense, promptly correct any Subcontract Work or related services that have been rejected by the Contractor, the Consultant, or the Owner as being defective or non-conforming with the requirements of the Contract Documents, and shall do so without any extension of the Subcontract Completion Date. The Subcontractor shall also be responsible for ensuring that the Subcontract Work is completed to the specified finished dimensions and elevations, fits the indicated spaces accurately, and is flush, plumb, true to lines and levels, and accurate in all respects. Where this Subcontract is on a fixed price or unit price basis, the Subcontractor shall correct all deficiencies or improperly performed work, whether or not due to negligence, at its sole cost and without any adjustment to such fixed or unit prices. The Subcontractor shall include an equivalent obligation in all subcontracts with its sub-subcontractors and suppliers and shall require that each such party further include this obligation throughout every tier of the construction pyramid.
- 6.9 **Project Materials and Equipment** - The Subcontractor shall not remove any materials or equipment brought on to the Project site for incorporation into the Subcontract Work without the prior written authority of the Contractor.
- 6.10 **Supervision** - The Subcontractor shall keep on the Project, during the course of the Subcontract Work, a competent supervisor and any necessary assistants, all satisfactory to the Contractor. The supervisor must fulfil all of the requirements set out in the Declaration of a Competent Supervisor form, including possessing English proficiency equivalent to Grade 12 College Preparation or TOEFL 550 (paper)/80 (online) or higher. The supervisor shall not be changed except with the consent of the Contractor, unless the supervisor proves to be unsatisfactory to the Subcontractor or ceases to be in its employ.
- 6.11 **Loss or Damage to Work** - Except as otherwise specifically provided herein, the Contractor shall not be liable for any loss or damage to the Subcontract Work in this Subcontract until after final acceptance of the Subcontract Work by the Contractor and the Owner. The Contractor shall not be liable for loss or damage to plant materials, tools, equipment, supplies or any other property of the Subcontractor used in its construction, caused by water, wind, acts of God, theft, fire or any other cause whatsoever. If an insurable loss is experienced by the Subcontractor on this Project, the burden of related deductibles will be borne by the party responsible for the loss, or if no responsibility can be determined, by the party receiving the direct benefit of such insurance shall be responsible for the deductible. All risk of loss of or damage to work not fully or finally accepted by the Owner, or to supplies and equipment shall rest solely on the Subcontractor.
- 6.12 **Inspection Readiness** - Where the Subcontractor is not prepared for a review or inspection by the Consultant after notification to the Consultant requested a review or inspection and the Consultant is required to make a subsequent visit, the cost of such subsequent visit by the Consultant shall be paid by the Subcontractor or may be.
- 6.13 **Layout of the Subcontract Work** - The Subcontractor shall be solely responsible for the proper laying out of the whole of the Subcontract Work. The Subcontractor shall carefully check and verify all lines, levels, and measurements shown in the Contract Documents, and shall, at its own cost, retain a qualified and experienced local land surveyor, satisfactory to the Contractor, to establish and check grades, bench marks, references, elevations, points and lines as from time to time may be required for the purposes of the Subcontract Work or layout of the same, and the Subcontractor shall at every appropriate stage of the Subcontract Work take all necessary steps to have all proper checks and surveys made so as to ensure that the Subcontract Work and all components thereof will be wholly within the boundaries of the site and in the exact position (or respective positions) established for such Subcontract Work and shall assume full responsibility for the correctness of all such lines, levels and measurements, including the location of existing underground equipment and services
- 6.14 **Reporting Deficiencies** - The Subcontractor shall promptly report to the Contractor, in writing, any apparent deficiencies in the work of other subcontractors, the Contractor's own forces, the Owner's own forces, that may affect the proper execution of any portion of the Subcontract Work and shall do so prior to proceeding with the affected portion of the Subcontract Work. Failure by the Subcontractor to so report shall invalidate any claim by the Subcontractor against the Contractor in respect of such deficiencies, except in the case of deficiencies that were not then reasonably discoverable.
- 6.15 **Review of Contract Documents** - The Subcontractor shall review the Contract Documents and all other documents forming part of the Subcontract Documents and shall report promptly, and in any event no later than three (3) working days after discovery, to the Contractor any error, inconsistency, or omission the Subcontractor may discover. The Subcontractor shall not proceed with the affected portion of the

Project Name:
Project Number:
Phase code:

Subtrade Name:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

Subcontract Work until such error, inconsistency, or omission has been addressed by the Contractor. The Subcontractor shall cooperate in good faith with the Contractor in resolving any such issues so as to avoid any increase in the Subcontract Price or delay in the progress of the Subcontract Work or the Work generally.

- 6.16 **Liability for Failure to Report** - The Subcontractor shall be liable and responsible, without any extension to the Subcontract Completion Date, for any actual losses (including, for clarity, any and all losses, debts, expenses, liabilities, damages, obligations, payments, fines, and costs, and including bodily injury or death to any person or loss or damage to property) arising from errors, inconsistencies, or omissions in the Contract Documents or any other documents forming part of the Subcontract Documents that the Subcontractor recognizes, or ought to recognize acting in accordance with the Standard of Care, but fails to report to the Contractor prior to performing the affected portion of the Subcontract Work.
- 6.17 **Loss or Damage to Work and Title Transfer** - Title to Products and materials required by the Subcontract Documents to be incorporated into and form part of the Subcontract Work shall pass to the Owner, as required by and in accordance with the Prime Contract, immediately upon payment therefor (subject to any applicable holdback). Title to Products delivered, but not yet installed, shall likewise pass to the Owner, as required by and in accordance with the Prime Contract, when paid for (subject to any applicable holdback). Notwithstanding the transfer of title, the Subcontractor shall bear the risk of loss or damage to the Subcontract Work, including all Products and materials, until final acceptance of the Subcontract Work by the Contractor and the Owner. The Subcontractor shall promptly execute and deliver to the Contractor, from time to time as the Contractor may require, any documentation necessary to identify, evidence, perfect, or protect the Owner's or Contractor's beneficial or registered interest in the Products and materials supplied under this Subcontract.

7. Article 7 – Changes

7.1 Contractor's Right to Make Changes

- 7.1.1 The Contractor, without invalidating this 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 Completion Date for the Subcontract Work, or any part thereof, by Change Order.
- 7.1.2 The Subcontractor shall not perform a change in the Subcontract Work without a Change Order or a Change Directive.
- 7.1.3 If the Subcontractor advances any claims to the applicable dispute resolution processes or any other proceeding, the Subcontractor will bear the associated costs to do so including the cost for the Contractor's representation. The Contractor shall only be liable to the Subcontractor to the extent that the Contractor succeeds in recovery on that claim as against the Owner. For all undocumented changes or claims, the Subcontractor shall have no claim against the Contractor unless notification is given in writing within five (5) days of the occurrence indicating details and amount of the claim.

7.2 Change Order

- 7.2.1 When a change in the Subcontract Work is proposed or required, the Contractor will provide the Subcontractor with a written description of the proposed change in the Subcontract Work. The Subcontractor shall also promptly present, in a form acceptable to the Contractor, its proposed adjustment or an amount of adjustment for the Subcontract Price, if any, and the adjustment in the Subcontract Completion Date, if any, for the proposed change in the Subcontract Work.
- 7.2.2 When the Contractor and Subcontractor agree to the adjustments in the Subcontract Price and Subcontract Completion Date, if any, 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 application for progress payment.

7.3 Change Directive

- 7.3.1 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 Completion Date, the Contractor shall issue a Change Directive.
- 7.3.2 Upon receipt of a Change Directive, the Subcontractor shall proceed promptly with the change in the Subcontract Work.
- 7.3.3 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.
- 7.3.4 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 Article 7.3.5 and as follows:

Project Name:
Project Number:
Phase code:

Subtrade Name:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- .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; and
- .2 If the change results in a net decrease in the Subcontractor's costs, the Subcontract Price shall be decreased by the amount of the net decrease in the Subcontractor's cost.

7.3.5 The cost of performing the work attributable to the Change Directive shall be limited to the actual cost of the following:

- .1 salaries, wages and benefits paid to personnel in the direct employ of the Subcontractor under a salary or wage schedule agreed upon by the Contractor and the Subcontractor, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the Subcontractor to carry out the work attributable to the Change Directive;
- .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Subcontractor and included in the cost of the Subcontractor Work as provided in Article 7.3.5.1;
- .3 travel and subsistence expenses of the Subcontractor's personnel described in Article 7.3.5.1;
- .4 all products including cost of transportation thereof;
- .5 materials, supplies, Construction Equipment, Temporary Work, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the Work; and cost less salvage value on such items used but not consumed, which remain the property of the Subcontractor;
- .6 all tools and construction equipment, exclusive of hand tools used in the performance of the Subcontract Work, whether rented from or provided by the Subcontractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
- .7 all equipment and services required for the Subcontractor's field office;
- .8 deposits lost;
- .9 the amounts reasonably paid under all subcontracts;
- .10 quality assurance such as independent inspection and testing services;
- .11 charges levied by authorities having jurisdiction with respect to the Work;
- .12 any adjustment in premiums for all bonds and insurance which the Subcontractor is required, by the Contract Documents, to purchase and maintain;
- .13 any adjustment in taxes, other than Value Added Taxes, and duties for which the Subcontractor is liable;
- .14 charges for long distance telephone and facsimile communications, courier services, expressage, and petty case items incurred in relation to the performance of the Work that is subject to the Change Directive;
- .15 removal and disposal of waste products and debris; and
- .16 safety measures and requirements.

7.3.6 Notwithstanding any other provisions contained in this Subcontract, it is the intention of the parties that the cost of any item under any element listed in Article 7.3.5 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 attention to the work shall be borne by the Subcontractor.

7.3.7 The Subcontractor shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the work attributable to the Change Directive and shall provide the Contractor with copies thereof when requested.

7.3.8 For the purpose of valuing Change Directives, the Contractor shall be afforded reasonable access to all of the Subcontractor's relevant documents related to the cost of performing the work attributable to the Change Directive.

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- 7.3.9 Pending determination of the final amount of a Change Directive, the undisputed value of the work performed as the result of a Change Directive is eligible to be included in progress payments.
- 7.3.10 If the Contractor and Subcontractor do not agree on the proposed adjustment in the Subcontract Completion Date attributable to the change in the Subcontract Work, or the method of determining it, the adjustment shall be referred, in the first instance, to the Consultant for determination. If either party disputes the decision of the Consultant, such dispute shall be dealt with according to Article 16 – Disputes Not Subject to Interim Adjudication.
- 7.3.11 When the Contractor and the Subcontractor reach agreement on the adjustment to the Subcontract Price and to the Subcontract Completion Date, this agreement shall be recorded in a Change Order.
- 7.4 Concealed or Unknown Conditions**
- 7.4.1 If the Contractor or the Subcontractor discovers conditions which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the Subcontract Work which differ materially from those indicated in the Contract Documents; and
 - .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 Contract 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 five (5) calendar days after first observance of the conditions.
- 7.4.2 The Consultant will 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 Consultant, with the Contractor's approval, will issue appropriate instructions for a change in the Subcontract Work as provided for in Article 7.2 – Change Order or Article 7.3 – Change Directive.
- 7.5 Claims for Adjustments to the Subcontract Price or Subcontract Completion Date**
- 7.5.1 The Subcontractor acknowledges and agrees that any claim for an adjustment to the Subcontract Price, the Subcontract Completion Date, or any other form of relief under this Subcontract, shall be made strictly in accordance with this Article 7.5 and, to the extent applicable, the claims processes set out in the Prime Contract, including without limitation GC 6.6 of the Prime Contract.
- 7.5.2 If the Subcontractor intends to make a claim for an increase to the Subcontract Price, a change to the Subcontract Completion Date, or any other adjustment under this Subcontract, it shall deliver to the Contractor a written notice of intent to claim (a "Claim Notice") within two (2) working days of becoming aware, or when it ought reasonably to have become aware, of the event or circumstance giving rise to the claim. Failure to deliver a timely Claim Notice shall not bar the claim, but the Subcontractor's entitlement shall be reduced to the extent the Contractor or Owner has been prejudiced by such failure, including where the Owner has denied upstream relief.
- 7.5.3 Each Claim Notice shall include all documentation and information reasonably necessary to evaluate the claim, including: (i) a detailed description of the event or circumstance; (ii) a breakdown of the claimed impact on the Subcontract Price and/or Subcontract Completion Date; (iii) supporting records and documentation; and (iv) a description of the Subcontract Work affected. The Subcontractor shall provide updates to this information as it becomes available.
- 7.5.4 The Subcontractor shall: (i) take all reasonable steps to mitigate the costs, delays, or impacts associated with the claimed event or circumstance; and (ii) maintain and make available all records necessary to support its claim.
- 7.5.5 The Contractor shall have the right, in its sole discretion, to advance any claim submitted by the Subcontractor under this Article 7.5 as a corresponding claim under the Prime Contract, including through the claims process in GC 6.6 of the Prime Contract. The Contractor may also, in its sole discretion, require that any resultant dispute relating to such claim be addressed in the same manner and resolved under the same dispute resolution process as set out in the Prime Contract, in accordance with Article 16(A). In such event: (a) the Subcontractor shall cooperate fully and in good faith with the Contractor in the preparation, substantiation, and pursuit of the claim; and (b) the Subcontractor shall bear all costs associated with the preparation and advancement of its claim, including the Contractor's reasonable costs of administration and representation.
- 7.5.6 The Contractor shall have the right, in its sole discretion, to settle, compromise, or withdraw any claim under the Prime Contract that arises from or relates to a claim submitted by the Subcontractor under this Subcontract. Where practicable, the Contractor shall inform the Subcontractor of the proposed settlement or withdrawal in advance, but shall have no obligation to obtain the Subcontractor's consent. The Contractor shall not be liable to the Subcontractor for any portion of such claim except to the extent the Contractor obtains and receives corresponding relief from the Owner under the Prime Contract.
- 7.5.7 The Subcontractor shall not be entitled to any greater rights, entitlements, or relief of any kind against the Contractor under this Subcontract than the Contractor actually has and obtains from the Owner under the Prime Contract, in relation to the Subcontract, the performance of the

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

Subcontract Work, or any claims of the Subcontractor relating thereto. Without limiting the generality of the foregoing: (a) if the Subcontractor makes any claim that is the proper subject of a corresponding claim by the Contractor to the Owner pursuant to the Prime Contract, such claim (and any resultant dispute, if applicable) shall, at the Contractor's sole discretion, be addressed in the same manner, forum, and at the same time as the corresponding claim or dispute between the Contractor and the Owner; (b) the Contractor shall have no obligation to pay or provide any relief to the Subcontractor in respect of any such claim unless and until, and only to the extent that, the Contractor actually obtains and receives corresponding relief from the Owner under the Prime Contract, and such receipt shall be a condition precedent to any payment or other obligation of the Contractor to the Subcontractor in respect of such claim; and (c) the Subcontractor acknowledges and accepts the risk of any denial, reduction, or non-payment by the Owner in respect of such claim, and further acknowledges that the Contractor shall not be liable to the Subcontractor for any amount in excess of the corresponding amount actually received from the Owner on behalf of the Subcontractor. This Article 7.5.7 applies notwithstanding anything in the Subcontract to the contrary.

7.5.8 Any dispute regarding the Subcontractor's entitlement to relief shall be resolved in accordance with the dispute resolution provisions of this Subcontract, subject to Articles 7.5.5 and 7.5.7.

7.5.9 The Subcontractor acknowledges that the Prime Contract may require the Contractor to give notice to the Owner within specified time periods in order to preserve claims or entitlements to relief. Where the Subcontractor is required to give any notice to the Contractor in connection with a matter that may give rise to a corresponding claim under the Prime Contract, the Subcontractor shall deliver such notice to the Contractor no later than two (2) Working Days before the deadline by which the Contractor is required to give notice to the Owner, unless this Subcontract expressly requires the Subcontractor to give such notice earlier. If the Prime Contract requires less than two (2) working days' notice, the Subcontractor shall provide such notice as early as reasonably practicable. If the Subcontractor fails to comply with this obligation and the Contractor is thereby prejudiced in its ability to obtain relief under the Prime Contract, the Subcontractor shall be disentitled to claim the corresponding sum, extension of time, or other relief under this Subcontract.

8. Article 8 – Insurance and Bonds

8.1 The Subcontractor shall, without limiting its obligations of liabilities as stated elsewhere in this Subcontract, obtain and continuously carry at its own expense and cost, the following insurance coverages with limits not less than in the following amounts (where applicable), as per CCDC 41:

- .1 Workers Compensation insurance covering all employees engaged in the Subcontract Work in accordance with the statutory requirements of the Province or Territory;
- .2 Commercial General Liability Insurance including coverage for contractual liability, tortious liability, Contractors protective liability and completed operations liability, with limits of not less than \$10,000,000 per occurrence and with a property damage deductible not to exceed \$10,000;
- .3 Automobile Liability Insurance covering all owned and non-owned motor vehicles operated or used by the Subcontractor in the performance of the Subcontract Work with limits of not less than \$10,000,000 per occurrence;
- .4 Watercraft and Aircraft Liability Insurance covering all owned and non-owned watercraft and aircraft operated or used by the Subcontractor in the performance of the Subcontract Work with limits of not less than \$10,000,000 per occurrence;
- .5 Unmanned aerial vehicle liability insurance with respect to owned or non-owned aircraft (if used directly or indirectly in the performance of the Work), shall have limits of not less than \$5,000,000 per occurrence or accident for bodily injury, death and damage to property or such amounts as required by any applicable law or regulation;
- .6 If the Subcontract Work includes any professional services, the Subcontractor shall maintain Professional Liability (Errors and Omissions) Insurance with limits of not less than \$5,000,000 per claim and \$5,000,000 in the aggregate, written on a claims-made basis, and shall be continued for a period of 24 months following the Substantial Performance of the Work;
- .7 Contractors' Pollution liability insurance shall have limits of not less than \$5,000,000 per occurrence and in aggregate on claims made basis for bodily injury, death, and damage to property. Additionally, the insurance certificate shall include for the following endorsements (i) Job site- occurrence limit, (ii) Non-owned disposal site, (iii) Contingent transportation liability, (iv) Emergency remediation coverage;
- .8 An all-risk Contractor's Equipment Insurance covering all construction machinery, temporary buildings, equipment, and small tools used by the Subcontractor in the performance of the Subcontract Work;
- .9 Such other insurance that may be required by the Owner or the Contractor; and
- .10 If an insurable loss is experienced by the Subcontractor on this Project, the burden of related deductibles will be borne by the party responsible for the loss, or if no responsibility can be determined, by the party receiving the direct benefit of such insurance shall be responsible for the deductible. All risk of loss of or damage to work not fully or finally accepted by the Owner, or to supplies and equipment shall rest solely on the Subcontractor.

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- 8.2 The insurance to be provided under subarticles 8.1(2) and 8.1(3) shall name the Contractor and Owner as additional insureds for the work performed under this Subcontract.
- 8.3 On projects where the Contractor is required to provide an All Risk Course of Construction Insurance or similar insurance, such insurance may be subject to a deductible, with the deductible being the obligation of the person causing the damage. It is the obligation of the Subcontractor to satisfy itself as to the adequacy of the policy.
- 8.4 Prior to the commencement of the Subcontract Work and, to the extent requested by the Contractor during the course of its completion, the Subcontractor shall provide to the Contractor a certificate(s) in respect of the foregoing insurance coverages (or a certified copy of the entire policy or policies, if so requested) and clearance certificate or similar instrument of the relevant Workers Compensation authority or authorities. Thirty (30) calendar days written notice of cancellation or expiration of the coverage under subarticles 8.1(2), 8.1(3), 8.1(4), 8.1(5), 8.1(6) or 8.1(7) shall be provided to the Contractor.
- 8.5 The Subcontractor shall, prior to the commencement of the Subcontract Work, deliver to the Contractor any security specified in the Contract Documents.
- 8.6 **Performance Security Description**
- .1 Without limiting any other provision of this Subcontract, the Subcontractor shall, upon written request by the Contractor, provide such contract security at its sole cost and expense. The form of such contract security shall be as specified by the Contractor and may include, without limitation:
- a. subcontractor default insurance (SDI), if the Contractor elects in its sole discretion to enroll the Subcontractor into a subcontractor default insurance program and notifies the Subcontractor accordingly, provided such policy includes the Owner as Scheduled Entity, if so requested. The Subcontractor shall, as requested, register with COMPASS (<https://compass.bespokemetrics.com/>), an independent third-party prequalification platform, to enhance the integrity and efficiency of subcontractor evaluation. On this platform, the Subcontractor shall complete the prequalification submission and maintain its account in good standing. Alternatively, and at the request of the Contractor, the Subcontractor shall provide all required documentation and information (including financial documents) to the Contractor in order to be rated and pass prequalification process which is mandatory under SDI Program;
 - b. a performance bond and a labour and material payment bond, each in the form of the most current CCDC-approved bond forms and in an amount equal to the Subcontract Price, naming the Owner and the Contractor as dual obligees and issued by a surety authorized to transact the business of suretyship in the Province or Territory of the Place of the Project, and approved by the Contractor. Such surety bonds shall be signed, sealed and delivered to the Contractor prior to the commencement of the Subcontract Work; or
 - c. such other form of contract security as may be acceptable to the Contractor and/or Owner, as may be required in the Prime Contract.
- .2 The Subcontractor shall maintain such contract security in good standing until two (2) years following the date of Substantial Performance of the Work (as defined in the Prime Contract) and shall provide satisfactory evidence of such security to the Contractor upon request.

9. Article 9 – Indemnification

- 9.1 Without limiting any other liability or obligation of the Subcontractor under this Subcontract, the Subcontractor shall indemnify and hold harmless the Contractor, the Contractor's Affiliates, and their respective directors, officers, partners, agents, employees, consultants, successors, and assigns (collectively, the "Contractor Indemnitees") from and against any and all claims, demands, losses, costs, damages, actions, suits or proceedings (including legal expenses on a full indemnity basis) suffered, sustained, or incurred by, or made against, any of the Contractor Indemnitees to the extent arising or alleged to arise, directly or indirectly, out of:
- .1 the negligent acts or omissions of the Subcontractor or any person for whom the Subcontractor is responsible at law;
 - .2 any breach by the Subcontractor of its obligations under this Subcontract or applicable Laws (including, for greater certainty, any applicable workplace safety, toxic substances, or anti-corruption laws and regulations);
 - .3 any infringement or alleged infringement of intellectual property rights (excluding infringement arising solely from Owner-supplied intellectual property);
 - .4 any bodily injury, illness or death of any individual, or loss of or damage to tangible property (including the Place of the Work or other property relating to the Project), to the extent attributable to the Subcontractor or any person for whom it is responsible; and

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- .5 without duplication, any matter in respect of which the Contractor is required, pursuant to the Prime Contract, to indemnify the Owner to same extent and in the same manner as provided therein, to the extent such matter arises out of or relates to the acts or omissions of the Subcontractor or any person for whom it is responsible.

10. Article 10 – Warranty

- 10.1 The warranty period for the Subcontract is two (2) years from the date of Substantial Performance of the Work and such further and other periods specified in the Contract Documents for portions of the Subcontract Work or products to be furnished by the Subcontractor.
- 10.2 The time period for the warranty with respect to any item corrected shall commence from the date when the defect is corrected, and the remedial work is accepted by the Contractor and Consultant.
- 10.3 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.
- 10.4 The Contractor or the Owner may, through the Consultant or otherwise, provide notice in writing of observed defects or deficiencies which occur during the Warranty Period.
- 10.5 Subject to Article 10.2, the Subcontractor shall promptly correct, at its own expense, any defects or deficiencies in the Subcontract Work that appear prior to and during the applicable Warranty Period. The Subcontractor's obligation to perform the corrective work under this Article includes the provision of all necessary labour and materials, and the removal and replacement of covering materials. The Subcontractor shall, at its cost, correct or pay for damages caused by its defective or deficient Subcontract Work. The performance of such replacement or corrective work shall be carried out at times reasonably convenient to the Contractor and the Owner, which may entail overtime work by the Subcontractor. Any additional charges for such overtime work shall be borne solely by the Subcontractor. If the Subcontractor fails to carry out such corrective work promptly, the Contractor may perform or arrange for the correction of the Subcontract Work or affected property, and the Subcontractor shall be responsible for all direct and administrative costs incurred by the Contractor in doing so. For greater certainty, if the Subcontractor is notified of defects or non-conformance before the end of the warranty period, then the Subcontractor shall correct such defect or non-conformance, notwithstanding that the associated warranty work may be performed or completed after the expiry of the warranty period.
- 10.6 The Subcontractor shall correct or pay for any damage resulting from corrective work performed under Article 10.5. Such work shall be carried out at times reasonably convenient to the Contractor and the Owner, which may entail overtime work by the Subcontractor. Any additional charges for such overtime work shall be borne solely by the Subcontractor.
- 10.7 The Subcontractor shall ensure that all of its warranties (including any manufacturers' and sub-subcontractors' warranties provided under or in connection with the Subcontract Work): (a) include an obligation to promptly correct, at their own expense, defects or deficiencies in the relevant materials, equipment, or workmanship during the applicable warranty periods specified in the Subcontract Documents; and (b) include an obligation to correct or pay for any damage resulting from such corrections.
- 10.8 To the extent not previously issued directly to the Owner, the Subcontractor shall, immediately upon expiration of the warranty period (or as otherwise required by the Subcontract Documents), assign to the Owner the benefit of all warranties and guarantees in respect of the Subcontract Work, to the extent such warranties and guarantees are assignable. Any such assignment shall expressly reserve the Contractor's right to make claims thereunder, and such assignment shall not prejudice any rights or benefits accruing to the Contractor. The Subcontractor shall ensure that such warranties and guarantees are assignable to the Owner and, where requested, name the Owner as a dual obligee.
- 10.9 Nothing in this Article 10 shall limit or be construed as a waiver of any right, remedy or cause of action available to the Owner or Contractor under the Subcontract, the Prime Contract, or at law or equity.

11. Article 11 – Safety

- 11.1 In addition to acknowledgement and acceptance of the Contractor's Health and Safety Policy Statement and Manual, the Subcontractor agrees to implement and administer the following procedures:
- .1 The Subcontractor shall actively promote safe working performance by its employees and those for whom it is responsible. The Subcontractor's Site Supervisors shall attend all Supervisory Personnel Safety Meetings as may be scheduled by the Subcontractor's Project superintendent. It is expected that each Subcontractor will also conduct its own safety program best suited to its practical needs;
- .2 The Subcontractor shall have a representative at the Scheduled Tool Box Safety Meetings and inform all of its employees and those for whom it is responsible of current safety procedures on the Project site;
- .3 The Subcontractor shall cooperate with all safety representatives having jurisdiction at the Project site;
- .4 The Subcontractor shall ensure that before any of its employees or those for whom it is responsible begin work on the Project, they have been advised and indoctrinated as to the safety rules and procedures of the Contractor's Health and Safety Policy Statement and Manual;

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- .5 The Subcontractor shall inform its employees and those for whom it is responsible of the location and use of emergency equipment;
- .6 The Subcontractor shall inform its employees and those for whom it is responsible of existing Project procedures for First Aid and Ambulance calls;
- .7 The Subcontractor shall take immediate action to correct unsafe practices or conditions when reported or observed;
- .8 The Subcontractor should use its own regular system of inspection to detect and correct hazardous conditions, safety rule violations and unsafe work practices in its own area;
- .9 The Subcontractor shall at all times provide and enforce the use of personal protective equipment required by Workers' Safety Insurance Board, local, Provincial, and Federal Regulations;
- .10 The Subcontractor shall at all times employ good and orderly housekeeping methods. Special attention must be given to maintaining clear walkways, removal of trash, removal of slipping and tripping hazards, and proper storage of materials. Temporary material storage accesses must be requested and cleared through the Project Superintendent and kept neat at all times;
- .11 The Subcontractor's Site Supervisor or their representative shall give their current address and telephone number to the Contractor's Project Superintendent so that they may be contacted after hours in case of any emergency involving hazard, loss or damage of the Subcontractor's job or equipment;
- .12 The Subcontractor must attend the pre-job Safety Meeting, if applicable, and at least one (1) site person, preferably the Subcontractor's Site Superintendent, must attend;
- .13 The Contractor takes enforcement of health and safety laws, policies and measures very seriously and has a zero tolerance policy toward health and safety-related infractions. The Contractor's supervisor and/or health and safety representative reserve the right to remove from the Project, any person (including those for whom Subcontractor is responsible for) who violates Occupational Health and Safety Legislation and / or the Contractor's and Subcontractor's safety policies or procedures;
- .14 Notwithstanding item 11.1.3, violation of Occupational Health and Safety Legislation and the Contractor's or Subcontractor's safety procedures violates the Subcontract and may result in termination of the Subcontract, at the Contractor's sole discretion. The Subcontractor shall be responsible for any damages incurred by the Contractor as a result of such termination; and
- .15 In the event of non-compliance with any of the requirements listed in this Subcontract any of the following may immediately occur:
 - a. the Subcontractor will indemnify the Contractor and will be back-charged for or have set off against any amounts owed to the Subcontractor by the Contractor any costs associated with delays and non-completion of work caused by non-compliance & safety violations and or correction of safety deficiencies on the Subcontractor's behalf;
 - b. the Subcontractor will be responsible for any fines or charges levied against the Contractor due to any Subcontractor activities (including activities of those for whom Subcontractor is responsible) which are non-compliant with any applicable legislation; and
 - c. any and all Subcontractor employees or those for whom Subcontractor is responsible may be subject to disciplinary action, up to and including removal from the Project.

11.2 The Subcontractor will supply the following documents prior to its forces attending site:

- .1 A current WSIB Clearance Certificate;
- .2 A current Certificate of Insurance;
- .3 A completed Form 1000 "Registration of Constructors and Employers in Construction" document;
- .4 A copy of their Corporate Safety Policy prior to commencement of site operations;
- .5 Safety Data Sheets (SDS) for all materials brought to site by your forces;
- .6 Copy of all current valid training certificates of employees assigned to the Project;
- .7 Pre-Job Hazard Assessment;
- .8 Completed Safety Policy Acknowledgment Form; and

Project Name:
Project Number:
Phase code:

Subtrade Name:

.9 Current WSIR Report (Workplace Injury Summary Report)

- 11.3 The Contractor shall have the authority in an emergency to stop the progress of the Subcontract Work whenever, in the Contractor's opinion, such stoppage may be necessary to ensure the safety of life, or the protection of any part of the Project, or any neighboring property. The Contractor shall have the authority to make changes to the Subcontract and direct the Subcontractor or otherwise as may be necessary to ensure such safety, or protection of the property. Any such direction (if in fact a change) shall be dealt with in accordance with Article 7.3.

12. Article 12 – Contractor's Right to Perform Subcontract Work, Stop Subcontractor's Work or Terminate Subcontract

- 12.1 If the Subcontractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed, and should any of these actions interfere with the Subcontractor's ability to discharge its obligations under the Subcontract, the Contractor may, without prejudice to any other right or remedy the Contractor may have, by giving the Subcontractor or receiver or trustee in bankruptcy notice in writing, terminate the Subcontractor's right to continue with the Subcontract Work in whole or in part or terminate the Subcontract.

12.2 If the Subcontractor:

- .1 neglects to prosecute the Subcontract Work properly;
- .2 fails to comply with any requirement of the Subcontract;
- .3 fails to attain any of the key milestones (as defined in the Prime Contract) identified in this Subcontract; or
- .4 commits any act or omission that causes or contributes to the Contractor being in breach or default under the Prime Contract, or that gives rise to any right on the part of the Owner to correct, remedy, suspend, or terminate the Contractor's rights under the Prime Contract;

the Contractor may, without prejudice to any other right or remedy it may have, notify the Subcontractor in writing that it is in default of its contractual obligations and instruct the Subcontractor to correct the default within two (2) working days of receiving such notice.

- 12.3 If the default cannot be corrected in the two (2) working days specified, the Subcontractor shall be in compliance with the Contractor's instructions if the Subcontractor:

- .1 Commences the correction of the default within the specified time; and
- .2 Provides the Contractor within the two (2) working days with an acceptable schedule for such correction; and
- .3 Corrects the default in accordance with such schedule.

- 12.4 If the Subcontractor fails to correct the default in the time specified or subsequently agreed upon, without prejudice to any other right of remedy the Subcontractor may have, the Contractor may:

- .1 Correct such default and deduct the cost thereof from any payment then or thereafter due the Subcontractor and any remaining cost due the Contractor shall remain the liability of the Subcontractor; or
- .2 Terminate the Subcontractor's right to continue with the Subcontract Work in whole, or in part, or terminate the Subcontract.

- 12.5 If the Contractor terminates the Subcontractor's right to continue with the Subcontract Work as provided herein, the Contractor shall be entitled to:

- .1 Take possession of the Subcontract Work and material and utilize the construction machinery and equipment available upon the Project site, subject to the rights of third parties, and finish the Subcontract Work by whatever method the Contractor may consider expedient, but without undue delay or expense;
- .2 Charge the Subcontractor the full cost of finishing the Subcontract Work, including a reasonable allowance to cover the overhead, fees and an estimation of the cost of corrections to the work performed by the Subcontractor that may be required if the total of these amounts 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 Owner shall pay the Subcontractor the difference;
- .3 Upon expiry of the warranty period, charge the Subcontractor the amount by which the cost of corrections to the Subcontractor's work exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the Subcontractor the difference; and

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- .4 Withhold further payment to the Subcontractor, without interest, until such time as a final accounting or reconciliation of the Subcontract Work is completed and all amounts properly owing to or recoverable by the Contractor from the Subcontractor, including costs of completion, correction, warranty work, and any claims for indemnity, set-off, or other recovery under the Subcontract, have been determined.

- 12.6 Prime Contract Chargebacks. Without limiting any other right of set-off or indemnity under this Subcontract, the Subcontractor shall be liable to the Contractor for any amounts that the Owner is entitled to charge back to the Contractor under the Prime Contract to the extent such amounts arise from, relate to, or are attributable to the Subcontract Work. This includes, without limitation, any amounts by which the cost of completing or correcting the Subcontract Work exceeds any allowances, budgets, or estimated costs previously allocated to such work under the Prime Contract, and any amounts determined, certified, or withheld by the Consultant or Owner pursuant to the Prime Contract.
- 12.7 Termination of Prime Contract. If the Prime Contract is terminated for convenience by the Owner, the Contractor may, by written notice to the Subcontractor, terminate this Subcontract in whole or in part. Upon such termination, the Subcontractor shall comply with any related post-termination obligations that the Contractor is subject to under the Prime Contract. The Subcontractor shall only be entitled to be paid for the Subcontract Work properly performed up to the effective date of termination and reasonable demobilization costs, reasonable costs of preserving and protecting the Subcontract Work, and any reasonable cancellation costs in respect of sub-subcontracts or supply agreements, but in all such cases, only to the extent, and subject to the express condition precedent, that the Contractor is both entitled to, and actually receives, corresponding payment from the Owner under the Prime Contract. For clarity, the Subcontractor shall not be entitled to any other payment or compensation in connection with such termination, including loss of anticipated profit, loss of opportunity, or indirect, consequential, or special damages.
- 12.8 Prime Contract Suspension. If the Contractor is directed by the Owner under the Prime Contract to suspend the Work or the Services under the Prime Contract, in whole or in part, then the Contractor may, by written notice to the Subcontractor, direct a corresponding suspension of the Subcontract Work. Upon receipt of such notice, the Subcontractor shall immediately suspend the Subcontract Work in accordance with the Contractor's directions and shall take all reasonable steps to protect and preserve the Subcontract Work during the period of suspension. Upon the conclusion of the suspension, the Contractor shall issue written direction to the Subcontractor to resume the Subcontract Work. The Subcontractor shall be entitled to a reasonable adjustment to the Subcontract Price or the Subcontract Completion Date, as applicable, to the extent that the Contractor is entitled to, and actually receives, corresponding adjustments from the Owner under the Prime Contract in respect of the suspension.

13. Article 13 - Subcontractor's Right to Suspend Work or Terminate the Subcontract

- 13.1 The Subcontractor has no right to suspend performance of the work under this Subcontract or terminate the Subcontract unless the Contractor fails to comply with an adjudicator's determination, made according to the interim adjudication procedures set out in Article 15, within 10 calendar days from the date the decision is delivered, following which the Subcontractor may suspend further Subcontract Work until the Contractor pays the amounts required by the adjudicator's determination, plus interest in accordance with the *Courts of Justice Act* and reasonable costs incurred as a result of the suspension of the Subcontract Work.

14. Article 14 – Liens

- 14.1 Subcontractor shall pay or cause to be paid all bona fide accounts for services, material or equipment rendered or supplied by a subcontractor or supplier in relation to this Subcontract.
- 14.2 In the event that a construction lien is registered against the Project where the services and materials are to be performed, arising from the performance of the Subcontract Work under this Subcontract or the Contractor or Owner receives any written notice of lien arising from the performance of the work under this Subcontract, unless the Subcontractor makes alternate arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the Contractor and Owner, acting reasonably, or the Owner or Contractor receives any written notice of lien arising from the performance of the work under this Subcontract, the Contractor shall be entitled to withhold such portion of any payment otherwise due to Subcontractor in an amount the Contractor reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by the Contractor in connection therewith, including such amount on account of costs of the lien claimant such that the Contractor may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien claim pursuant to the *Construction Act* (Ontario), until such time as such claim has been dealt with as provided below. The failure of the Contractor to exercise this right to withhold shall not affect the obligation of Subcontractor to protect the Contractor as elsewhere provided in this Subcontract.
- 14.3 In the event that a written notice of a construction lien arising from the performance of the work under this Subcontract is received by the Owner or the Contractor, and unless Subcontractor within ten (10) calendar days of such written notice makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the Contractor, acting reasonably, then the Contractor may, at Subcontractor's sole expense, arrange for the vacating, withdrawal or other disposal of the written notice of a lien pursuant to the *Construction Act* (Ontario), and the Subcontractor shall be responsible for reimbursing the Contractor for any amounts paid, and costs and expenses incurred.
- 14.4 If a construction lien arising from the performance of the Subcontract Work under this Subcontract is preserved against the Project to which the services and materials are to be performed, Subcontractor shall, within ten (10) calendar days of the preservation of such lien, at its sole

Project Name:
Project Number:
Phase code:

Subtrade Name:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

expense, vacate or discharge the lien from title to the site to which the services and materials are to be performed. If the lien is merely vacated, Subcontractor shall, if requested, undertake the Owner's and/or Contractor's defence of any subsequent action commenced in respect of the lien at Subcontractor's expense.

- 14.5 If Subcontractor fails or refuses to vacate or discharge a construction lien or written notice of lien arising from the performance of the Subcontract Work under this Subcontract within the time prescribed above, then unless Subcontractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the Contractor, acting reasonably, the Contractor shall, at its sole option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by the Contractor in doing so (including legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be to the account of Subcontractor, and the Contractor may deduct such amounts from the amounts otherwise due or owing to Subcontractor.
- 14.6 Without limiting any of the foregoing, Subcontractor shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the work under this Subcontract or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against the Contractor by any person that provided services or materials to any of the sites to which the services and materials are to be performed which constituted part of the Subcontract Work under this Subcontract.
- 14.7 The provisions of Article 14.2 to 14.6 inclusive, do not apply to construction liens: (i) filed by the Subcontractor which are claimed as a result of any alleged default of the Contractor to make payments to Subcontractor in accordance with the terms of this Subcontract or (ii) filed by any other party retained directly by the Contractor which the services and materials are to be performed at the Project, if not the Construction, including for greater certainty the Contractor's own forces or the Contractor's other subcontractors, which are claimed as a result of work in relation to work performed on the Project to which the services and materials are to be performed and not in connection with this Subcontract.

15. Article 15 – Disputes Subject to Interim Adjudication

- 15.1 The Contractor or Subcontractor may refer to adjudication a Dispute (as defined in Article 16) with the other party to this Subcontract respecting:
- .1 the valuation of services or materials provided under this Subcontract;
 - .2 payment under the Subcontract, including in respect of a change order, whether approved or not, or a proposed change order;
 - .3 disputes that are the subject of a notice of non-payment under Part I.1 of the *Construction Act* (Ontario);
 - .4 amounts retained under section 12 or section 17(3) of the *Construction Act* (Ontario);
 - .5 payment of holdback under section 26.1 or 26.2 of the *Construction Act* (Ontario);
 - .6 non-payment of holdback under section 27.1 of the *Construction Act* (Ontario); or,
 - .7 any other matter that the parties to the adjudication agree to, or that may be prescribed, so long as the notice of adjudication is given before the date this Subcontract is completed, unless the parties to the adjudication agree otherwise.
- 15.2 All interim adjudications shall be conducted in accordance with the adjudication procedures set out in Part II.1 *Construction Act* (Ontario) and the *Construction Act*, O Reg 306/18, and the Subcontractor and Contractor agree that the following additional provisions shall apply to such interim adjudication, subject to any further determinations of an adjudicator:
- .1 the parties consent to service by electronic mail (with proof of delivery or receipt) of documents to be provided during the interim adjudication process;
 - .2 a party delivering a response to a notice of adjudication shall have a reasonable amount of time in which to review and prepare its response, having regard to the materials provided with the notice of adjudication and the principles of natural justice; and
 - .3 In addition to the powers of the adjudicator provided under the *Construction Act* (Ontario), the adjudicator may fix timetables for the conduct of the proceedings; convene teleconferences with the parties' representatives and/or advisors; make reasonable requests for specific documents from either or both parties, having regard to the principles of proportionality and the intent of the interim adjudication process to be swift and cost-effective; extend the adjudication for a further period of up to 60 days from the date the adjudicator's decision is due, having regard to the time required for submission of a reply, the complexity of the Dispute, and the volume of materials filed, or order that the Contractor or Subcontractor provide security (including, but not limited to, a letter of credit, parent company guarantee, or bond) for amounts awarded pursuant to the adjudicator's determination.
- 15.3 The Subcontractor shall continue with the diligent performance of the Subcontract Work and follow and abide by directions and instructions issued by Contractor during the pendency of any interim adjudication. The Contractor shall be entitled to seek recovery of any damages sustained as a result of the Subcontractor's failure to continue with the diligent performance of the Subcontract Work during the pendency of an interim adjudication.

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- 15.4 If a Dispute referred to adjudication is, in the Contractor's opinion, factually or legally connected to a dispute involving the Owner or another third party, the Contractor may, by written notice to the Subcontractor, require that such Dispute be consolidated with or conducted in parallel to such other adjudication proceedings. The Subcontractor shall not oppose such consolidation or coordination and hereby agrees to be bound by and participate in such consolidated or coordinated adjudication proceedings. The Subcontractor further acknowledges and agrees that, in such circumstances, all adjudication-related terms and conditions set out in the Prime Contract shall apply to the Subcontractor, with all necessary modifications to reflect the context of this Subcontract (and, for clarity, this Article 15.4 does not limit the Contractor's rights under Article 16(A)).
- 15.5 The Subcontractor acknowledges and agrees that no adjudication may be commenced in connection with a claim unless and until a valid Claim Notice has been submitted and determined in accordance with Article 7.5 and, if applicable, GC 6.6 of the Prime Contract, as incorporated by reference. The parties further agree that the subject matter of a Claim Notice shall not constitute a Dispute, and no adjudication, arbitration, action, suit, or other proceeding may be brought by the Subcontractor against the Contractor in respect of such subject matter, unless and until: (i) a Claim Notice has been delivered in accordance with Article 7.5; and (ii) the Contractor (or the Owner and/or Consultant, as applicable) has issued a determination regarding the validity of such Claim Notice, in accordance with the procedures set out in this Subcontract (including, where applicable, GC 6.6 of the Prime Contract).

16. Article 16 – Disputes Not Subject to Interim Adjudication

- 16.1 In the case of any dispute arising between the Subcontractor and the Contractor to their respective rights and obligations under the Subcontract, which are not subject to the interim adjudication process in Article 15, the Consultant, in the first instance shall interpret and provide its decision in writing. The Subcontractor shall continue with the diligent performance of the Subcontract Work and follow and abide by directions and instructions issued by Contractor during the pendency of any Dispute. The Contractor shall be entitled to seek recovery of any damages sustained as a result of the Subcontractor's failure to continue with the diligent performance of the Subcontract Work during the pendency of any dispute.
- 16.2 Differences between the parties 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 the decision of the Contractor or Consultant, as applicable, and are not subject to the interim adjudication process in Article 15 shall be settled in accordance with Article 16 of this Subcontract.
- 16.3 The parties shall be conclusively deemed to have accepted the Consultant's written decision and to have expressly waived and released the other party from any claims in respect of the particular Disputes unless within ten (10) working days after receipt of that decision the party provides a notice in writing to the other party of any Dispute in respect of such decision.
- 16.4 The parties shall first make all reasonable efforts to resolve the Dispute by amicable negotiations.
- 16.5 If the Dispute is not resolved by negotiations, then within ten (10) working days of receipt of the notice referenced in Article 16.2.1 above, or such longer period as the parties mutually agree, either party shall be entitled to request the use of a mediator to be appointed through mutual agreement to assist the parties to reach agreement on any unresolved Dispute. The date and time of the mediation shall be set by mutual agreement of the parties. The cost of the mediator, including any costs for experts and venue, shall be shared equally by the parties. If the parties resolve the Dispute through mediation, such resolution shall be recorded in a Change Order.
- 16.6 If the parties fail to appoint a mediator or the Dispute is not resolved through mediation, then within ten (10) working days of the failure to appoint the mediator or failure to resolve the Dispute through mediation, or such longer period as the parties mutually agree, either party shall be entitled to give the other party notice, in writing, demanding arbitration thereof. After such notice and demand has been given, the parties shall:
- .1 Within ten (10) working days jointly select a single arbitrator, or
 - .2 If after the expiration of the time mentioned in sub-article 16.6.1 the parties fail to select a single arbitrator, the parties shall each appoint an arbitrator within three (3) working days who shall, within five (5) working days, select a third arbitrator as chairman.
 - .3 If within five (5) working days, the two arbitrators appointed by the parties are unable to agree upon a third arbitrator, or a party who has been notified of a dispute fails to appoint an arbitrator, then either party may apply to have the remaining arbitrator(s) appointed by a judge or a court of competent jurisdiction.
 - .4 The date, timing and procedure for the arbitration shall be set by the arbitrator(s).
 - .5 The decision of the single arbitrator, or of any two of the three arbitrators, shall be final and binding upon the parties who covenant that their Disputes shall be decided by arbitration alone and the parties shall not have recourse to any court by way of action at law.
 - .6 The cost of arbitration shall be shared equally, save and except that the arbitrator(s) may apportion the costs of the arbitration as between the parties, or any one of them.

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- 16.7 The Subcontractor shall give the Contractor prompt notice of any adjudication or dispute falling within the scope of section 13.11 of the *Construction Act* (Ontario) involving the Subcontractor, any sub-subcontractor, supplier, or any other party at any tier, and in any event no later than two (2) working days after the delivery of any document to an adjudicator under that section. The Subcontractor shall include in all subcontracts and supply agreements a requirement for similar notice to the Subcontractor, to enable the Contractor to fulfill its notice obligations under the Prime Contract.

16(A) Article 16(A) – Dispute Joinder

16(A).1 The Subcontractor agrees that if a dispute arises between the Contractor and the Subcontractor (a "Dispute") that, in the Contractor's opinion, is factually or legally connected to a dispute involving the Owner, another subcontractor, a supplier, or any third party (each, a "Third Party"), the Contractor may, by written notice to the Subcontractor, require that such Dispute be resolved in the same forum, at the same time, and in the same proceedings (including arbitration, adjudication, mediation, or court proceedings) as the related dispute involving the Third Party. The Subcontractor further agrees to be bound by and to participate in such proceedings, and consents to the application of any contractual dispute resolution provisions applicable to that dispute. The Subcontractor shall not oppose any joinder, consolidation, or coordinated procedure which, in the Contractor's opinion, may be required or beneficial for the efficient or complete resolution of any Dispute.

17. Article 17 – Partial Occupancy

- 17.1 Should the Consultant or the Owner request partial occupancy, the Subcontractor shall prepare the portion of the Work necessary for partial occupancy. The Contractor shall endeavor to make arrangements with the Owner to accept those portions to be used and to start from the date of such acceptance any guarantee or warranty under the Prime Contract as to performance and/or of quality of the work furnished pursuant to the Prime Contract.

18. Article 18 – General

- 18.1 **Precedence** - In the event of any discrepancy between this Subcontract and the various documents constituting the Contract Documents, the terms and conditions of this Subcontract shall prevail.
- 18.2 **Regulations, Laws Permits etc.** - The laws of the Province of Ontario govern the Subcontract Work. In the performance of the Subcontract Work, the Subcontractor shall comply with all laws, statutes, regulations, ordinances and codes which are or come into force during the performance of the Subcontract Work and which relate thereto. Unless otherwise stipulated, the Contractor shall obtain the building permit. The Subcontractor shall obtain all other permits, licenses and certificates relative to the Subcontract Work.
- 18.3 **Patents** - The Subcontractor shall pay the royalties and patent license fees required for the performance of the Subcontract. The Subcontractor shall hold the Contractor harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Subcontractors performance of the Subcontract which are attributable to an infringement of an alleged infringement of a patent of invention by the Subcontractor or anyone for whose acts the Subcontractor may be liable. The Contractor shall hold the Subcontractor harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Subcontractors performance of the Subcontract which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the Subcontract, the model, plan or design of which was supplied to the Subcontractor as part of the Contract Documents.
- 18.4 **Assignment** - The Subcontractor shall not assign this Subcontract, or any part thereof, without the prior written consent of the Contractor. The Subcontractor will not assign payments under this Subcontract without the written consent of the Contractor, provided always, however, that the Subcontractor by reason of this provision will not be precluded from assigning or pledging the benefits of this Subcontract in the normal course of business. The Subcontractor agrees that the list of names of sub-subcontractors supplied prior to the signing of this Subcontract is the list of sub-subcontractors to be used to carry out those portions of the Subcontract Work noted thereon and the Subcontractor shall not employ any to whom the Contractor may reasonably object. If the change of any name on such list is required by the Contractor and the Subcontract Work has to be awarded to a higher bidder, the amounts payable hereunder shall be increased by the difference payable as a result of the difference between the two bids. No such sub-contracting by the Subcontractor will relieve the Subcontractor from any obligations under this Subcontract. The Subcontractor agrees the Contractor shall not require the Subcontractor's prior written or verbal authorization or consent to effect a partial or complete assignment or transfer of this Subcontract to either the Owner, or the Owner's agent, affiliate, heir or designated assign, and shall ensure that equivalent provisions are included in its agreements with any sub-subcontractors or sub-consultants of the Subcontractor. In the event that this Subcontract, or a portion thereof, is assigned pursuant to this provision, the Contractor shall have no further liability whatsoever with respect to this Subcontract, except as to any monies due and owing pursuant to any approved and unpaid Subcontractor Invoices on account of work up to and including the date of the Subcontract assignment.
- 18.5 **Guarantee**
- .1 The Subcontractor warrants and guarantees the Subcontract Work services and materials covered by this Subcontract, and agrees to make good, at his own expense, any defect in materials or workmanship which may occur. Should a maintenance bond be required, the Subcontractor shall furnish same at his expense.

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

- .2 The Subcontractor shall pay for all damage to the structure resulting from defects in the Subcontract Work and all expenses necessary to remove, replace and/or repair the Work and any other work damaged in removing or repairing the Subcontract Work.
- .3 The Subcontractor hereby guarantees and warrants that the Subcontract Work will be performed in accordance with the Contract Documents. No payment to the Subcontractor and no partial or entire use or occupancy of the Subcontract Work by the Contractor or the Owner shall be construed as an acceptance of any work or material not in accordance with the Contract Documents.

18.6 Applicable Law

- .1 This Subcontract shall be deemed to have been made in Ontario, and the law of Ontario shall be the law of the Subcontract.
- .2 The Subcontractor shall comply, and shall require its employees, agents, sub-subcontractors and anyone for whom they are responsible to comply, with all Laws and all of the Owner's policies and procedures which are or become in force and are applicable to the performance of the Subcontract Work including all those relating to the preservation of the public health, occupational health and safety and to construction safety.
- .3 The Subcontractor shall perform the Subcontract Work in compliance with all Laws, including those which come into effect after the date of execution of this Subcontract, to the extent they apply to the Subcontract Work. If the Subcontractor becomes aware of any variance between the Subcontract Documents and applicable laws, or if changes to any laws require a modification to Subcontract or the Contract Documents, the Subcontractor shall immediately notify the Contractor in writing and request direction. If the Subcontractor fails to notify the Contractor as required under this Article, fails to obtain direction, and/or performs work that it knows or ought to have known contravenes any Laws, the Subcontractor shall be responsible for, and shall correct, such violations and shall bear all resulting costs, expenses, and damages. The Subcontractor shall indemnify and hold harmless the Contractor, the Owner, and the Consultant from and against any and all losses (including all losses, debts, expenses, liabilities, damages, obligations, payments, fines and costs and includes bodily injury or death to any person or loss or damage to property) resulting from such failure.
- .4 Without limiting the generality of any other provision in the Subcontract Documents, the Subcontractor shall cause all certificates to be furnished that are required or given by the appropriate governmental or quasi-governmental authorities as evidence that the Subcontract Work as installed conforms with the laws. The certificates are to be final certificates giving complete clearance of the Subcontract Work, in the event that such governmental or quasi-governmental authorities furnish such certificates.

18.7 **Non-Merger of Remedies** - Each of the rights and remedies of the Contractor provided for in this Subcontract shall be in addition to and not in substitution for any of the other rights and remedies of the Contractor provided for in this Subcontract or available to the Contractor at law or in equity and none of such rights and remedies shall be construed so as to limit, prejudice or adversely affect any other of such rights and remedies.

18.8 Entire Agreement

- .1 The terms of this Subcontract, including the Schedules, represent the entire understanding and agreement between Subcontractor and Contractor regarding the supply of the Subcontract Work and no other terms or conditions shall apply, except as provided in this Subcontract. No amendment of the terms of this Subcontract shall be binding upon a party unless it is evidenced in writing and executed by both parties.
- .2 The headings of the clauses herein and in the Schedules are inserted for convenience of reference only and shall not affect their construction or interpretation.
- .3 If any conflict exists between the provisions of this Subcontract and the Schedules, or between the provisions of any of the Schedules, the more stringent provision shall apply. Subcontractor shall promptly notify the Contractor of any such conflict for resolution.
- .4 Unless otherwise defined in this Subcontract, all capitalized terms used in this Subcontract that are defined in the Prime Contract (including, without limitation, "Place of the Work", "Products", "Working Days", and "Laws") shall have the meanings ascribed to them in the Prime Contract.
- .5 Any reference in this Subcontract to "working day" or "working days", whether or not capitalized, shall be deemed to mean "Working Day" or "Working Days" as defined in the Prime Contract.
- .6 References in this Subcontract to a "subcontractor", "sub-subcontractor", or other lower-tier party of the Subcontractor shall be deemed to include all subcontractors, sub-subcontractors, suppliers, vendors, trades, consultants, or other parties engaged by or through the Subcontractor in connection with the performance of the Subcontract Work.
- .7 Notwithstanding the expiry or earlier termination of this Subcontract for any reason, any provisions of this Subcontract which by their nature are intended to survive such expiry or termination, including without limitation provisions relating to confidentiality, audit and inspection rights, intellectual property, indemnification, dispute resolution, limitations of liability, insurance, and warranties, shall remain in full force and effect. For clarity, this includes (a) any provision of this Subcontract that expressly states it survives termination or

Project Name:
Project Number:
Phase code:

Subtrade Name:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

expiry, and (b) any provision of the Prime Contract that is incorporated by reference into this Subcontract and is stated in the Prime Contract to survive termination or expiry of the Prime Contract.

- 18.9 **Trade Customs** - The Subcontractor agrees that no understandings, agreements, quotations or trade customs shall be binding on the parties hereto in the interpretation or fulfilment hereof unless such understandings, agreements, quotations or trade customs are made a part of this Subcontract and expressly stated herein.
- 18.10 **Notices** - Any notice, direction, document or payment hereunder shall be sufficiently given if it is emailed, faxed or mailed by prepaid registered mail addressed to the party for whom it is intended at its address as shown below or to such other address of which either party hereto may from time to time notify the other in the manner set out in this Article. Any notice, direction, document or payment so mailed shall be deemed to have been given at the expiration of twenty-four (24) hours after it is so mailed.
- 18.11 **Construction Act Notices**
- .1 Any notice required or permitted to be given under the *Construction Act* (Ontario) (a "Construction Act Notice") shall be in writing and shall be given by a means or method permitted under the *Construction Act* (Ontario) or as expressly provided in this Subcontract.
 - .2 For the purposes of this Subcontract and the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, the parties agree that Construction Act Notices may be given by electronic mail in accordance with Article 18.10, unless expressly provided otherwise in this Subcontract.
 - .3 The means, method, names and addresses for the giving of Construction Act Notices shall be specified by the Contractor and the Subcontractor within five (5) days of the execution of the Subcontract, including the name and telephone number of a person at the sender to contact in the event of a problem with electronic transmission. For clarity, in the event of a problem with an electronic transmission (including if the intended recipient is "out of office"), the sender shall deliver the Construction Act Notice to such alternate person.
- 18.12 **Confidentiality** - Without limiting the foregoing, the Subcontractor: (i) shall treat all Owner's information as the confidential and proprietary property of the Owner; (ii) shall use such information solely for the purposes of performing the Subcontract Work; (iii) shall cause its employees and sub-subcontractors to comply with these obligations; and (iv) acknowledges the right to injunctive relief in the event of breach.
- 18.13 **Anti-Corruption Provisions**
- .1 The Subcontractor shall comply with all applicable commercial and public anti-bribery and anti-corruption laws ("Anti-Bribery Laws"), including the Corruption of Foreign Public Officials Act (Canada) and Criminal Code (Canada), which prohibit corrupt offers of anything of value, either directly or indirectly, to anyone, including Government Officials, to obtain or keep business or to secure any other improper commercial advantage. The Subcontractor shall not make any facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform. "Government Official" means any government official, including government employees, candidates for public office, and employees of government-owned or government-controlled companies, Authorities Having Jurisdiction, public international organizations, and political parties.
 - .2 The Subcontractor represents that it (including its affiliates, and any directors, officers, partners, members, shareholders, and employees of the Subcontractor or each such entity):
 - a. has complied, and will continue to comply, with Anti-Bribery Laws in connection with its Subcontract Work;
 - b. has not otherwise taken, and will not take, any actions in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Government Official or to any other person for the purpose of influencing official action, to obtain or retain business, or to secure any other improper commercial advantage related to this Subcontract; and
 - c. is not and will not become a Government Official in a jurisdiction having authority over any aspect of the Project during the term of this Subcontract without the prior written consent of the Contractor.

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

This Subcontract includes the following supplementary documents:

- **Schedule A – Scope of Work**
- **Schedule B – Drawing & Specification List and Schedule**
- **Schedule C – Safety Policy Acknowledgement Form**
- **Schedule D – Amendment to Subcontract (as applicable)**

Contractor at:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario L4G 4C4

Contact:
Phone:
Fax:
Email:

Subcontractor at:

Subtrade Name
Address
City, Ontario, Postal Code

Contact:
Phone:
Fax:
Email:

IN WITNESS WHEREOF the parties have executed the Agreement under their respective corporate seals and by the hands of their proper authorized officers.

SIGNED AND SEALED

MATHESON CONSTRUCTORS LIMITED

SUBTRADE NAME

Signature

Signature

Date: _____

Date: _____

Neil Banerjee, P.Eng, G.S.C., LEED AP
President

Subtrade Signing Authority

I have authority to bind the corporation

I have authority to bind the corporation

Project Name:
Project Number:
Phase code:

Subtrade Name:

Matheson Constructors Limited
245 Industrial Parkway North
Aurora, Ontario
L4G 4C4

Subtrade Name
Address
City, Ontario
Postal Code

**SCHEDULE “A”
SCOPE OF WORK**

SAMPLE

SCHEDULE "B" DRAWING & SPECIFICATION LIST AND SCHEDULE

SAMPLE

SCHEDULE "C" SAFETY POLICY ACKNOWLEDGEMENT FORM

SAMPLE

SCHEDULE "D" AMENDEMENT TO SUBCONTRACT

SAMPLE