

CCDC 14

Design-Build Stipulated Price Contract

2 0 1 3

[Name of the Work]

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The Canadian Construction Documents Committee (CCDC) is a national joint committee responsible for the development, production and review of standard Canadian construction contracts, forms and guides. Formed in 1974 the CCDC is made up of volunteer representatives from:

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Private-Sector Owners

*The Association of Consulting Engineering Companies-Canada

*The Canadian Construction Association

*Construction Specifications Canada

*The Royal Architectural Institute of Canada

*Committee policy and procedures are directed and approved by the four constituent national organizations.

This document has also been endorsed by the Canadian Design-Build Institute.



Comments and inquiries should be directed to:
Canadian Construction Documents Committee
1900-275 Slater Street
Ottawa, ON
K1P 5H9
613 236-9455
info@ccdc.org
ccdc.org

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AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

For use when a stipulated price is the basis of payment.

This Agreement made on the _____ day of _____ in the year _____ .

by and between the parties:

hereinafter called the "*Owner*"
and

hereinafter called the "*Design-Builder*"

The *Owner* and the *Design-Builder* agree as follows:

ARTICLE A-1 DESIGN SERVICES AND THE WORK

The *Design-Builder* shall:

1.1 provide the *Design Services*, and

1.2 perform the *Work* for

[Name of the Work]

insert above the name of the Work

located at

insert above the Place of the Work

for which the Agreement has been signed by the parties, and for which

insert above the name of the Consultant

is acting as, and is hereinafter called, the "*Consultant*", and for which

insert above the name of the Payment Certifier

is acting as, and is hereinafter called the *Payment Certifier*, and for which

insert above the name of the Owner's Advisor

is acting as, and is hereinafter called the *Owner's Advisor*^{*};
(*Strike out if none appointed)

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- 1.3 subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance* of the Work by the _____ day of _____ in the year _____.

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, including bidding documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.
- 2.2 This *Contract* may be amended only as provided for in the *Contract Documents*.

ARTICLE A-3 CONTRACT DOCUMENTS

- 3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK:
- Agreement Between Owner and Design-Builder
 - Definitions in this *Contract*
 - General Conditions of this *Contract*
 - Owner's Statement of Requirements, consisting of the following (list those written requirements and information constituting those documents intended to comprise the Owner's Statement of Requirements):

- Construction Documents

*

* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents, e.g. Supplementary Conditions; Proposals; Specifications (giving a list of contents with section numbers and titles, number of pages, date and revision date(s), if any); Drawings (giving drawing number, title, date, revision date or mark); Addenda (giving title, number, date).

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ARTICLE A-4 CONTRACT PRICE

4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:

_____/100 dollars \$ _____

4.2 *Value Added Taxes* (of _____ %) payable by the *Owner* to the *Design-Builder* are:

_____/100 dollars \$ _____

4.3 Total amount payable by the *Owner* to the *Design-Builder* is:

_____/100 dollars \$ _____

4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

4.5 Amounts are in Canadian funds.

ARTICLE A-5 PAYMENT

5.1 Subject to provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of _____ percent (_____ %), the *Owner* shall:

- .1 make progress payments to the *Design-Builder* on account of the *Contract Price* when due in the amount certified by the *Payment Certifier*, together with such *Value Added Taxes* as may be applicable to such payment, and
- .2 upon *Substantial Performance of the Work*, pay to the *Design-Builder* the unpaid balance of the holdback amount when due, together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Design-Builder* the unpaid balance of the *Contract Price* when due, together with such *Value Added Taxes* as may be applicable to such payment.

5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler and machinery insurance policies, payments shall be made to the *Design-Builder* in accordance with the provisions of GC 11.1 – INSURANCE.

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.
 - (2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

(Insert name of chartered lending institution whose prime rate is to be used)

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

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of claims in dispute that are resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date on which the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

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

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

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- 6.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 6.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission.
- 6.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

name of Owner*

Address

facsimile number

email address

Design-Builder

name of Design-Builder*

Address

facsimile number

email address

Owner's Advisor**

name of Owner's Advisor*

Address

facsimile number

email address

* If it is intended that the notice must be received by a specific individual, indicate that individual's name.

** Strike out this entry if no Owner's Advisor is designated as per GC 2.3 – OWNER'S ADVISOR.

ARTICLE A-7 LANGUAGE OF THE CONTRACT

- 7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/French*** language shall prevail.

*** Complete this statement by striking out the inapplicable term.

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

ARTICLE A-8 SUCCESSION

8.1 This *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns.

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

SIGNED AND DELIVERED

in the presence of:

WITNESS

OWNER

signature

name of Owner

signature

name of person signing

name and title of person signing

signature

name of person signing

WITNESS

DESIGN-BUILDER

signature

name of Design-Builder

signature

name of person signing

name and title of person signing

signature

name of person signing

N.B. Where legal jurisdiction, local practice, or Owner or Design-Builder requirement calls for:

- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
- (b) the affixing of a corporate seal, this Agreement should be properly sealed.

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DEFINITIONS

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

Change Directive

A *Change Directive* is a written instruction signed by the *Owner* directing a change in the *Work* or in the *Design Services* within the general scope of the *Contract Documents*.

Change Order

A *Change Order* is a written amendment to the *Contract* signed by the *Owner* and the *Design-Builder* stating their agreement upon:

- a change in the *Work* or in the *Design Services*;
- an amendment to the *Owner's Statement of Requirements*, if any;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

Construction Documents

The *Construction Documents* consist of *Drawings*, *Specifications*, and other documents prepared by or on behalf of the *Design-Builder*, based on the *Contract Documents*, and accepted in writing by the *Owner* and the *Design-Builder* as meeting the *Owner's Statement of Requirements* and the general intent of the *Contract Documents*.

Construction Equipment

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

Consultant

The *Consultant* is the person or entity identified as such in the Agreement. The *Consultant* is the architect, the engineer, or entity licensed to practise in the province or territory of the *Place of the Work* and engaged by the *Design-Builder* to provide all or part of the *Design Services*.

Contract

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

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.

Contract Price

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK from the date of the Agreement to the date of *Substantial Performance of the Work*.

Design-Builder

The *Design-Builder* is the person or entity identified as such in the Agreement.

Design Services

Design Services are the professional design and related services required by the *Contract Documents*.

Drawings

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

Notice in Writing

A *Notice in Writing* is a written communication between the parties that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Other Consultant

Other Consultant is a person or entity, other than the *Consultant*, that may be engaged by the *Design-Builder* to perform part of the *Design Services*.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

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Owner's Advisor

The *Owner's Advisor*, if any, is the person or entity appointed by the *Owner* and identified as such in the Agreement.

Owner's Statement of Requirements

The *Owner's Statement of Requirements* consists of written requirements and information provided by the *Owner* and as listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments thereto agreed upon between the parties.

Payment Certifier

The *Payment Certifier* is the person or entity identified as such in the Agreement responsible for the issuance of certificates for payment.

Place of the Work

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

Product

Product or Products means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

Project

The *Project* means the *Owner's* entire undertaking of which the *Work* may be the whole or a part thereof.

Shop Drawings

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

Specifications

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

Subcontractor

A *Subcontractor* is a person or entity having a direct contract with the *Design-Builder* to perform a part or parts of the *Work* at the *Place of the Work*.

Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

Supplemental Instruction

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

Supplier

A *Supplier* is a person or entity having a direct contract with the *Design-Builder* to supply *Products*.

Temporary Work

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

Value Added Taxes

Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the federal or any provincial or territorial government and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Design-Builder* by tax legislation.

Work

The *Work* means the total construction and related services required by the *Contract Documents*, but does not include *Design Services*.

Working Day

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

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GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the design, the labour, the *Products* and other services necessary for the design and performance of the *Work* by the *Design-Builder* in accordance with these documents. It is not intended, however, that the *Design-Builder* shall supply products or perform services or work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between the *Owner* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, a *Supplier*, or their agent, employee, or any other person performing any portion of the *Design Services* or the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 If there is a conflict within the *Contract Documents*:
 - .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Design-Builder*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions,
 - the *Owner's Statement of Requirements*,
 - the *Construction Documents*,
 - .2 later dated documents shall govern over earlier documents of the same type, and
 - .3 amendments to documents shall govern over documents so amended.
- 1.1.7 Copyright for the design and *Drawings* and electronic media, prepared on behalf of the *Design-Builder* belongs to the *Consultant* or *Other Consultants* who prepared them. Plans, sketches, *Drawings*, graphic representations, and *Specifications*, including, but not limited to computer generated designs, are instruments of the *Consultant's* or *Other Consultant's* services and shall remain their property, whether or not the *Work* for which they are made is executed and whether or not the *Design-Builder* has paid for the *Design Services*. Their alteration by the *Owner* is prohibited.
- 1.1.8 The *Owner* may retain copies, including reproducible copies, of plans, sketches, *Drawings*, graphic representations, and *Specifications* for information and reference in connection with the *Owner's* use and occupancy of the *Work*. Copies may only be used for the purpose intended and for a one time use, on the same site, and for the same *Project*. Except for reference purposes, the plans, sketches, *Drawings*, electronic files, graphic representations, and *Specifications* shall not be used for additions or alterations to the *Work* or on any other project without a written license from the *Consultant* or *Other Consultants* who prepared the documents, for their limited or repeat use.
- 1.1.9 The *Owner* shall be entitled to keep original models or renderings specifically commissioned and paid for.
- 1.1.10 Should the *Owner* alter a *Consultant's* or *Other Consultant's* instrument of service, or use or provide them to third parties other than in connection with the *Work* without informing the *Consultant* and without the *Consultant's* or *Other Consultant's* prior written consent, the *Owner* shall indemnify the *Design-Builder* against claims and costs (including legal costs) associated with such improper alteration or use.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

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- 1.3.2 No action or failure to act by the *Owner, Design-Builder, Consultant, Other Consultant, Payment Certifier, or Owner's Advisor* shall constitute a waiver of any right or duty afforded to either the *Owner* or the *Design-Builder* under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed to in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the prior written consent of the other, which consent shall not be unreasonably withheld.

GC 1.5 CONFIDENTIALITY

- 1.5.1 Where a confidentiality agreement exists or as the *Owner* otherwise expressly identifies and requires, the *Owner* and the *Design-Builder* shall keep confidential all matters respecting technical and commercial issues relating to or arising from the performance of the *Contract* and shall not, without the prior written consent of the other party, disclose any such matters, except in strict confidence, to their respective professional advisors.

PART 2 OWNER'S RESPONSIBILITIES

GC 2.1 OWNER'S INFORMATION

- 2.1.1 The *Owner* shall furnish the information required to complete the *Contract* promptly to avoid delay in the performance of the *Contract*.
- 2.1.2 Unless the *Contract Documents* specifically state otherwise, the *Design-Builder* is entitled to rely on the accuracy of all information provided by or on behalf of the *Owner* without regard for the source of such information.
- 2.1.3 Notwithstanding any other provision of the *Contract*, the *Design-Builder* is not responsible for any design errors or omissions in any designs or *Specifications* provided by or on behalf of the *Owner* unless the *Design-Builder* has been specifically requested to review and has accepted in writing those designs and *Specifications* under the *Contract*.

GC 2.2 ROLE OF THE OWNER

- 2.2.1 The *Owner* will render any necessary decisions or provide instructions promptly to avoid delay in the performance of the *Contract*.
- 2.2.2 All communications between the *Owner* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, or a *Supplier* shall be forwarded through the *Design-Builder*.
- 2.2.3 The *Owner* will be, in the first instance, the interpreter of the requirements of the *Owner's Statement of Requirements*.
- 2.2.4 The *Owner* will have authority to reject by *Notice in Writing* design or work which in the *Owner's* opinion does not conform to the requirements of the *Owner's Statement of Requirements*.
- 2.2.5 Whenever the *Owner* considers it necessary or advisable, the *Owner* will have authority to require a review of the *Design Services* and inspection or testing of the *Work*, whether or not such work is fabricated, installed or completed, in accordance with paragraph 2.5.5 of GC 2.5 – OWNER'S REVIEW OF THE DESIGN AND THE WORK.
- 2.2.6 During the progress of the *Design Services* or of the *Work* the *Owner* will furnish *Supplemental Instructions* related to the *Owner's Statement of Requirements* to the *Design-Builder* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Owner* and the *Design-Builder*.

GC 2.3 OWNER'S ADVISOR

- 2.3.1 When the *Owner* appoints an *Owner's Advisor*, the duties, responsibilities and limitations of authority of the *Owner's Advisor* shall be as set forth in the *Contract Documents*.
- 2.3.2 The duties, responsibilities and limitations of authority of the *Owner's Advisor* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Design-Builder*.
- 2.3.3 Subject to any notified limitations in authority, the *Design-Builder* may rely upon any written instructions or directions provided by the *Owner's Advisor*. Neither the authority of the *Owner's Advisor* to act, nor any decision to exercise or not exercise such authority, shall give rise to any duty or responsibility of the *Owner's Advisor* to the *Design-Builder*, the *Consultant*, *Other Consultants*, *Subcontractors*, *Suppliers*, or their agents, employees or other persons performing any portion of the *Design Services* or the *Work*.

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- 2.3.4 If the employment of the *Owner's Advisor* is terminated, the *Owner* may appoint or reappoint an *Owner's Advisor* against whom the *Design-Builder* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Owner's Advisor*.

GC 2.4 ROLE OF THE PAYMENT CERTIFIER

- 2.4.1 The *Owner* shall designate a *Payment Certifier* who will review the *Design-Builder's* applications for payment and certify the value of the *Design Services* and of *Work* performed and *Products* delivered to the *Place of the Work*.
- 2.4.2 The duties, responsibilities and limitations of authority of the *Payment Certifier* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Design-Builder*.
- 2.4.3 Neither the authority of the *Payment Certifier* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Payment Certifier* to the *Design-Builder*, the *Consultant*, *Other Consultants*, *Subcontractors*, *Suppliers*, or their agents, employees or other persons performing any of the *Design Services* or the *Work*.
- 2.4.4 The *Payment Certifier* will take all reasonable steps to be accessible to the *Design-Builder* during performance of the *Contract* and shall render any necessary decisions or instructions promptly as provided in GC 5.3 – PROGRESS PAYMENT to avoid delay in the processing of payment claims.
- 2.4.5 Based on the *Payment Certifier's* observations and evaluation of the *Design-Builder's* applications for payment, the *Payment Certifier* will determine the amounts owing to the *Design-Builder* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement – PAYMENT, GC 5.3 – PROGRESS PAYMENT and GC 5.7 – FINAL PAYMENT.
- 2.4.6 All communications between the *Payment Certifier* and the *Consultant*, an *Other Consultant*, a *Subcontractor*, or a *Supplier* shall be forwarded through the *Design-Builder*.
- 2.4.7 The *Payment Certifier* will promptly inform the *Owner* of the date of receipt of the *Design-Builder's* applications for payment as provided in paragraph 5.3.1.1 of GC 5.3 – PROGRESS PAYMENT.
- 2.4.8 If the *Payment Certifier's* services are terminated, the *Owner* shall immediately designate a new *Payment Certifier* against whom the *Design-Builder* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Payment Certifier*.
- 2.4.9 The *Owner* may provide to the *Consultant*, *Other Consultants*, *Subcontractors* or *Suppliers*, through the *Payment Certifier*, information as to the percentage of the *Design Services* and *Work* that has been certified for payment.

GC 2.5 OWNER'S REVIEW OF THE DESIGN AND THE WORK

- 2.5.1 The *Owner* shall review the design as set out in the design development documents and proposed *Construction Documents* as the *Design Services* proceed, to confirm that the design is in compliance with the *Owner's Statement of Requirements* and the *Contract Documents*.
- 2.5.2 The *Owner* shall complete the reviews in accordance with the schedule agreed upon, or in the absence of an agreed schedule, with reasonable promptness so as to cause no delay.
- 2.5.3 The *Owner's* review shall not relieve the *Design-Builder* of responsibility for errors or omissions in the *Construction Documents* or for meeting all requirements of the *Contract Documents* unless the *Owner* accepts in writing a deviation from the *Contract Documents*.
- 2.5.4 No later than 10 days after completing the review, the *Owner* shall advise the *Design-Builder* in writing that the *Owner* has accepted or rejected the proposed *Construction Documents*. If rejected, the *Owner* shall inform the *Design-Builder* of the reasons of non-conformance and the *Design-Builder* shall revise the proposed *Construction Documents* to address such non-conformance. The *Design-Builder* shall inform the *Owner* in writing of any revisions other than those requested by the *Owner*.
- 2.5.5 The *Owner* may order any portion or portions of the *Work* to be examined to confirm that the *Work* performed is in accordance with the requirements of the *Contract Documents*. If the *Work* is not in accordance with the requirements of the *Contract Documents*, the *Design-Builder* shall correct the *Work* and pay the cost of examination and correction. If the *Work* is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay all costs incurred by the *Design-Builder* as a result of such examination and restoration.

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GC 2.6 WORK BY OWNER OR OTHER CONTRACTORS

- 2.6.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform other design or other work with its own forces.
- 2.6.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
 - .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Design Services* and the *Work*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Design-Builder* as it affects the *Design Services* and the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 2.6.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Design-Builder* shall:
 - .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
 - .3 promptly report to the *Owner* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Design Services* or of the *Work*, prior to proceeding with that portion of the *Design Services* or of the *Work*.
- 2.6.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Design-Builder* shall co-ordinate and schedule the *Design Services* and the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 2.6.5 Where a change in the *Design Services* or in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Design Services* or with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.6.6 Disputes and other matters in question between the *Design-Builder* and the *Owner's* other contractors shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Design-Builder* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owners* contains a similar agreement to arbitrate.

PART 3 DESIGN-BUILDER'S RESPONSIBILITIES

GC 3.1 CONTROL OF THE DESIGN SERVICES AND THE WORK

- 3.1.1 The *Design-Builder* shall have total control of the *Design Services* and of the *Work* and shall direct and supervise the *Design Services* and the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Design-Builder* shall be solely responsible for the *Design Services* and construction means, methods, techniques, sequences, and procedures with respect to the *Work*.
- 3.1.3 The *Design-Builder* shall preserve and protect the rights of the parties under the *Contract* with respect to the *Design Services* to be performed by the *Consultant* and *Other Consultants*, and shall enter into a contract with the *Consultant* and *Other Consultants* to perform *Design Services* as provided in the *Contract*, in accordance with laws applicable at the *Place of the Work*.
- 3.1.4 The *Design-Builder's* contract with the *Consultant* shall:
 - .1 be based on the version of CCDC 15 – Design Services Contract between Design-Builder and Consultant in effect as at the date of this *Contract* or incorporate terms and conditions consistent with this version of CCDC 15, and
 - .2 incorporate terms and conditions of the *Contract Documents*, insofar as they are applicable.
- 3.1.5 Upon the *Owner's* request, the *Design-Builder* shall promptly provide the *Owner* with proof of compliance with paragraph 3.1.4.

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- 3.1.6 The *Design-Builder* shall be as fully responsible to the *Owner* for acts and omissions of the *Consultant* and *Other Consultants*, and of persons directly or indirectly employed by the *Consultant* and *Other Consultants*, as for acts and omissions of persons directly employed by the *Design-Builder*.
- 3.1.7 The *Design-Builder's* responsibility for *Design Services* performed by the *Consultant* and *Other Consultants* shall be limited to the degree of care, skill and diligence normally provided by consultants in the performance of comparable services in respect of projects of a similar nature to that contemplated by this *Contract*. The *Design-Builder* shall ensure that the *Consultant* and *Other Consultants* perform the *Design Services* to this standard.
- 3.1.8 The *Design-Builder* shall ensure that the *Consultant* and *Other Consultants* provide documentation required by authorities having jurisdiction in accordance with regulations and by-laws in effect at the *Place of the Work*.
- 3.1.9 The *Design-Builder* is solely responsible for the quality of the *Design Services* and of the *Work* and shall undertake any quality control activities specified in the *Contract Documents* or, if none are specified, as may be reasonably required to ensure such quality.
- 3.1.10 The *Design Builder* shall provide access to the *Work*, including parts being performed at locations other than the *Place of the Work* and to the location where the *Design Services* are performed, that the *Owner*, or the *Payment Certifier* may reasonably require to verify the progress of the *Work* or *Design Services* and their conformity to the requirements of the *Contract Documents*. The *Design-Builder* shall also provide sufficient, safe, and proper facilities at all times for such reviews of the *Design Services* or the *Work* and for inspection of the *Work* by authorized agencies.
- 3.1.11 If work is designated for tests, inspections, or approvals in the *Contract Documents*, or by the instructions of the *Owner*, the *Consultant*, or *Other Consultants*, or the laws or ordinances of the *Place of the Work*, the *Design-Builder* shall give the *Owner* reasonable notice of when the work will be ready for review and inspection.
- 3.1.12 The *Design-Builder* shall arrange for and shall give the *Owner* reasonable notice of the date and time of inspections by other authorities.
- 3.1.13 If the *Design-Builder* covers, or permits to be covered, work that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or, completed, the *Design-Builder* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and restore the covering work at the *Design-Builder's* expense.
- 3.1.14 The *Design-Builder* shall furnish promptly to the *Owner*, on request, a copy of certificates, test reports and inspection reports relating to the *Work*.

GC 3.2 DESIGN-BUILDER'S REVIEW OF OWNER'S STATEMENT OF REQUIREMENTS OR OTHER INFORMATION

- 3.2.1 The *Design-Builder* shall promptly notify the *Owner* of any significant error, inconsistency, or omission discovered in the *Owner's Statement of Requirements* or other information provided by or on behalf of the *Owner*. The *Design-Builder* shall not proceed with the *Design Services* or *Work* affected until the *Design-Builder* and the *Owner* have agreed in writing how the information should be corrected or supplied.
- 3.2.2 The *Design-Builder* shall not be liable for damages or costs resulting from such errors, inconsistencies, or omissions in the *Owner's Statement of Requirements* or other information provided by or on behalf of the *Owner*.

GC 3.3 ROLE OF THE CONSULTANT

- 3.3.1 The *Consultant* or *Other Consultants* will be, in the first instance, the interpreter of the requirements of the *Construction Documents* that they have prepared.
- 3.3.2 The duties, responsibilities and limitations of authority of the *Consultant* shall be in accordance with paragraph 3.1.4 of GC 3.1 – CONTROL OF THE DESIGN SERVICES AND THE WORK and shall be modified only with the written consent of the *Owner*, which consent shall not be unreasonably withheld.
- 3.3.3 If the *Consultant's* engagement is terminated, the *Design-Builder* shall immediately appoint or reappoint a *Consultant* against whom the *Owner* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Consultant*.

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GC 3.4 OTHER CONSULTANTS, SUBCONTRACTORS AND SUPPLIERS

- 3.4.1 The *Design-Builder* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
1. enter into contracts or written agreements with *Other Consultants* to require them to perform *Design Services* as provided in the *Contract Documents*;
 2. enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform *Work* as required by the *Contract Documents*;
 3. incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Other Consultants*, *Subcontractors* and *Suppliers* insofar as they are applicable; and
 4. be as fully responsible to the *Owner* for acts and omissions of *Other Consultants*, *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Design-Builder*.
- 3.4.2 The *Design-Builder* shall indicate in writing, at the request of the *Owner*, the names of *Other Consultants*, *Subcontractors*, or *Suppliers* whose proposals or bids have been received by the *Design-Builder* which the *Design-Builder* would be prepared to accept for the performance of a portion of the *Design Services* or of the *Work*. Should the *Owner* not object before signing the subcontract, the *Design-Builder* shall employ *Other Consultants*, *Subcontractors* or *Suppliers* so identified by the *Design-Builder* in writing for the performance of that portion of the *Design Services* or of the *Work* to which their proposal or bid applies.
- 3.4.3 The *Owner* may, for reasonable cause, at any time before the *Design-Builder* has signed the subcontract, object to the use of a proposed *Other Consultant*, *Subcontractor* or *Supplier* and require the *Design-Builder* to employ another proposed *Other Consultant*, *Subcontractor* or *Supplier* bidder.
- 3.4.4 If the *Owner* requires the *Design-Builder* to change a proposed *Other Consultant*, *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences resulting from such required change.
- 3.4.5 The *Design-Builder* shall not be required to employ any *Subcontractor*, *Supplier*, *Other Consultant*, person or firm to whom the *Design-Builder* may reasonably object.

GC 3.5 CONSTRUCTION DOCUMENTS

- 3.5.1 The *Design-Builder* shall submit the proposed *Construction Documents* to the *Owner* to review in orderly sequence and sufficiently in advance so as to cause no delay. The *Owner* and the *Design-Builder* shall jointly prepare a schedule of the dates for submission and return of proposed *Construction Documents*.
- 3.5.2 During the progress of the *Design Services*, the *Design-Builder* shall furnish to the *Owner* documents that describe details of the design required by the *Contract Documents*.
- 3.5.3 At the time of submission the *Design-Builder* shall advise the *Owner* in writing of any significant deviations in the proposed *Construction Documents* from the requirements of the *Contract Documents*. The *Owner* may or may not accept such deviations. Accepted deviations from the *Owner's Statement of Requirements* will be recorded in a *Change Order*.
- 3.5.4 When a change is required to the *Construction Documents* it shall be made in accordance with GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, or GC 6.3 – CHANGE DIRECTIVE.

GC 3.6 DESIGN SERVICES AND WORK SCHEDULE

- 3.6.1 The *Design-Builder* shall:
- .1 promptly after signing the Agreement, prepare and submit to the *Owner* a *Design Services* and *Work* schedule that indicates the timing of the major activities of the *Design Services* and of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Design Services* and the *Work* will be performed in conformity with the schedule;
 - .2 monitor the progress of the *Design Services* and of the *Work* relative to the schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
 - .3 advise the *Owner* of any revisions required to the schedule as a result of extensions to the *Contract Time* as provided in Part 6 of the General Conditions – CHANGES IN THE CONTRACT.

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GC 3.7 SUPERVISION

- 3.7.1 The *Design-Builder* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.7.2 The appointed representative shall represent the *Design-Builder* at the *Place of the Work*. Information and instructions provided by the *Owner* to the *Design-Builder's* appointed representative shall be deemed to have been received by the *Design-Builder* except that *Notices in Writing* otherwise required under the *Contract* shall be given as indicated in Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Design-Builder* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with the *Contract Documents* and their use acceptable to the *Owner*.
- 3.8.3 The *Design-Builder* shall maintain good order and discipline among the *Design-Builder's* employees involved in the performance of the *Work* and shall not employ anyone not skilled in the tasks assigned.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Design-Builder* shall keep one copy of current *Owner's Statement of Requirements*, *Construction Documents*, *Shop Drawings*, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 The *Design-Builder* shall provide *Shop Drawings* as described in the *Contract Documents* or as the *Owner* may reasonably request.
- 3.10.2 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Design-Builder* for approval.
- 3.10.3 The *Design-Builder* shall review all *Shop Drawings* before providing them to the *Owner*. The *Design-Builder* represents by this review that the *Design-Builder* has:
 - .1 determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
 - .2 checked and co-ordinated each *Shop Drawing* with the requirements of the *Contract Documents*.
- 3.10.4 If the *Owner* requests to review shop drawings, the *Design-Builder* shall submit them in an orderly sequence and sufficiently in advance so as to cause no delay in the *Design Services* or the *Work* or in the work of other contractors. The *Owner* and the *Design-Builder* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings*.
- 3.10.5 The *Owner's* review under paragraph 3.10.4 is for conformity to the intent of the *Contract Documents* and for general arrangement only. The *Owner's* review shall not relieve the *Design-Builder* of the responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Contract Documents* unless the *Owner* expressly accepts a deviation from the *Contract Documents* by *Change Order*.

GC 3.11 NON-CONFORMING DESIGN AND DEFECTIVE WORK

- 3.11.1 Where the *Owner* has advised the *Design-Builder*, by *Notice in Writing*, that designs or *Specifications* fail to comply with the *Owner's Statement of Requirements*, the *Design-Builder* shall ensure that the design documents or proposed *Construction Documents* are promptly corrected or altered.
- 3.11.2 The *Design-Builder* shall promptly correct defective work that has been rejected by *Notice in Writing* by the *Owner* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, design, use of defective products, or damage through carelessness or other act or omission of the *Design-Builder*.
- 3.11.3 The *Design-Builder* shall promptly make good other contractors' work destroyed or damaged by such removals or replacements at the *Design-Builder's* expense.

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- 3.11.4 If, in the opinion of the *Owner*, it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Design-Builder* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Design-Builder* does not agree on the difference in value, the *Design-Builder* shall refer the dispute to Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 4 ALLOWANCES

GC 4.1 CASH ALLOWANCES

- 4.1.1 The *Contract Price* includes the cash allowances, if any, stated in the *Owner's Statement of Requirements*. The scope of work or costs included in such cash allowances shall be as described in the *Owner's Statement of Requirements*.
- 4.1.2 The *Contract Price*, and not the cash allowances, includes the *Design-Builder's* overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner*.
- 4.1.4 Where the actual cost of the work performed under any cash allowance exceeds the amount of the allowance, the *Design-Builder* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where the actual cost of the work performed under any cash allowance is less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Design-Builder's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between each cash allowance and the actual cost of the work performed under that cash allowance.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Design-Builder* and the *Owner* shall jointly prepare a schedule that shows when the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Design Services* or of the *Work*.

GC 4.2 CONTINGENCY ALLOWANCE

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Owner's Statement of Requirements*.
- 4.2.2 The contingency allowance includes the *Design-Builder's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 The *Owner* shall, at the request of the *Design-Builder*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Design-Builder* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Design-Builder Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement – PAYMENT may be made monthly as the *Design Services* and the *Work* progress.
- 5.2.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed to in writing by the parties.
- 5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of the *Design Services* and of the *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period.

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- 5.2.4 The *Design-Builder* shall submit to the *Payment Certifier*, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the *Design Services* and of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.2.5 The schedule of values shall be made out in such form and supported by such evidence as the *Payment Certifier* may reasonably direct, and when accepted by the *Payment Certifier*, shall be used as the basis for applications for payment unless it is found to be in error.
- 5.2.6 The *Design-Builder* shall include a statement based on the schedule of values with each application for payment.
- 5.2.7 A declaration by the *Design-Builder* as to the distribution made of the amounts received using document CCDC 9A – Statutory Declaration of Progress Payment Distribution by Contractor shall be joined to each application for progress payment except the first one.
- 5.2.8 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Payment Certifier* may reasonably require to establish the value and delivery of the *Products*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1 After receipt by the *Payment Certifier* of an application for payment submitted by the *Design-Builder* in accordance with GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT:
 - .1 the *Payment Certifier* will promptly inform the *Owner* of the date of receipt and value of the *Design-Builder's* application for payment,
 - .2 the *Payment Certifier* will issue to the *Owner* and copy to the *Design-Builder*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Payment Certifier* determines to be properly due. If the *Payment Certifier* amends the application, the *Payment Certifier* will promptly advise the *Design-Builder* in writing giving reasons for the amendment,
 - .3 the *Owner* shall make payment to the *Design-Builder* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Payment Certifier* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Design-Builder* considers that the *Work* is substantially performed or, if permitted by the lien legislation applicable at the *Place of the Work*, a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Design-Builder* shall prepare and submit to the *Payment Certifier* appropriate documents as required by the *Contract Documents* together with a written application for a review by the *Payment Certifier* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include this information does not alter the responsibility of the *Design-Builder* to complete the *Contract*.
- 5.4.2 The *Design-Builder's* application for *Substantial Performance of the Work* shall include a statement from the *Consultant*, and *Other Consultants* in support of the submitted information and the date of *Substantial Performance of the Work* or designated portion of the *Work*.
- 5.4.3 The *Payment Certifier* shall, within 7 calendar days after receipt of the *Design-Builder's* application for *Substantial Performance of the Work*, issue a certificate of the *Substantial Performance of the Work* which shall state the date of *Substantial Performance of the Work* or designated portion thereof or advise the *Design-Builder* in writing of the reasons for which such a certificate is not issued.
- 5.4.4 If the applicable lien legislation requires the *Consultant* to determine whether the *Work* has been substantially performed, the *Consultant* shall issue a certificate of the *Substantial Performance of the Work* which shall state the date of *Substantial Performance of the Work* or designated portion of the *Work* or advise the *Design-Builder* in writing of the reasons for which such a certificate is not issued.
- 5.4.5 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder*, in consultation with the *Owner* will establish a reasonable date for completing the *Work*.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Design-Builder* shall:
 - .1 submit an application for payment of the holdback amount,
 - .2 submits a CCDC 9A Statutory Declaration of Progress Payment Distribution by Contractor.

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- 5.5.2 After the receipt of an application for payment from the *Design-Builder* and the statement as provided in paragraph 5.5.1, the *Payment Certifier* will issue a certificate for payment of the holdback amount.
- 5.5.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Design-Builder*.
- 5.5.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.5.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 In the common law jurisdictions, where legislation permits and where, upon application by the *Design-Builder*, the *Payment Certifier* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Design-Builder* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.6.2 In the Province of Quebec, where, upon application by the *Design-Builder*, the *Payment Certifier* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Design-Builder* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Payment Certifier*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.
- 5.6.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Design-Builder* shall ensure that such subcontract work or *Products* are protected pending the issuance of a *Substantial Performance of the Work* certificate and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.7 FINAL PAYMENT

- 5.7.1 When the *Design-Builder* considers that the *Design Services* and the *Work* are completed, the *Design-Builder* shall submit an application for final payment.
- 5.7.2 The *Payment Certifier* will, no later than 10 calendar days after the receipt of an application from the *Design-Builder* for final payment, verify the validity of the application and advise the *Design-Builder* in writing that the application is valid or give reasons why it is not valid.
- 5.7.3 When the *Payment Certifier* finds the *Design-Builder's* application for final payment valid, the *Payment Certifier* will promptly issue a final certificate for payment.
- 5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Design-Builder* as provided in Article A-5 of the Agreement – PAYMENT.

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GC 5.8 DEFERRED WORK

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Design-Builder*, there are items of work that cannot be performed, payment in full for that portion of the *Design Services* or *Work* which has been performed as certified by the *Payment Certifier* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portions of the *Design Services* and *Work* are finished, only such amount that the *Payment Certifier* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.9 NON-CONFORMING DESIGN SERVICES AND WORK

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Design Services* and the *Work* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES IN THE CONTRACT

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- 6.1.1 The *Owner* without invalidating the *Contract*, may make:
- .1 changes to the *Work* or to the *Owner's Statement of Requirements* consisting of additions, deletions or revisions to the *Design Services* or to the *Work*, by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* by *Change Order*.
- 6.1.2 The *Design-Builder* shall not perform a change in the *Design Services*, *Construction Documents* or to the *Work* without a *Change Order* or a *Change Directive*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change is proposed or required, the *Owner* or the *Design-Builder* shall provide a written description of the proposed change to the other party. The *Design-Builder* shall present, in a form acceptable to the *Owner*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change.
- 6.2.2 When the *Owner* and *Design-Builder* agree to the adjustments in the *Contract Price* and *Contract Time*, or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the *Design Services* or the *Work* performed as the result of a *Change Order* shall be included in applications for progress payment.
- 6.2.3 If the *Owner* requests the *Design-Builder* to submit a proposal for a change and then elects not to proceed with the change, a *Change Order* shall be issued by the *Owner* to reimburse the *Design-Builder* for all costs incurred by the *Design-Builder* in developing the proposal, including the cost of the related *Design Services*.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Design-Builder* to proceed with a change prior to the *Owner* and the *Design-Builder* agreeing upon the corresponding adjustment in *Contract Price* and *Contract Time*, the *Owner* shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Design-Builder* shall proceed promptly with the change.
- 6.3.5 For the purpose of valuing *Change Directives*, changes that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Design-Builder's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:
- .1 If the change results in a net increase in the *Design-Builder's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Design-Builder's* cost, plus the *Design-Builder's* percentage fee on the net increase.

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- .2 If the change results in a net decrease in the *Design-Builder's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Design-Builder's* cost, without adjustment for the *Design-Builder's* percentage fee.
- 6.3.7 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 *Design-Builder* under a salary or wage schedule agreed upon by the *Owner* and the *Design-Builder*, 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 *Design-Builder*, for personnel:
 - (1) stationed at the *Design-Builder's* field office, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings, coordination drawings, and project record drawings; or
 - (4) engaged in the processing of changes in the *Design Services* or in the *Work*;
 - .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 *Design-Builder* and included in the cost of the work as provided in paragraphs 6.3.7.1;
 - .3 travel and subsistence expenses of the *Design-Builder's* personnel described in paragraphs 6.3.7.1;
 - .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 *Design-Builder*;
 - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work* whether rented from or provided by the *Design-Builder* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - .7 all equipment and services required for the *Design-Builder's* field office;
 - .8 deposits lost;
 - .9 the cost of *Design Services* including all fees and disbursements of the *Consultant* and *Other Consultants* engaged to perform such services;
 - .10 the amounts of all subcontracts;
 - .11 quality assurance such as independent inspection and testing services;
 - .12 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - .13 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefore subject always to the *Design-Builder's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
 - .14 any adjustment in premiums for all bonds and insurance which the *Design-Builder* is required, by the *Contract Documents*, to purchase and maintain;
 - .15 any adjustment in taxes, other than *Value Added Taxes*, and duties for which the *Design-Builder* is liable;
 - .16 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the *Work*;
 - .17 removal and disposal of waste products and debris; and
 - .18 safety measures and requirements.
- 6.3.8 Notwithstanding other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Design-Builder* to exercise reasonable care and diligence in the *Design-Builder's* attention to the *Design Services* or to the *Work*. Any cost due to failure on the part of the *Design-Builder* to exercise reasonable care and diligence in the *Design-Builder's* attention to the *Design Services* or to the *Work* shall be borne by the *Design-Builder*.
- 6.3.9 The *Design-Builder* 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 *Owner* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* shall be afforded reasonable access to all of the *Design-Builder's* pertinent documents related to the cost of performing the work attributable to the *Change Directive*.

- 6.3.11 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 to be included in progress payments.
- 6.3.12 If the *Owner* and *Design-Builder* do not agree on the proposed adjustment in the *Contract Time* attributable to the change, or the method of determining it, the adjustment shall be referred to the provisions of PART 8 – DISPUTE RESOLUTION, for determination.
- 6.3.13 When the *Owner* and the *Design-Builder* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Design-Builder* discovers conditions at the *Place of the Work* which are:
 - .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Contract* and which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *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 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Owner* will promptly investigate such conditions. If the conditions differ materially from the *Contract Documents* and this would cause an increase or decrease in the *Design-Builder's* cost or time to perform the *Design Services* or the *Work*, the *Owner* will issue appropriate instructions for a change in the *Contract* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Owner* is of the opinion that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Owner* will advise the *Design-Builder* in writing of the grounds on which this opinion is based.
- 6.4.4 The *Design-Builder* shall not be entitled to an adjustment in the *Contract Price* or the *Contract Time* if such conditions were reasonably apparent during the request for proposal period or bidding period and prior to proposal closing or bid closing.
- 6.4.5 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

GC 6.5 DELAYS

- 6.5.1 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by an action or omission of the *Owner* or anyone employed or engaged by the *Owner* directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.
- 6.5.2 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Design-Builder* or any person employed or engaged by the *Design Builder* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The *Design-Builder* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Design-Builder* as the result of such delay.
- 6.5.3 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by:
 - .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Design-Builder* is a member or to which the *Design-Builder* is otherwise bound), or
 - .2 fire, unusual delay by common carriers or unavoidable casualties, or
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Design-Builder's* control other than one resulting from a default or breach of *Contract* by the *Design-Builder*,
 then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Design-Builder* agrees to a shorter extension. The *Design-Builder* shall not be entitled to payment for costs

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incurred by such delays unless such delays result from actions of the *Owner*, or anyone employed or engaged by the *Owner* directly or indirectly.

- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Owner* no later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 Any adjustment to *Contract Price* and *Contract Time* required as a result of GC 6.5 – DELAYS shall be made as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Design-Builder* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party, to give the other party the opportunity to take actions to mitigate the claim.
- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
 - .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at regular intervals as agreed between the parties, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 If the *Owner* and *Design-Builder* are in disagreement regarding the basis for the claim or its valuation, the matter shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 7 RIGHT TO SUSPEND OR TERMINATE

GC 7.1 OWNER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR TERMINATE THE CONTRACT BEFORE THE WORK COMMENCES

- 7.1.1 The *Owner* may, at any time before the *Work* commences at the *Place of the Work*, suspend performance of the *Design Services* by giving *Notice in Writing* to the *Design-Builder* indicating the expected length of the suspension. Such suspension shall be effective in the manner as stated in the *Notice in Writing* and shall be without prejudice to any claims which either party may have against the other.
- 7.1.2 Upon receiving a notice of suspension, the *Design-Builder* shall, subject to any directions in the notice of suspension, suspend performance of the *Design Services*.
- 7.1.3 If the *Design Services* are suspended for a period of 20 *Working Days* or less, the *Design-Builder*, upon the expiration of the period of suspension, shall resume the performance of the *Design Services* in accordance with the *Contract Documents*. The *Contract Price* and *Contract Time* shall be adjusted as provided in paragraph 6.5.1 of GC 6.5 – DELAYS.
- 7.1.4 If, after 20 *Working Days* from the date of delivery of the *Notice in Writing* regarding the suspension of the *Design Services*, the *Owner* and the *Design-Builder* agree to continue with and complete the *Design Services* and the *Work*, the *Design-Builder* shall resume the *Design Services* in accordance with any terms and conditions agreed upon by the *Owner* and the *Design-Builder*. Failing such an agreement, the *Owner* shall be deemed to have terminated the *Contract* and the *Design-Builder* shall be entitled to be paid for all *Design Services* performed and for such other damages as the *Design-Builder* may have sustained, including reasonable profit, as a result of the termination of the *Contract*.

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GC 7.2 OWNER'S RIGHT TO TERMINATE THE DESIGN-BUILDER'S RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

- 7.2.1 If the *Design-Builder* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Design-Builder's* insolvency, or if a receiver is appointed because of the *Design-Builder's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Design-Builder's* right to continue with the *Design Services* or *Work*, by giving the *Design-Builder* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Design-Builder* neglects to properly perform the *Design Services* or *Work*, or otherwise fails to comply with the requirements of the *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Design-Builder Notice in Writing* that the *Design-Builder* is in default of the *Design-Builder's* contractual obligations and instruct the *Design-Builder* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.2.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Design-Builder* shall be in compliance with the *Owner's* instructions if the *Design-Builder*:
- .1 commences the correction of the default within the specified or agreed time, as the case may be, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.2.4 If the *Design-Builder* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Design-Builder* provided the *Payment Certifier* has certified such cost to the *Owner* and the *Design-Builder*, or
 - .2 terminate the *Design-Builder's* right to continue with the *Design Services* or *Work* in whole or in part, or
 - .3 terminate the *Contract*.
- 7.2.5 If the *Owner* terminates the *Design-Builder's* right to continue with the *Design Services* or *Work* as provided in paragraphs 7.2.1 and 7.2.4, or if the *Owner* terminates the *Contract*, the *Owner* shall be entitled to:
- .1 use the plans, sketches, *Drawings*, graphic representations and *Specifications* pursuant to paragraph 1.1.8 of GC 1.1 – CONTRACT DOCUMENTS, as reasonably required for the completion of design and construction of the *Project*, but unless otherwise agreed, the *Consultant* and *Other Consultants* shall not assume any responsibility or liability resulting from use of such documents which may be incomplete;
 - .2 take possession of the *Work* and *Products* at the *Place of the Work*, and subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*, and finish the *Design Services* and *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense;
 - .3 withhold further payment to the *Design-Builder* until final payment is determined in accordance with paragraphs 7.2.5.4 and 7.2.5.5;
 - .4 charge the *Design-Builder* the amount by which:
 - (1) the full cost of finishing the *Design Services* and the *Work*, as certified by the *Payment Certifier*, including compensation to the *Payment Certifier* for the *Payment Certifier's* additional services, plus
 - (2) a reasonable allowance as determined by the *Payment Certifier* to cover the cost of corrections to work performed by the *Design-Builder* that may be required under GC 12.5 – WARRANTY, together exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Design Services* and the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Design-Builder* the difference; and
 - .5 on expiry of the warranty period, charge the *Design-Builder* the amount by which the cost of corrections to the *Design-Builder's* work under GC 12.5 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Design-Builder* the difference.
- 7.2.6 The *Design-Builder's* obligation under the *Contract* as to quality, correction and warranty of the *Work* performed by the *Design-Builder* up to the time of termination shall continue after such termination of the *Contract*.

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GC 7.3 DESIGN-BUILDER'S RIGHT TO SUSPEND THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

- 7.3.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.3.2 If the *Design Services* or *Work* are suspended or otherwise delayed for a period of more than 20 *Working Days* under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Design-Builder* or of anyone directly or indirectly employed or engaged by the *Design-Builder*, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.3.3 The *Design-Builder* may give *Notice in Writing* to the *Owner* that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Design-Builder*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Payment Certifier* fails to issue a certificate as provided in GC 5.3 – PROGRESS PAYMENT, or
 - .3 the *Owner* fails to pay the *Design-Builder* when due the amounts certified by the *Payment Certifier* or awarded by arbitration or court, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree.
- 7.3.4 The *Design-Builder's* *Notice in Writing* to the *Owner* provided under paragraph 7.3.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Design-Builder* may, without prejudice to any other right or remedy the *Design-Builder* may have, suspend the *Design Services* or the *Work*, or terminate the *Contract*.
- 7.3.5 If the *Design-Builder* suspends the *Work* pursuant to paragraph 7.3.4, the *Design-Builder* shall:
- .1 at the cost of the *Owner* maintain operations necessary for safety reasons and for care and preservation of the *Work*,
 - .2 make reasonable efforts to delay *Product* deliveries, and
 - .3 not remove from the *Place of the Work* any part of the *Work* or any *Products* not yet incorporated into the *Work*.
- 7.3.6 If the *Design-Builder* terminates the *Contract* under the conditions set out above, the *Design-Builder* shall be entitled to be paid for all *Design Services* and *Work* performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and for such other damages as the *Design-Builder* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION

GC 8.1 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
- 8.1.2 If a dispute does arise, the parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.1.3 If the parties do not reach an agreement, either party shall send a *Notice in Writing* of dispute to the other party which contains the particulars of the matter in dispute, the relevant provisions of the *Contract Documents* and, if a Project Mediator has not already been appointed, a request that a Project Mediator be appointed. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing*, setting out particulars of the response and any relevant provisions of the *Contract Documents*.
- 8.1.4 If a dispute is not resolved promptly, the *Owner* will issue such instructions as necessary to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Design-Builder* costs incurred by the *Design-Builder* in carrying out such instructions which the *Design-Builder* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Design Services* or the *Work*.

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- 8.1.5 The parties shall, in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of proposal closing or bid closing, appoint a Project Mediator:
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.1.6 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.1.3, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 Rules for Mediation and Arbitration of Construction Disputes in effect at the time of proposal closing or bid closing.
- 8.1.7 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.1.6 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner* and the *Design-Builder*.
- 8.1.8 By giving a *Notice in Writing* to the other party not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.1.7, either party may refer the dispute to be finally resolved by arbitration conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of proposal closing or bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.1.9 On expiration of the 10 *Working Days* stipulated in paragraph 8.1.8, the arbitration agreement under paragraph 8.1.8 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.1.8 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.1.10 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.1.8, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.1.8 shall be
- .1 held in abeyance until
 - (1) *Substantial Performance of the Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Design-Builder* has abandoned the *Design Services* or the *Work*, whichever is earlier; and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.1.8.

GC 8.2 RETENTION OF RIGHTS

- 8.2.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.4.
- 8.2.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.1.9 of GC 8.1 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.
- 8.2.3 Part 8 of the General Conditions – DISPUTE RESOLUTION shall survive suspension or termination of the *Contract*.

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Design-Builder* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Design-Builder's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Owner's Statement of Requirements*, or
 - .2 acts or omissions by the *Owner*, the *Owner's* agents and employees.
- 9.1.2 Before commencing any work, the *Design-Builder* shall determine the location of all underground utilities and structures that are reasonably apparent in an inspection of the *Place of the Work*.

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- 9.1.3 Should the *Design-Builder* in the performance of the *Contract* damage the *Work*, the *Owner's* property, or property adjacent to the *Place of the Work*, the *Design-Builder* shall be responsible for making good such damage at the *Design-Builder's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Design-Builder* is not responsible, as provided in paragraph 9.1.1, the *Design-Builder* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Design-Builder* commencing the *Design Services* or *Work*, the *Owner* shall, subject to legislation applicable to the *Place of the Work*:
 - .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Design-Builder* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Design-Builder* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Design-Builder* commencing the *Work*.
- 9.2.5 If the *Design-Builder* encounters toxic or hazardous substances at the *Place of the Work* or has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Design-Builder* shall:
 - .1 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by legislation applicable to the *Place of the Work*, and
 - .2 immediately report the circumstances to the *Owner* in writing.
- 9.2.6 If the *Owner* and *Design-Builder* do not agree on the existence or significance of the toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and make a determination on such matters. The expert's report shall be delivered to the *Owner* and the *Design-Builder*.
- 9.2.7 If the *Owner* and *Design-Builder* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the *Place of the Work* by the *Design Builder* or anyone for whom the *Design Builder* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
 - .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Design-Builder* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as agreed between the *Design-Builder* and the *Owner* in consultation with the expert referred to in 9.2.6 and reimburse the *Design-Builder* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Design-Builder* as required by GC 12.2 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Design-Builder* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substance was brought onto the *Place of the Work* by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible, the *Design-Builder* shall promptly at the *Design-Builder's* own expense:
 - .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;

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- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
- .4 indemnify the *Owner* as required by GC 12.2 – INDEMNIFICATION.

9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided in paragraphs 9.2.7 or 9.2.8.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Owner* and the *Design-Builder*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Design-Builder* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Owner* upon discovery of such items.
- 9.3.3 The *Owner* will investigate the impact on the *Design Services* or the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Design-Builder's* cost or time to perform the *Design Services* or the *Work*, the *Owner* will issue appropriate instructions for a change in the *Contract* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 Except as provided for in paragraph 2.6.2.2 of GC 2.6 – WORK BY OWNER OR OTHER CONTRACTORS, the *Design-Builder* shall assume overall responsibility for:
 - .1 construction health and safety at the *Place of the Work* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation, and
 - .2 establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work*.

GC 9.5 MOULD

- 9.5.1 If the *Design-Builder* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
 - .1 the observing party shall promptly report the circumstances to the other party in writing, and
 - .2 the *Design-Builder* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould.
- 9.5.2 If the *Owner* and *Design-Builder* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and make a determination on such matters. The expert's report shall be delivered to the *Owner* and *Design-Builder*.
- 9.5.3 If the *Owner* and *Design-Builder* agree, or if the expert referred to in paragraph 9.5.2 determines that the presence of mould was caused by the *Design-Builder's* operations under the *Contract*, the *Design-Builder* shall promptly, at the *Design-Builder's* own expense:
 - .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.2, and
 - .4 indemnify the *Owner* as required by GC 12.2 – INDEMNIFICATION.
- 9.5.4 If the *Owner* and *Design-Builder* agree, or if the expert referred to in paragraph 9.5.2 determines that the presence of mould was not caused by the *Design-Builder's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
 - .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 reimburse the *Design-Builder* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 extend the *Contract Time* for such reasonable time as agreed between the *Design-Builder* and the *Owner* in consultation with the expert referred to in paragraph 9.5.2 and reimburse the *Design-Builder* for reasonable costs incurred as a result of the delay, and

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.4 indemnify the *Design-Builder* as required by GC 12.2 – INDEMNIFICATION.

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

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the proposal closing or bid closing except for *Value Added Taxes* payable by the *Owner* to the *Design-Builder* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Design-Builder* due to changes in such included taxes and duties after the time of the proposal closing or bid closing shall increase or decrease the *Contract Price* accordingly, and either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Design Services* and the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for the permanent easements and rights of servitude.
- 10.2.3 Unless otherwise stated, the *Design-Builder* shall obtain and pay for the building permit and other permits, licences, or certificates necessary for the performance of the *Work* at the time of the proposal closing or bid closing. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Design-Builder* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the *Design Services* or the performance of the *Work* and which relate to the *Design Services* or the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Design-Builder* shall not be responsible for verifying that the *Owner's Statement of Requirements* is in substantial compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Design Services* or the *Work*. If after the time of the proposal closing or bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Design-Builder* shall advise the *Owner* in writing requesting direction immediately upon such variance or change becoming known. Changes shall be made as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Design-Builder* fails to advise the *Owner* in writing and fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes, the *Design-Builder* shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of proposal closing or bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Design Services* or the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.3 PATENT FEES

- 10.3.1 The *Design-Builder* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Design-Builder* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Design-Builder* or anyone for whose acts the *Design-Builder* may be liable.
- 10.3.2 The *Owner* shall hold the *Design-Builder* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the model, plan or design of which was supplied by the *Owner* to the *Design-Builder* as part of the *Contract Documents*.

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GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Design Services* or the *Work*, again with the *Design-Builder's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Design-Builder's* application for final payment, the *Design-Builder* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Design-Builder* shall provide such evidence of compliance by the *Design-Builder* and *Subcontractors*.

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.2 – INDEMNIFICATION, the *Design-Builder* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of proposal closing or bid closing except as hereinafter provided:
- .1 Everywhere used in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the term “*Contractor*” shall be replaced with the term “*Design-Builder*”.
 - .2 General liability insurance in the name of the *Design-Builder* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner*, the *Consultant*, *Other Consultants*, the *Owner's Advisor*, and the *Payment Certifier* as insured but only with respect to liability arising out of the operations of the *Design-Builder* with regard to the *Design Services* or *Work*. All liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years.
 - .3 Automobile Liability Insurance from the date of commencement of the *Design Services* or the *Work* until one year after the date of *Substantial Performance of the Work*.
 - .4 If owned or non-owned aircraft and watercraft are used directly or indirectly in the performance of the *Design Services* or *Work*, Aircraft and Watercraft Liability Insurance from the date of commencement of the *Design Services* or *Work* until one year after the date of *Substantial Performance of the Work*.
 - .5 "All risks" property insurance in the joint names of the *Design-Builder*, the *Owner*, the *Consultant*, the *Owner's Advisor*, and the *Payment Certifier*. The policy shall include as Additional Insureds all *Subcontractors*. Where the full insurable value of the *Work* is substantially less than the *Contract Price*, the *Owner* may reduce the amount of insurance required or waive the insurance requirement. The “all risks” property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
 - (2) on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitation, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; or
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
 - .6 Boiler and machinery insurance in the joint names of the *Design-Builder* and the *Owner*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - .7 The “all risks” property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Design-Builder* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Design-Builder* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Design-Builder* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Design-Builder* shall be entitled to such reasonable extension of *Contract Time* as agreed by the *Owner* and *Design-Builder*;
 - (2) the *Design-Builder* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount at which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions of the *Contract*. In addition the *Design-Builder* shall be entitled to receive from the payments made by the insurer the amount of the *Design-Builder's* interest in the restoration of the *Work*; and

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- (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces, or another contractor, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, the *Owner* shall pay the *Design-Builder* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions of the *Contract*.
- .8 *Design-Builders' Equipment Insurance* from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- .9 In addition to the insurance requirements specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the *Design-Builder* shall carry professional liability insurance with limits of not less than \$1,000,000 per claim and with an aggregate limit of not less than \$2,000,000 within any policy year, unless specified otherwise in the *Contract Documents*. The policy shall be maintained continuously from the commencement of the *Contract* until 2 years after *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Design Services* or *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Design-Builder* shall promptly provide the *Owner* with confirmation of coverage and, if required, a true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Design Services* or *Work*.
- 11.1.3 The *Design-Builder* shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the *Design-Builder's* responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY and GC 12.2 – INDEMNIFICATION.
- 11.1.4 If the *Design-Builder* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence of same to the *Design-Builder* and the *Consultant*. The *Design-Builder* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from any amount which is due or may become due to the *Design-Builder*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Design-Builder's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.7 If a revised version of CCDC 41 – CCDC INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may require the increased coverage from the *Design-Builder* by way of a *Change Order*.
- 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to any revision of CCDC 41 – CCDC INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Design-Builder* shall, prior to commencement of the *Design Services* or *Work* or within such other time as may be specified in the *Contract Documents*, provide to the *Owner* any *Contract* security specified in the *Contract Documents*.
- 11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY

GC 12.1 DEFINITION AND SURVIVAL

- 12.1.1 For the purposes of Part 12 – INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY, “claim” or “claims” shall mean claims, demands, losses, costs, damages, actions, suits or proceedings, whether in contract or tort.
- 12.1.2 Part 12 of the General Conditions – INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY shall survive suspension or termination of the *Contract*.

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GC 12.2 INDEMNIFICATION

- 12.2.1 Without restricting the parties' obligations to indemnify one another as described in paragraph 12.2.4 and the Owner's obligation to indemnify as described in paragraph 12.2.5, the *Owner* and the *Design-Builder* shall each indemnify and hold harmless the other from and against all claims, whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
 - (1) errors, omissions, or negligence of the party from whom indemnification is sought or anyone for whom that party is responsible, or
 - (2) a breach of this *Contract* by the party from whom indemnification is sought; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.3 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.
- The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 12.2.2 The obligation of either party to indemnify as set forth in paragraph 12.2.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 – CCDC INSURANCE REQUIREMENTS in effect at the time of proposal or bid closing.
 - .2 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 of the Agreement – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
 - .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.2.2.1 and 12.2.2.2 shall apply.
- 12.2.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.2.1 and 12.2.2 shall be inclusive of interest and all legal costs.
- 12.2.4 The *Owner* and the *Design-Builder* shall indemnify and hold harmless the other from and against all claims arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS.
- 12.2.5 The *Owner* shall indemnify and hold harmless the *Design-Builder* from and against all claims:
- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
 - .2 arising out of the *Design-Builder's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.
- 12.2.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Design-Builder*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known; and
 - .2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this *Contract* to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.3 LIMITATION OF LIABILITY FOR DESIGN SERVICES

- 12.3.1 Notwithstanding any other provisions of this *Contract*, the *Design-Builder's* liability for claims which the *Owner* may have against the *Design-Builder*, including the *Design-Builder's* officers, directors, employees and representatives, that arise out of, or are related to, the *Design Services*, shall be limited:
- .1 to claims arising from errors, omissions, or negligent performance of the *Design Services* by the *Consultant* or *Other Consultant* and
 - .2 where claims are covered by insurance the *Design-Builder* is obligated to carry pursuant to GC 11.1 – INSURANCE, to the amount of such insurance.

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GC 12.4 WAIVER OF CLAIMS

- 12.4.1 Subject to any lien legislation applicable at the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Design-Builder* waives and releases the *Owner* from all claims which the *Design-Builder* has or reasonably ought to have knowledge of that could be advanced by the *Design-Builder* against the *Owner* arising from the *Design-Builder's* involvement in the *Design Services* or *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Design-Builder* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Design-Builder* by third parties for which a right of indemnification may be asserted by the *Design-Builder* against the *Owner* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Design-Builder* pursuant to the provisions of paragraphs 12.2.4 or 12.2.5 of GC 12.2 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.4.2 The *Design-Builder* waives and releases the *Owner* from all claims referenced in paragraph 12.4.1.4 except for those referred in paragraphs 12.4.1.2 and 12.4.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Design-Builder* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.4.3 Subject to any lien legislation applicable at the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Owner* waives and releases the *Design-Builder* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Design-Builder* arising from the *Owner's* involvement in the *Design Services* or *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Design-Builder* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Design-Builder* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Design-Builder* pursuant to the provisions of paragraph 12.2.4 of GC 12.2 – INDEMNIFICATION;
 - .4 damages arising from the *Design-Builder's* actions which result in substantial defects or deficiencies in the *Work*. “Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - .5 claims arising pursuant to GC 12.5 – WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.4.4 The *Owner* waives and releases the *Design-Builder* from all claims referred to in paragraph 12.4.3.4 except claims for which *Notice in Writing* of claim has been received by the *Design-Builder* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
 - .2 if the *Place of the Work* is the Province of Quebec, then Article 2118 of the Civil Code of Quebec.
- 12.4.5 The *Owner* waives and releases the *Design-Builder* from all claims referenced in paragraph 12.4.3.6 except for those referred in paragraph 12.4.3.2, 12.4.3.3 and those arising under GC 12.5 – WARRANTY and claims for which *Notice in Writing* has been received by the *Design-Builder* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.4.6 “*Notice in Writing* of claim” as provided for in GC 12.4 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.4 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;

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- .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
- .3 a statement of the estimated quantum of the claim.
- 12.4.7 The party giving “*Notice in Writing* of claim” as provided for in GC 12.4 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.4.8 Where the event or series of events giving rise to a claim made under paragraphs 12.4.1 or 12.4.3 has a continuing effect, the detailed account submitted under paragraph 12.4.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.4.9 If a *Notice in Writing* of claim pursuant to paragraph 12.4.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim is received pursuant to paragraph 12.4.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.
- 12.4.10 If a *Notice in Writing* of claim pursuant to paragraph 12.4.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim is received pursuant to paragraph 12.4.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

GC 12.5 WARRANTY

- 12.5.1 Except for extended warranties as described in paragraph 12.5.6, the warranty period under the *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.5.2 The *Design-Builder* warrants that the *Work* is in accordance with the *Contract Documents*.
- 12.5.3 The *Owner* shall promptly give the *Design-Builder* *Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.5.4 The *Design-Builder* shall promptly correct, at the *Design-Builder's* expense, any work which is not in accordance with the *Contract Documents* or defects or deficiencies in the *Work* which appear at any time until the end of the warranty periods specified in the *Contract Documents*.
- 12.5.5 The *Design-Builder* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.5.4.
- 12.5.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.5.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor for the benefit of the *Owner*. The *Design-Builder's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.
- 12.5.7 The *Design-Builder* does not warrant against the effects of corrosion, erosion or wear and tear of any *Product* or failure of any *Product* due to faulty operations or maintenance by the *Owner* or conditions of operation more severe than those specified for the *Product*.
- 12.5.8 The warranties specified in GC 12.5 – WARRANTY or elsewhere in the *Contract Documents* are the only warranties of the *Design-Builder* applicable to the *Work* and no other warranties, statutory or otherwise, are implied.

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SUPPLEMENTARY GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT CCDC14 - 2013 DESIGN-BUILD AGREEMENT

The Agreement is amended as follows:

ARTICLE A-1 DESIGN SERVICES AND THE WORK

Add:

- “1.4 The *Design-Builder* shall properly design and fully construct the *Work* in accordance with, the requirements of all federal, provincial and local government authorities having jurisdiction and the rules and customs of best trade practice (meaning practice of the industry and not necessarily “local practice”). Without limiting the generality of the foregoing, the *Work* shall include:
- .1 the provision of those professional design and engineering services necessary to properly prepare fully detailed and professionally sealed plans and *specifications*, stated as being the *Design-Builder's* responsibility in the *Cost Allocation Matrix*, based on CRD validated *Issued for Tender Drawings*;
 - .2 review during and upon completion of construction by the *Consultant* to ensure conformance of the *Work* to the *Contract Documents*; and
 - .3 all necessary approvals, licences, permits, charges and certificates including the building permit for the *Work* other than any required development permit or rezoning, which for certainty, shall be the responsibility of the *Owner* to obtain.
- 1.5 The Design-Builder shall at all times be fully responsible to the Owner for any errors, omissions, or deficiencies in the Contract Documents it produces pursuant to this Agreement, including any revisions and addenda thereto and shall be fully liable for all direct, consequential and additional costs incurred by the Owner as a direct or indirect result of such errors, omissions or deficiencies, other than lost profits. For certainty, the reference to omissions in the Contract Document contained in this section does not refer to a change in the scope or quality of the *Project* required by the *Owner* that is unrelated to an error or omission by the *Design-Builder* in the design of the *Project* or the preparation of any of the Contract Documents.
- 1.6 At least 7 calendar days prior to the commencement of construction, the *Design-Builder* shall deliver to the *Owner* all of the following:
- .1 Proof of all necessary permits, licences, certificates and other authorizations required by all municipal, provincial or federal authorities, for the *Work* and proof of payment of all applicable fees, that are the *Design-Builder's* responsibility to obtain under the *Contract Documents*;
 - .2 Certified copies of all insurance policies required by this *Contract*;

- .3 The performance and labour and material payment bonds required by this *Contract*;
 - .4 A construction schedule satisfactory to the *Owner* as required by paragraph 3.6.1 of the General Conditions of the *Contract* including, in a graphic form, the proposed dates of commencement and completion of each of the various subdivisions of the *Work*, and corresponding to the breakdown of *work* shown on the schedule of values, as required by GC 5.2.4 so as to facilitate evaluation of applications for payment;
 - .5 A schedule of values of the various parts of the *Work* as required by paragraph 5.2.4 of the *Contract*;
 - .6 A schedule of anticipated monthly progress payments as required by paragraph 5.2.5 of the Supplementary Conditions of the *Contract*; and
 - .7 Proof that the *Design-Builder* has obtained Workers' Compensation Board registration and clearance;
- 1.7 The *Design-Builder* will give to the *Owner* a minimum of forty-five (45) calendar days' written notice that the *Design-Builder* will meet the date set in Article A-1 for *Substantial Performance of the Work*, or the latest revision to this date that is executed through the endorsement of the Contract or change orders."

ARTICLE A-3 CONTRACT DOCUMENTS

- 3.1 Add the following:
- the Supplementary General Conditions dated INSERT DATE
 - the following documents prepared by the *Design Builder* pursuant to Contract Number INSERT NUMBER between the *Owner* and the *Design-Builder*:
 - Issued for Tender Drawings**
 - INSERT ANY OTHER DOCUMENTS PREPARED BY DESIGN-BUILDER UNDER DESIGN CONTRACT
 - (the "**Pre-Construction Design Documents**")
 - the *Cost Allocation Matrix*

Add:

- 3.2 Notwithstanding any other provision of the Contract Documents, including but not limited to GC 3.2, the *Design-Builder* acknowledges that it has reviewed and satisfied itself as to the *Contract Documents*, including without limitation, the *Pre-Construction Design Documents*, plans, specifications, consultant reports, and other materials referred to in this Article, the observable site conditions, and all other materials it desires, prior to execution of this Contract. The *Design-Builder* agrees that, on execution of this Contract, the *Design-Builder* will assume full responsibility for completion of the *Project*, notwithstanding any defect or deficiency or incompleteness in any of the foregoing, it being acknowledged that since the *Design-Builder* prepared the *Pre-Construction Design Documents*, and that since this is intended to be a turnkey contract, the *Design-Builder* is taking the risk of any defects, deficiencies or incompleteness in any of the foregoing For certainty,

the reference to incompleteness of the Contract Document contained in this section does not refer to a change in the scope or quality of the *Project* required by the *Owner* that is unrelated to an error or omission by the *Design-Builder* in the design of the *Project* or the preparation of any of the Contract Documents.

ARTICLE A-4 CONTRACT PRICE

Add:

- “4.6 The *Contract Price* includes all costs of the *Work*, including, without limitation, all costs incurred in the design and construction of the *Work*, whether foreseen or unforeseen, save and except for those costs which are the responsibility of the *Owner* as specifically set out in this *Contract* (including the *Cost Matrix*, and the *Contract Price* shall include, without limitation:
- .1 all professional design, engineering and construction services and *products* reasonably necessary to properly perform the *Work* and to permit the *Project* to operate as contemplated following *Substantial Performance of the Work*, other than those specified as the *Owner's* responsibility in the *Cost Matrix*;
 - .2 all labour and materials, other than those specified as the *Owner's* responsibility in the *Cost Matrix*;
 - .3 all permits, fees, licences and certificates of inspection and insurance in connection with the *Work* required by all authorities having jurisdiction including residential builder licensing fees, the building permit, the plumbing, electrical, sewer, water, and gas connections permits, and the gas, electricity and telephone service connection fees,, other than those specified as the *Owner's* responsibility in the *Cost Matrix*;
 - .4 all inspections required for specific warranty conditions, other than those specified as the *Owner's* responsibility in the *Cost Matrix*;
 - .5 all inspections by all authorities having jurisdiction, other than those specified as the *Owner's* responsibility in the *Cost Matrix*;
 - .6 all material testing required under bylaws, ordinances, rules, regulations, orders and approvals of all public authorities having jurisdiction;
 - .7 any surveying work to create a separate legal parcel containing the *Project* specified in the *Cost Matrix*, and an updated survey of the *Place of the Work* prepared by a British Columbia Land Surveyor confirming the exact area of the property, the location of all registered easements or statutory rights of way, and confirming that the position of the buildings, including foundations and overhangs, building heights and finish grades comply with all municipal requirements;
 - .8 all required soils reports other than those specified as being the *Owner's* responsibility in the *Cost Matrix*;

- .9 a *Project* sign mutually agreed to between the *Owner* and the *Design-Builder*;
- .10 all warranties required under the *Contract*;
- .11 all bonds required under the *Contract*;
- .12 all insurance the *Design Builder* is required to obtain under the *Contract*;
- .13 the construction or installation of all off site services or payments in lieu thereof as may be required by all authorities having jurisdiction to be constructed or installed as a condition of the construction of the *Project*, , other than those specified as the *Owner's* responsibility in the *Cost Matrix*;
- .14 one complete set of white prints and CAD file of all as built *drawings* for the *Project*; and
- .15 all requirements of any subdivision, site plan, development or other agreement with the municipality other than those specified as being the responsibility of the *Owner* in the *Cost Matrix*."

ARTICLE A-5 PAYMENT

Delete Article A-5.2 in its entirety.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

Remove all references to facsimile.

Add as Article A-9 through A-11

ARTICLE A-9 THE CONSULTANT

- 9.1 The *Design-Builder* shall not change any *Sub-Consultant* without cause and without the written consent of the *Owner*, which consent will not be unreasonably withheld. The *Consultant* shall not be changed except in accordance with paragraph 2.1.3 of GC 2.1.

The *Design-Builder* will ensure that the *Consultant* and all *Sub-Consultants* will sign an agreement and acknowledgement with the *Owner* in which such party:

- .1 agrees that, without regard to payment by the *Design-Builder*, the *Owner*, its successors and assigns, will have a licence to use the *Contract Documents* for the purposes of the *Project* and such party will act in an even-handed fashion in the administration of the *Contract*; and

Notwithstanding such agreements, acknowledgements and assignments, the *Design-Builder* will remain fully liable for defects or deficiencies in the *Work*, even if the parties to such agreements and acknowledgements are also liable.

ARTICLE A-10 INSPECTION AND TURNOVER

- 10.1 The *Work* shall be completed and turned over to the *Owner*, with the *Work* being completed, ready for use, delivered and turned over to the *Owner* on or before the date referred to in Article 1.3.
- 10.2 During the course of *Construction*, the parties and their representatives will meet for a completion inspection of the *Work* in order to compile a list of readily visible defects at the earliest possible time. The *Design-Builder* shall ensure that the *Work* is available and ready for such inspection no later than three *Working Days* prior to the scheduled date of *Substantial Performance of the Work*.
- 10.3 The *Design-Builder* shall be responsible for inspecting the *Work* of its *Subcontractors* from time to time and ensuring that they, or the *Design-Builder's* own forces, correct all defects shown on the lists resulting from such inspections prior to the further inspection procedure set out below.
- 10.4 The *Design-Builder* will arrange with the *Consultant*, the *Owner* and the *Owner's Advisor* for a further inspection of the *Work* on the scheduled date of *Substantial Performance of the Work* in order to compile a further list of any remaining readily visible defects.
- 10.5 All defects set out on the lists compiled at the meeting referred to in Articles 12.2 and 12.4 shall be repaired by the *Design-Builder* as soon as possible.
- 10.6 Upon completion of that portion of the *Construction* that comprises of exterior work and landscaping, the parties or their representatives shall meet and compile a list of readily visible defects in such exterior work and landscaping.
- 10.7 In addition to the inspections referred to above, the *Design-Builder* shall be responsible for all electrical, plumbing, and other inspections required by any code or *Governmental Authority* and paying for all permits and inspection fees required by any *Governmental Authority*, other than those specified as the *Owner's* responsibility in the *Cost Matrix*. The *Design-Builder* shall be responsible for making appropriate arrangements with the *Consultant* for all of the *Consultant's* inspections required by the *Contract Documents* or by *Applicable Laws*.

ARTICLE A-11 TIME OF THE ESSENCE

- 11.1 All time limits stated in this *Contract* are of the essence of the *Contract*."

DEFINITIONS

Substantial Performance of the Work

Delete and replace with the following:

“Substantial Performance of the Work shall have been reached when:

- .1 the Work is ready for use or is being used for the purpose intended and is so certified by the Consultant; and*
- .2 a Certificate of Completion has been issued for the Work as a whole.”*

“Statement of Requirements

Delete and replace with the following:

“Statement of Requirements” means the Issues for Tender Drawings

“Builders Lien Act

Builders Lien Act means the Builders Lien Act, S.B.C. 1997, c.45, as amended, and all regulations thereto, and any successor legislation in the Province of British Columbia in relation to builders liens.

Certificate of Completion

A Certificate of Completion is a certificate of completion as defined in the Builders Lien Act issued by the Payment Certifier.”

Cost Matrix

*Cost Matrix means the CRD – Field Operations Building Cost Allocation Matrix dated **INSERT DATE.***

Pre-Construction Design Documents

*Pre-Construction Design Documents means those documents created by the Design Builder pursuant to Contract **INSERT NAME AND DATE OF DESIGN SERVICES AGREEMENT**, as referred to in Article A-3.1.*

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

1.1.6.1 Delete and Replace with the following:

“.1 the order of priority of documents, from highest to lowest, shall be:

- - *Supplementary Conditions,*
- - *the Agreement between the Owner and the Design Builder,*
- - *the Definitions,*
- - *the General Conditions,*
- - *the Cost Plan,*
- - *the Construction Documents,*
- - *the Owner’s Statement of Requirements,*
- - *the Pre-Construction Design Documents.*
-

1.1.8: Delete and replace with the following:

“The *Owner* may retain copies, including reproducible copies, of plans, sketches, *Drawings*, graphic representations, and *Specifications* for information and reference in connection with the *Owner’s* use and occupancy of the *Work*, The *Owner* and its successors and assigns may use the copies for use purposes and for additions or alterations to the *Project*, without obtaining any consent or permission or making any payment. The *Design-Builder* warrants that it has and shall obtain any and all waivers, assignments and approvals needed to confer this perpetual right and license.”

GC1.2 OWNER SUPPLIED INFORMATION

Delete GC 1.2.4 to 1.2.8

Insert a new GC 1.24 as follows:

The Parties recognize that the *Owner’s Statement of Requirements* for the purposes of the *Project* are the *Issued for Tender Drawings* prepared by the *Design Builder*. Any change to the *Statement of Requirements* resulting from an *Owner* requested change to the *Project* scope or quality shall be the responsibility of the *Owner*. Any change due to defects or deficiencies in the *Statement of Requirement*, interpretations by authorities having jurisdiction that differ from the *Design-Builder’s* interpretation of statutes, regulations, codes or bylaws, in drafting the *Statement of Requirements*, or any other change, shall be at no cost to the *Owner*.

GC1.3 RIGHTS AND REMEDIES

Add:

“1.3.3 No inspection, review, approval, consent or any other act or omission on the part of the *Owner* or the *Payment Certifier* shall relieve the *Design-Builder* of any obligations under the *Contract* to complete the *Work* strictly in conformance with all applicable plans and *specifications*.”

Add a new GC 1.6 as follows:

“GC 1.6 RECORDS AND AUDIT

The *Design-Builder* will keep and maintain full and detailed records for two years after expiry of the warranty period pursuant to Part 12 all records, reports and other documentation required under this *Contract*. During this period, the *Owner*, the *Consultant* and the *Owner*’s representatives may on request, and acting reasonably, require copies of and inspect all books, invoices and records of the *Design-Builder* that relate to any *Change Order*, *Change Directive*, delay claims or disputes by the *Design-Builder*, including but not limited to quotations and invoices by *Subcontractors* or *Suppliers*.

PART 2 OWNERS RESPONSIBILITIES

GC 2.1 OWNER’S INFORMATION

In paragraph 2.1.2, delete “without regard for the source of such information”.

Add the following new paragraph 2.1.4:

“2.1.4 Promptly following the execution of the *Contract*, the *Design-Builder* shall review the *Contract Documents*, including the *Owner’s Statement of Requirements*, and shall promptly notify the *Owner* in writing of any significant error, inconsistency, discrepancy or omission that the *Design-Builder* may discover in the *Contract Documents*, including the *Owner’s Statement of Requirements*. For certainty, the reference to an error of the *Contract Document* contained in this section does not refer to a change in the scope or quality of the *Project* required by the *Owner* that is unrelated to an error or omission by the *Design-Builder* in the design of the *Project* or the preparation of any of the *Contract Documents*. If the *Design-Builder* does discover any significant error, inconsistency, discrepancy or omission in the *Owner’s Statement of Requirements* or any of the *Contract Documents*, the *Design-Builder* shall not proceed with the *Design Services* or the *Work* affected until the *Design-Builder* and the *Owner* have discussed and agreed how the documents should be interpreted, or how the information should be corrected or supplied. In the event that the *Design-Builder* and the *Owner* are unable to reach an agreement regarding how the information or documentation, or both, should be corrected or supplied, then the *Consultant* shall, acting reasonably, determine how the information should be corrected or supplied in order for the *Work* to proceed and the *Design-Builder* shall proceed to continue with the *Design Services* and the *Work*, subject to any directions issued by the *Consultant* or changes that are the subject of a *Change Order* or *Change Directive*. In the event that the *Design-Builder* is delayed in performance of the *Work* by any changes made to the *Design Services* or the *Work* in accordance with the provisions set out herein, then the *Contract Time* shall be extended for such reasonable time as agreed between the *Owner* and the *Design-Builder*.”

GC2.4 ROLE OF THE PAYMENT CERTIFIER

Add:

“2.4.10 The *Payment Certifier* will conduct reviews of the Work from time to time and, based upon such reviews will determine the date of *Substantial Performance* of the Work, issue *Certificates of Completion* for all or designated portions of the Work and identify and estimate values for deficient and incomplete items of work as provided in GC5.4 SUBSTANTIAL PERFORMANCE OF THE WORK, GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, GC5.6 PROGRESSIVE RELEASE OF HOLDBACK and GC5.7 FINAL PAYMENT.”

GC 2.5 OWNER’S REVIEW AND INSPECTION OF THE DESIGN AND THE WORK

In paragraph 2.5.3 insert “its sole” before “responsibility” and insert “expressly in writing” after “accepts”. Add the following to the end of the paragraph: “The parties acknowledge that For certainty, the reference to omissions contained in this section does not refer to a change in the scope or quality of the *Project* required by the *Owner* that is unrelated to an omission by the *Design-Builder* in the design of the *Project* or the preparation of any of the Contract Documents.

In paragraph 2.5.4 change “10 days” to “10 *Working Days*” and replace the last sentence with “The *Design-Builder* shall not make any revisions to the accepted Construction Documents not requested by the *Owner*, except by complying again with the requirements of this GC2.5”.

Add new paragraph 2.5.6:

“2.5.6 Nothing in the *Contract*, including any review or acceptance or opportunity to review or accept the design, shall make the *Owner* or the *Owner’s Advisor* responsible for the design of the *Work*, the *Drawings* and *Specifications* or any other aspect of the *Work* or any other *Contract Documents* prepared by or on behalf of the *Design--Builder*, including compliance of any of the foregoing with the *Owner’s Statement of Requirements* and other requirement of the *Contract* and the *Design--- Builder* shall, notwithstanding any review or acceptance of any of the foregoing under the *Contract*, remain solely liable and responsible for compliance of the foregoing with the *Owner’s Statement of Requirements* and all other requirements of the *Contract*.”

Add the following:

2.5.7 If the *Owner* or public authorities having jurisdiction over the Place of Work determine that portions of the Design Services or Work require additional testing, inspection or approval not included under the Contract Documents, the *Owner* will instruct the *Design-Builder* to make arrangements for such additional testing, inspection or approval by an entity acceptable to the *Owner*, and the *Design-Builder* shall give timely notice to the *Owner* of when and where tests and inspections are to be made so that the *Owner* may be present for such procedures. All costs of such additional testing, inspection or approval shall be at the *Owner’s* expense and the Contract Price shall be increased by Change Order for such time and amount as documented by the *Design Builder*.

GC2.6 WORK BY OWNER OR OTHER CONTRACTORS

Delete 2.6.2.2

Add:

“2.6.3.4 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the *work* of other contractors.

2.6.3.5 as it applies to applicable health and construction safety legislation at the *Place of the Work* the *Design-Builder* shall assume overall responsibility and be designated as the “*Prime contractor*” in accordance with GC 9.4 Construction Safety.

2.6.3.6 If the *Design-Builder* has caused damage to the *work* of another contractor on the *Project*, the *Design-Builder* agrees to settle the matter with the other contractor by negotiation or arbitration. If the other contractor makes a claim against the *Owner* on account of damage alleged to have been so sustained, the *Owner* shall notify the *Design-Builder* and may require the *Design-Builder* to defend the action at the *Design-Builder's* expense if the claim is not covered by any insurance required to be obtained by the *Owner* pursuant to this Agreement. The *Design-Builder* shall satisfy a final order or judgment against the *Owner* and pay the costs incurred by the *Owner* arising from such action. Paragraph 12.2.6.2 of GC 12.1 INDEMNIFICATION shall apply.”

PART 3 DESIGN-BUILDER'S RESPONSIBILITIES

GC3.1 CONTROL OF THE WORK

Add to the end of 3.1.1:

“The *Design-Builder* warrants and represents that it possesses and will provide and apply all the skill, expertise and experience normally provided in the performance of professional design and construction services and reasonably required to complete the *Design Services* and the *Work* and ensure that the *Design Services* and *Work* are performed in a good, proper and workmanlike manner.”

GC3.3 ROLE OF THE CONSULTANT

Add:

“3.3.4 The *Consultant's* duties and responsibilities will include, without limitation:

- .1 The coordination required to integrate all parts of the design of the *Work*;
- .2 The provision of assistance to the *Design-Builder* to obtain approvals, permits, and licenses for the construction of the *Work*;
- .3 The conducting of general review of the progress of the construction, to the extent necessary, in order to determine to the *Consultant's* satisfaction that the

construction of the *Work* is performed in compliance with the requirements of:

- (1) the *Contract Documents*; and
- (2) the applicable statutes, regulations, codes, and bylaws of all authorities having jurisdiction over the *Work*;

- .4 The assurances required to regulatory authorities respecting substantial conformance of the design with the applicable building regulations, excluding construction safety issues;
- .5 The reviewing of any defects or deficiencies in the *Work* during the period described in GC 12.5 – WARRANTY and the issuance of appropriate instructions for the correcting of same; and
- .6 Such other *work* that may be required from time to time that is agreed to by the *Design-Builder*, the *Consultant*, and the *Owner* in writing.

3.3.5 The *Consultant* will deliver a copy of any *Supplemental Instructions* to the *Owner* at the same time as they are delivered to the *Design-Builder* and such *Supplemental Instructions* will not be effective until confirmed by the *Owner* if they are:

- .1 Inconsistent with items in the *Contract Documents*; or
- .2 Material or substantial.”

GC3.4 OTHER CONSULTANTS, SUBCONTRACTORS AND SUPPLIERS

3.4.2 Add to the end of the section:

“The *Design-Builder* shall not change any *Subcontractor* without cause and without the written consent of the *Owner*, which consent will not be unreasonably withheld.”

GC3.6 DESIGN SERVICES AND WORK SCHEDULE

Add new paragraphs 3.6.1.4 to 3.6.1.8 as follows:

- “4 provide the expertise and resources, such resources including manpower and equipment, as are necessary to maintain progress under the accepted baseline schedule of the Design Services and the *Work* or any successor or revised schedule;
- .5 monitor the progress of the *Design Services* and the *Work* on a weekly basis relative to the schedule reviewed and accepted pursuant to paragraph 3.4.1.1, or any successor or revised schedule accepted by the *Owner* pursuant to GC 3.4 – SCHEDULE OF THE WORK;
- .6 if, after applying the expertise and resources required under paragraph 3.6.1.4, the *Design--Builder* forms the opinion that the slippage in the accepted baseline schedule

reported in paragraph in 3.6.1.4 cannot be recovered by the *Design--Builder*, promptly provide notice to the *Owner* if the *Design--Builder* intends to apply for an extension of *Contract Time* as provided in PART 6 of the General Conditions --- CHANGES IN THE CONTRACT;

- .7 meet regularly with the *Owner's* project team with the frequency and at the times as the *Owner* may reasonably determine; and
- .8 in the event that the *Design Services* or the *Work* is not progressing in a manner to meet the schedule of the *Design Services* and *Work* as described in the *Contract*, follow the procedure below:
 - (1) within 7 days of receiving a written request from the *Owner*, provide a written report to the *Owner* detailing how the *Design-BUILDER* proposes to achieve the recovery of the schedule;
 - (2) if the *Owner*, acting reasonably, agrees with the *Design-BUILDER's* plan for achieving the recovery of the schedule, promptly and diligently implement such plan;
 - (3) if the *Owner* does not agree with the *Design-BUILDER's* plan to achieve the recovery of the schedule, promptly revise the plan accordingly and re-submit it to the *Owner* for the *Owner's* approval;
 - (4) the procedure shall be repeated until such time as the *Owner* agrees with the *Design-BUILDER's* plan to achieve the recovery of the schedule;
 - (5) all actions that the *Design-BUILDER* takes to achieve the recovery of the schedule shall be at the sole cost of the *Design-BUILDER*;

3.6.2 The *Design-BUILDER* shall not be entitled to payment for any costs incurred in preparing any recovery plan or the implementation of any recovery plan accepted by the *Owner* in accordance with paragraph 3.6.1.8, unless the cause for the slippage in the schedule is caused by a breach of the obligations of the *Owner* or the acts or omissions of the *Owner*;

3.6.3 If the *Design-BUILDER* intends to apply for a change in the *Contract Price* in relation to a schedule recovery plan, the *Design-BUILDER* shall provide written notice to the *Owner* within 5 *Working Days* of the event giving rise to the claim for a change in the *Contract Price* detailing the basis for the claim and shall proceed in accordance with PART 6 of the General Conditions - CHANGES IN THE CONTRACT.

3.6.4 Approval by the *Owner* of any plan to achieve the recovery of all or part of the schedule shall not derogate from the *Design-BUILDER's* responsibility for complying with the *Contract*, including Article A-1."

GC3.8 LABOUR AND PRODUCTS

Add:

“3.8.4 A *Product*, construction method or system singly named is considered exclusive and its use is mandatory, unless an equal is approved in advance by the *Owner*. Where plurally named, each named *Product*, construction method or system is approved for use under the *Contract Documents* and the choice rests with the *Design-Builder*.

3.8.5 All *Products* shall be used strictly according to manufacturers’ printed directions or recommendations unless specifically stated otherwise in the *specifications*. All *Products* shall be properly packed for delivery, must be delivered in their original containers, crates or wrappings, etc. as applicable and must be clearly identified with manufacturers’ name and address, *product* type and name. All *Products* shall be stored as recommended by the manufacturer and kept dry at the recommended temperature where applicable. Any damaged *Products* shall be rejected, and the *Design-Builder* shall remove such *Products* from the *Place of the Work* at the *Design-Builder’s* own expense.

PART 5 PAYMENT

GC5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

Delete GC 5.1 in its entirety.

Add the following:

5.1.3 The Owner shall furnish to the Design-Builder within fifteen days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce builder’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein at the time of execution of the Contract and, within five days after change, information of such change in title, recorded or unrecorded.

GC5.2 APPLICATIONS FOR PROGRESS PAYMENT

5.2.3 In line 2, delete: “and *Products* delivered to the *Place of the Work*”.

At the end thereof, add:

“No claim will be made by the *Design-Builder*, and no payment will be made by the *Owner*, for *Products* fabricated for the *Project* but stored off-site, or for *Products* delivered to the *Place of the Work* but not incorporated into the *Project* unless in the opinion of the *Payment Certifier* the *Products* will be installed within 30 calendar days of delivery, or as otherwise agreed to in writing by the *Owner*.”

Add at the end of paragraph 5.2.5:

“The schedule of values shall be prepared in such a manner that each major item of *work* and each

subcontracted item of *work* is shown as a separate line item and, in the case of each subcontract, shall accurately represent the related scope of work and subcontract price, and the *Consultant* and the *Owner* shall be entitled to rely on same. Separate amounts shall be shown for initial start-up, continuing expenses and *Project* closeout. A schedule stating the anticipated monthly progress payments shall be submitted with the schedule of values.”

Add at the end of paragraph 5.2.8:

“The *Design-Builder* shall submit one copy of all applications for payment and all applications for payment, except the first, shall be accompanied by a form of statutory declaration approved by the *Owner* completed and sworn before a Notary Public or a Commissioner for Oaths for the Province of British Columbia, which statutory declaration must include a statement that all accounts for labour, subcontracts, *Products*, construction machinery and equipment and other indebtedness which may have been incurred by the *Design-Builder* in the performance of the *Work* covered by the immediately preceding progress claim, and for which the *Owner* might in any way be held responsible, have been paid in full, except holdback monies properly retained.”

Add:

“5.2.9 Before any payment is made by the *Owner* to the *Design-Builder*, the *Payment Certifier* or the *Owner* may, by written notice, require that the *Design-Builder* furnish such further detailed information as the *Payment Certifier* or the *Owner* may determine is necessary to establish compliance by the *Design-Builder* with the *Contract Documents*.

5.2.10 Every application for payment shall identify the *Value Added Taxes* payable by the *Owner* to the *Design-Builder* as a separate entry.”

GC5.3 PROGRESS PAYMENT

5.3.1 Delete and replace with the following:

“No certificate for payment will be issued for any of the *Work* and no payment shall be approved, authorized or made unless the *Design-Builder* has provided all documents as required to be provided at that time under this *Contract*. After the receipt of a complete application for payment from the *Design-Builder* submitted in accordance with GC5.2 APPLICATIONS FOR PROGRESS PAYMENT, the *Payment Certifier* will issue to the *Owner*, within ten (10) calendar days, a certificate for payment in the amount applied for or in such other amount as the *Payment Certifier* determines to be properly due, provided that if the *Payment Certifier* amends the application, the *Payment Certifier* will promptly notify the *Design-Builder* in writing giving reasons for the amendment.”

Add:

5.3.2 “The *Owner* shall make payment of 90% of the amount as determined by the *Payment Certifier* to be due to the *Design-Builder* on account in accordance with the provisions of Article A-5 PAYMENT no later than 20 calendar days after the certificate for payment has been issued, provided that the *Owner*, at its sole and absolute discretion, may retain out of such payment the amount of any outstanding liens or claims or any other indebtedness which may have been

incurred by the *Design-Builder* in performing the *Work* and for which the *Owner* may in any way be held responsible. “Other indebtedness” means only such debts incurred by the *Design-Builder* to persons in privity of *contract* with the *Design-Builder*, debts arising out of statutory requirements and, in the case of the *Design-Builder’s* workers, any debts arising out of collective bargaining agreements, legislation applying to workers compensation, employment insurance and minimum wage standards where applicable. Upon request by the *Owner*, the *Design-Builder* shall forthwith provide a full accounting as to the disbursement of all monies paid by the *Owner* to the *Design-Builder*, including a complete list of all persons to whom monies remain due and the amounts due.”

GC 5.4 SBUSTANTIAL PERFORMANCE OF THE WORK

5.4.1 Delete “permitted by the lien legislation applicable to the *Place of the Work* on the first two lines.

5.4.1: Add at the end of paragraph

“The *Design-Builder* shall submit the following documents and items with its request for *Substantial Performance* review by the *Consultant*. These requirements do not limit the *Design-Builder’s Substantial Performance* obligations noted elsewhere in the *Contract*. A deficiency holdback will be retained for the estimated value of correcting or supplying the following items until they are all submitted, reviewed and accepted by the *Payment Certifier*.

- .1 The list of all deficient and incomplete items of *work* including the estimated value of each item;
- .2 Complete reports including a balancing report for the mechanical system and certification by all testing, or inspection authorities or associations as specified in the *Contract Documents*;
- .3 A complete demonstration of all mechanical and electrical systems and electrically operated devices to the *Owner’s* operating and maintenance staff and any training required by the *specifications*, to the *Owner’s* satisfaction;
- .4 All maintenance manuals, operating instructions, maintenance and operating tools, replacement parts or materials and warranties as specified in the *Contract Documents*;
- .5 A complete set of marked up construction *drawings* and other data in the form specified in the *Contract Documents*, or as required by the *Consultant*, for the production of as built *drawings* to show all significant *Changes to the Work* made during construction;
- .6 Current certification by the Workers Compensation Board that the *Design-Builder* and all *Subcontractors* are in good standing;
- .7 A statement that all claims and demands for extra *work* or otherwise, under or in connection with the *Contract*, have been presented to the *Payment Certifier* and that the *Design-Builder* expressly releases the *Owner* from all claims and demands except those made in writing prior to that date and still unsettled;

- .8 A statutory declaration in accordance with paragraph 5.2.8 of the Supplementary Conditions of the *Contract*;
- .9 A survey of the *Place of the Work* specified in the *Cost Matrix* prepared by a British Columbia Land Surveyor confirming the exact area of the property, the location of all registered easements or statutory rights of way, and confirming that the position of the buildings, including foundations and overhangs, building heights and finish grades comply with all municipal requirements; and
- .10 All keys required for the entire *Project*.”

5.4.3 Delete and replace with the following:

“Upon receipt of the *Design-Builder*’s request for issuance of a *Certificate of Completion* for all or a designated portion of the *Work*, the *Payment Certifier* will forthwith review the *Work* to verify the validity of the request and, no later than 10 calendar days after the date of the request, will notify the *Design-Builder* and the *Owner* whether the *Work*, or the designated portion of the *Work*, is substantially performed by delivery of the applicable *Certificate of Completion*, together with verification of the holdback amount to be released pursuant to the *Builders Lien Act* with respect to any subcontract. With respect to a request from the *Design-Builder* for a review by the *Payment Certifier* for issuance of the *Certificate of Completion* for the *Work* in its entirety, the *Payment Certifier* will, in addition to making an inspection and assessment of the *Work* to verify the validity of the request, establish a list of all deficient and incomplete items of *work* as confirmed or provided by the *Consultant*, including an estimated value for each item, subject to the approval of such value by the *Owner*. The *Design-Builder* shall be responsible for all additional costs incurred by the *Owner* for inspection of the *Work* prior to the *Design-Builder* meeting all requirements set out in paragraph 5.4.1, and such costs shall be deducted from the monies due to the *Design-Builder* upon *Substantial Performance of the Work*. This shall not in any way be construed as limiting the applicant of the *Builders Lien Act*.”

5.4.5 Delete and replace with the following:

“Immediately following the issuance of the *Certificate of Completion* for the *Work*, the *Design-Builder*, in consultation with the *Consultant* and the *Owner*, will establish a reasonable date for finishing the *Work*.”

Add:

“5.4.6 No later than 30 calendar days following issuance of the *Certificate of Completion* for the *Work*, the *Design-Builder* shall provide to the *Owner* all service contracts, manufacturer’s inspections, certifications, guarantees and warranties and assignments of all guarantees and warranties as specified in the *Contract Documents*.

5.4.7 No later than 30 calendar days following issuance of the *Certificate of Completion* for the *Work*, the *Owner* shall pay to the *Design-Builder* the balance of the *Contract Price* less:

- .1 Any holdback monies as required by the *Builders Lien Act* to be released in accordance with GC5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL

PERFORMANCE OF THE WORK;

- .2 The aggregate amount, if any, determined pursuant to paragraph 5.4.3 multiplied by two; and
- .3 The amount, if any, determined pursuant to GC5.8 DEFERRED WORK.

And until all of the deficient and incomplete *work* for which amounts are withheld pursuant to subparagraphs .2 and .3 of this paragraph 5.4.7 are rectified and completed to the satisfaction of all of the *Consultant* and the *Owner*, the *Owner* may withhold the full amounts set out in subparagraphs .2 and .3 of this paragraph 5.4.7 respectively.

- 5.4.8 The *Design-Builder* shall complete the deficient and incomplete *work* speedily and at the discretion and convenience of the *Owner*. Acceptance of the *Work* or occupancy of the *Project* or any portion thereof by the *Owner*, the *Payment Certifier* or *BC Housing* shall not relieve the *Design-Builder* from the obligation of correcting deficiencies which are missed at the time of drawing up the list of deficient and incomplete items of *work* or those hidden deficiencies which become apparent during the warranty period.”

GC5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 In line 1, delete “the *Certificate of Substantial Performance of the Work*” and replace with the following “the *Certificate of Completion for the Work*”.

Add:

- “.3 If specifically requested by the *Owner*, submit acknowledgements by the major *Subcontractors* and *Suppliers* that they have been paid in full, except for amounts properly retained as holdbacks, and that they have received notification of *Substantial Performance of the Work* by delivery of a notice that the *Certificate of Completion for the Work* has been issued, and
- .4 Submit a statement that all claims and demands for extra *work* or otherwise, under or in connection with the *Contract*, have been presented to the *Payment Certifier* and that the *Design-Builder* expressly releases the *Owner* from all claims and demands except those made in writing prior to that date and still unsettled.”

- 5.5.2 Delete and replace with the following:

“The *Payment Certifier* shall be the payment certifier responsible under the *Builders Lien Act* for certifying substantial completion of the *Work* and, if required, the *work* of a *Subcontractor* or *Supplier*, and for issuing a *Certificate of Completion*. The *Design-Builder* shall promptly provide the *Payment Certifier* with all information and documentation requested by the *Payment Certifier* to assist the *Payment Certifier* in making its inquiries and determinations for issuing a *Certificate of Completion*, including without limitation for *Subcontractors* and *Suppliers*, and shall indemnify and save the *Owner* and the *Payment Certifier* harmless from all liability arising from a failure to issue a *Certificate of Completion* when required, or from a premature issuance of a *Certificate of Completion* for a *Subcontractor* or *Supplier*, arising directly or indirectly from

a failure to promptly provide complete and accurate information and documentation requested by the *Payment Certifier*.”

5.5.3 Delete.

5.5.5 Delete.

GC5.6 PROGRESSIVE RELEASE OF HOLDBACK

5.6.1 Add the following to the end of the first sentence:

“provided that:

- .1 The *Payment Certifier* has issued a *Certificate of Completion* for such subcontract work or the *Products* supplied by such *Supplier*; and
- .2 The *Design-Builder* and the *Owner* jointly agree to release the holdback amount retained for such subcontract work or the *Products* supplied by such *Supplier*.”

GC5.7 FINAL PAYMENT

5.7.1 Add at the end of paragraph

“The *Design-Builder* may apply for final payment when the entire *Work*, except those items arising from the provisions of GC12.5 WARRANTY, has been performed to the requirements of the *Contract Documents*; all building systems have been brought to a state of full readiness for operation in accordance with the *Contract Documents* to the satisfaction of the *Consultant* and the *Owner*; all deficient and incomplete work previously identified has been rectified or completed to the satisfaction of the *Payment Certifier*; all cleanup has been performed (including (a) removal of waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, leaving the *Place of the Work* clean and suitable for use or occupancy by the *Owner* and (b) removal of any remaining products, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris, other than those resulting from the work of the *Owner*, other contractors or their employees; all landscaping has been completed in accordance with the *Contract Documents* to the satisfaction of the *Consultant* and the *Owner*; and when the *Design-Builder* has submitted to the *Owner* all of the following:

- .1 Current certification by the Workers Compensation Board that the *Design-Builder* and all *Subcontractors* are in good standing;
- .2 Proof of release and discharge of any builders or other liens;
- .3 Special *Project Possession* and Warranty Certificates pursuant to the applicable warranty program;
- .4 If specifically requested by the *Owner*, satisfactory evidence that all taxes, employment insurance premiums, Canada Pension Plan contributions, duties,

royalties, and all other monies required by law to be paid by the *Design-Builder* have been paid in full;

- .5 A statutory declaration in accordance with paragraph 5.2.8; and
- .6 One set of white prints and CAD file of all as built *drawings* for the *Project* satisfactory to the *Owner*, showing all significant changes in the *Work* made during construction.”

5.7.2 Add at the end of paragraph

“The *Design-Builder* shall be responsible for all additional costs incurred by the *Owner* for review and inspection of the *Work* where previously identified deficient or incomplete *work* has not been rectified or completed in a manner satisfactory to all of the *Owner*, and the *Consultant*, making additional inspections by the *Payment Certifier* necessary, or where the *Design-Builder* has failed to satisfy all requirements set out in paragraph 5.7.1 and such costs shall be deducted from the monies due to the *Design- Builder* upon issuance of the final certificate for payment.”

5.7.4 In line 2, delete the number “5” and replace with the number “20”.

Add at the end thereof:

“less any monies properly retained by the *Owner* pursuant to the terms of this *Contract* and less any other third party monetary claims against the *Design-Builder* which are enforceable against the *Owner*.”

PART 6 CHANGES IN THE WORK

GC6.1 OWNER’S RIGHT TO MAKE CHANGES

Add:

- “6.1.3 Any substitution of *Products* specified in the *Contract Documents* must be approved by the *Owner* in writing prior to such substitution or variation.”

GC6.2 CHANGE ORDER

6.2.1 Add at the end:

“The adjustment for the *Contract Price* shall not exceed the actual cost of the *Design- Builder’s work* for the change in the *Work*, plus an allowance for overhead and profit as follows:

- .1 For the *Design-Builder*, for overhead and profit, 15% of the actual cost of the *Design-Builder’s work*;
- .2 For the *Design-Builder*, for overhead and profit, 7.5% of the amount for the *Subcontractor’s work*, being the actual cost of the *Subcontractor’s work* plus the amount determined as set out in subparagraph .3 below;

6.2.2. Add at the end:

For certainty, no change to the *Statement of Requirements* shall result in an increase to the *Contract Price*, unless the change is the request of a request by the *Owner* to amend the *Project* scope or quality.

- .3 For the *Subcontractor*, for overhead and profit, 15% of the actual cost of the *Subcontractor's work*."

Add:

"6.2.4 If a change in the *Work* results in a net decrease in the *Contract Price*, the amount of the credit shall be the net cost, without deduction for overhead and profit. When both additions and deletions covering related work or substitutions are involved in a change in the *Work*, the allowance for overhead and profit shall be calculated on the basis of the net increase, if any, with respect to that change in the *Work*.

6.2.5 Where requested by the *Consultant*, the *Design-Builder* shall promptly provide itemized labour and material cost and quantity breakdowns, *subcontractor* costs, and other detailed information required to substantiate the *Design-Builder's* claim for a change to the *Design-Builder Price* or *Contract Time*."

GC6.3 CHANGE DIRECTIVE

6.3.6 Add:

"3 Unless otherwise agreed between the *Owner* and the *Design-Builder*, the allowance for overhead and profit shall be calculated as follows:

- .1 For the *Design-Builder*, for overhead and profit, 15% of the actual cost of the *Design-Builder's work*;
- .2 For the *Design-Builder*, for overhead and profit, 7.5% of the amount for *Subcontractor's work*, being the actual cost of the *Subcontractor's work* plus the amount determined as set out in subparagraph .3 below;
- .3 For the *Subcontractor*, for overhead and profit, 15% of the actual cost of the *Subcontractor's work*."

Add the following as GC 6.3.8:

6.3.8 For certainty, no change to the *Contract Price* will occur as a result of a change to the *Statement of Requirements*, unless the change is to *Project* scope or quality.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

Insert a new paragraph 6.4.01 as follows:

- “6.4.01 The *Design-Builder* confirms that prior to bidding the *Work*, it has investigated the *Place of the Work* and applied to that inspection the *Customary Industry Standards* and completeness of information provided by the *Owner*. Notwithstanding any other provision of the *Contract*, the *Design--Builder* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably been ascertained by the *Design-Builder* by such investigation undertaken prior to the execution of the *Contract*.”

Insert the following before the comma at the end of 6.4.1.2:

“(collectively “Concealed or Unknown Conditions”)”

GC6.5 DELAYS

Add the following words to paragraph 6.5.1 before the period at the end of paragraph 6.5.1:

“which includes an amount for Overhead and Profit as if the delay was authorized by a Change Order but excludes any consequential, indirect or special damages or any other damages for loss of profit or loss of business.”

- 6.5.3.4 In line 1, after the words “any cause beyond the Design-Builder’s control”, insert:

“except for any cause related to the inability or unwillingness of the Design-Builder to make payments of monies for which the Design-Builder is responsible for”

Add the following after “... the Design-Builder agrees to a shorter extension.”:

“Any such extension of time shall be deemed to be in full and final satisfaction for all actual and probable losses, claims, damages, causes of action or injuries sustained or sustainable by the Design-Builder in respect of any such extension.”

Add:

- “6.5.6 During any delays in the performance of the Work as set out in GC6.5 DELAYS, the Design-Builder shall maintain adequate surveillance of the Work and undertake such maintenance and protection of the Work as may be reasonable to maintain safety and when possible to protect Products already installed in the Work or delivered to the Place of the Work.”

PART 7 RIGHT TO SUSPEND OR TERMINATE

GC7.2 OWNER’S RIGHT TO TERMINATE THE DESIGN-BUILDERS RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORK OR TERMINATE THE CONTRACT

- 7.2.1 In line 1, after the word bankrupt, insert “commits an act of bankruptcy or threatens to commit an act of bankruptcy,”

“7.2.7 Except as provided in paragraphs 7.2.8, the *Design-Builder* shall have no claim or right of action against the *Owner* for any damages, costs, expenses, loss of profits or otherwise as a result of the termination by the *Owner* of the *Design-Builder’s* right to continue with the *Work* in whole or in part or the termination by the *Owner of the Contract*, under this GC7.2.

7.2.8 The *Owner* may terminate the *Contract* at any time for any reason. In such event, the *Owner* shall pay to the *Design Builder*:

- .1 the proportionate part of the *Contract Price* earned up to the effective date of termination; plus
- .2 the *Design Builder’s* reasonable demobilization costs, to the extent not already included in paragraph 7.2.8.1; plus
- .3 such unavoidable and reasonable additional third-party costs, if any, directly flowing from and which are a reasonable consequence of the termination, but excluding any consequential, indirect or special damages, and any claims for loss of profit or opportunity.

Notwithstanding the foregoing, the *Owner* shall not be liable to the *Design Builder* for any claims, costs or damages whatsoever arising from such termination of the *Contract* other than as set out in this paragraph.

7.2.9 If the *Owner* terminates the *Design-Builders* right to continue with the *Services* and *Work* in whole or in part or terminates the *Contract*, the *Design-Builder* shall, safeguard the *Work* then completed and the materials and equipment then delivered to the *Place of the Work*, assign or novate any *Subcontractor* or *Supplier* contracts to the *Owner* or terminate any *Subcontractor* or *Supplier* contracts to the extent requested by the *Owner* during the term of the *Contract* and do such other extra work as may be ordered by the *Consultant* for the purpose of leaving the *Work* in a safe and useful condition.”

GC7.3 DESIGN BUILDER’S RIGHT TO STOP THE DESIGN SERVICES OR WORK OR TERMINATE THE CONTRACT

7.3.3 Delete. 7.3.3.1. and 7.3.3.2.

Add the following as a new paragraph after paragraph 7.3.3.4:

“4 The foregoing defaults in contractual obligations shall not apply to the withholding of *certificates of payment* or payment, or both, following receipt of court ordered garnishments of monies owing to the *Design-Builder*, notice of the *Design-Builder’s* failure to pay claims against the *Design-Builder* or the filing of liens against the Project for as long as they remain outstanding.”

7.3.4 In line 2, delete the number “5” and replace with the following the number “20”.
Add to the end of the paragraph:

“provided that if the default is of the nature set out in paragraph 7.3.3.4 and such default cannot

be reasonably corrected within 20 *Working Days*, the *Owner* shall no longer be considered to be in default if the *Owner*:

- .1 provides the *Design-Builder* with a reasonable schedule for correction within 20 *Working Days*; and
- .2 corrects the default in accordance with such schedule.”

7.3.6 Delete and replace with the following:

“If the *Design-Builder* terminates the *Contract* under the conditions set out above, the *Design-Builder* shall be entitled to be paid for all *Work* performed to the date of termination, including a reasonable profit thereon, for loss sustained upon *Products* and construction machinery and equipment and for reasonable wind-up costs for the removal of construction machinery and equipment from the *Place of the Work*.”

PART 8 DISPUTE RESOLUTION

GC8.1 NEGOTIATION, MEDIATION AND ARBITRATION

Add:

“8.1.11 Unless both parties agree, the *Design-Builder* shall not stop the *Work*, or any part of the *Work*, pending the resolution of any dispute under the *Contract* between the parties.”

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC9.1 PROTECTION OF WORK AND PROPERTY

Add:

“9.1.5 The *Design-Builder* shall be responsible generally for the care, maintenance and protection of the *Work* during construction and during any shut-down or suspension of the *Work*.

9.1.6 The *Design-Builder* shall ensure that all rights and privileges presently accorded to all properties adjacent to the *Place of the Work* are maintained.”

GC9.4 CONSTRUCTION SAFETY

9.4.1 In line 1, delete “Except as provided for to paragraph 2.6.2.2 of GC2.6 – WORK BY OWNER OR OTHER CONTRACTORS,”

Add the following to GC 9.4

“9.4.2 The *Design-Builder* shall be responsible for the safety not only of the workers, *Subcontractors*, tradesmen and *suppliers* and their plant and equipment but also of all other persons who enter the *Place of the Work* whether during working hours or not and for that purpose shall erect

such boardings and signs and shall employ such safety measures as may be necessary to ensure the safety of such persons.

- 9.4.3 The *Design-Builder* acknowledges and agrees that the *Design-Builder* shall be the “prime contractor” for the workplace for the purposes of the Workers Compensation Act, as amended from time to time. Without limiting the foregoing, the *Design-Builder* shall, as the “prime contractor”, comply with, and do everything that is reasonably practicable to ensure compliance by *Subcontractor* and *Suppliers* with, the Workers Compensation Act of British Columbia and its regulations including the *Occupational Health & Safety Regulations*, *WHIMIS* regulation and the transportation of hazardous substances or dangerous goods requirements and obligations and shall pay assessments or compensation required to be paid under applicable legislation. If *Design-Builder* or any *Subcontractor* fails to pay any due assessment or compensation, the *Owner* may make such payment on behalf of *Design-Builder* or any *Subcontractor*, but will not be obliged to do so. *Design-Builder* shall reimburse *Owner* the amount of such payment on demand. The *Owner* may set off any amounts paid against money otherwise owed to the *Design-Builder*.
- 9.4.4 The *Design-Builder* shall deliver the Notice of Project required the Workers’ Compensation Act of British Columbia.
- 9.4.5 The *Design-Builder* shall be the “prime contractor” with respect to any work performed by the *Owner*’s own forces or other firms retained by the *Owner* carried out in the area of the *Place of the Work* with relation to the *Work*. Without limiting the generality of the foregoing, the *Design-Builder* is responsible for ensuring that the work undertaken by the *Owner*’s own forces or other contractors retained by the *Owner* are coordinated with the *Work* so as to avoid or minimize any hazardous situations.
- 9.4.6 The *Design-Builder* shall immediately inform the *Owner* if the *Owner*’s own forces or other contractor firms retained by the *Owner* attend at the *Place of the Work* without prior notification to the *Design-Builder*.
- 9.4.7 When entering the workplace for any reason, the *Owner* will comply, and will ensure that its employees agents and contractors comply, with all reasonable workplace rules established by the *Design Builder*, including, without limitation, any reasonable requirements that the *Design Builder* establishes in accordance with standard industry practice.

PART 10 GOVERNING REGULATIONS

GC10.1 TAXES AND DUTIES

Add:

- “10.1.3 Where documentation may be required for tax refund purposes, the *Design-Builder* shall be responsible for providing the *Owner* with such invoices and records as may be necessary to substantiate the amount of tax paid during the performance of the *Work* for which the *Owner* may lawfully claim exemption.”

GC10.2 LAWS, NOTICES, PERMITS AND FEES

10.2.4 Delete the first sentence.

10.2.5 Delete and replace with the following:

“The *Design-Builder* shall be responsible for verifying that the *Contract Documents* are in substantial compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If after the *Contract* is executed, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Design-Builder* shall notify the *Owner* in writing immediately upon such variance or change becoming known.”

Add:

“10.2.8 The *Design-Builder* shall provide to the *Consultant* copies of all inspection reports from the various authorities having jurisdiction forthwith as they are received from time to time.”

GC10.3 PATENT FEES

10.3.2 Delete

GC10.4 WORKERS COMPENSATION

10.4.1 In line 3, after the word “compliance” insert “by the *Design Builder* and *Subcontractors*”.

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 – INSURANCE

Delete GC 11.1 in its entirety and replace with the following:

Without restricting the generality of GC 12.1—INDEMNIFICATION, insurance and coverage will be arranged and paid for as under-noted:

11.1.1 For the period when the *Owner’s* Commercial General Liability – Wrap up Insurance is not in force, the *Design-Builder* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance with insurers licensed in British Columbia:

(a) Commercial General Liability Insurance with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000), inclusive per occurrence against bodily injury and property damage, and the *Owner* is to be added as an additional insured and include a cross-liability clause. This insurance shall be primary and not require the sharing of any loss by any insurer of the *Owner*.

11.1.2 The *Design-Builder* or the *Consultant* during the term of this *Contract* will provide and maintain Professional (Errors and Omissions) Liability Insurance protecting the *Design- Builder* or the *Consultant* and if applicable the *Consultant’s* insurable consultants and their respective servants, agents or employees, against any loss or damage arising out of the professional

services rendered by any of them under this *Contract*. Such insurance shall be for an adequate amount acceptable to the *Owner* and shall in any event be not less than TWO MILLION DOLLARS (\$2,000,000) per claim.

The sub-consultants of the *Consultant* or *Other Consultants* shall maintain a limit of no less than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) Professional (Errors and Omissions) Liability Insurance.

If coverage is provided by the *Consultant*, then such Professional (Errors and Omissions) Liability Insurance will not contain a "Design-Build" exclusion.

11.1.3 The *Design-Builder* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance with insurers licensed in British Columbia and in forms and amounts acceptable to the *Owner*:

- (a) **Automobile Liability Insurance** in respect of each owned or leased vehicle if used directly or indirectly in the performance of the *Work*, subject to limits of not less than THREE MILLION DOLLARS (\$3,000,000) inclusive per occurrence. This insurance shall be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant* in consultation with the *Design-Builder* and the *Owner*.
- (b) **Owned or Non-Owned Aircraft (including Unmanned Aircraft Vehicles) Liability Insurance** if used directly or indirectly in the performance of the *Work*, subject to limits not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and including aircraft passenger hazard where applicable. The insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance shall be maintained continuously from commencement of the work involving aircraft (including unmanned aircraft vehicles) until such work is completed.
- (c) **Owned or Non-Owned Watercraft Liability Insurance** if used directly or indirectly in the performance of the *Work*, subject to limits of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. The insurance will name the *Owner* as an additional insured and include a cross-liability clause. This insurance shall be maintained continuously from commencement of the work involving watercraft until such work is completed.
- (d) **Contractors Pollution Liability Insurance**, where the *Design-Builder's* performance or the *Subcontractor's* performance of the *Work* is associated with hazardous materials clean up, removal and/or containment, transit or disposal. This insurance must have a limit of liability not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence insuring against bodily injury, death, and damage to property including loss of use thereof.

Any insurance required under this clause 11.1.3 (d) must name the *Owner* as an additional insured, but only with respect to liability arising out of the *Design-Builder* or the *Subcontractor's* performance of the *Work*. Such insurance must include sudden and

accidental and gradual pollution events for third party liability including ongoing and completed operations and shall not be impaired by any, biological contaminants (without limitation, mould and bacteria), asbestos, or lead exclusions. Any 'insured vs. insured' exclusion shall not prejudice coverage for the *Owner* and shall not affect the *Owner's* ability to bring suit against the *Design-Builder* as a third party.

This insurance shall be maintained continuously from commencement of the work involving hazardous materials clean-up, removal and/or containment, transit and disposal until such work is completed and including a twenty-four (24) month extended reporting period if any such insurance is provided on a claims-made basis.

(e) Hot Roofing or Installation of Hot Membranes

If the project is a renovation involving hot roofing work or installation of hot membranes, the contractor will provide, maintain and pay for a liability policy insuring hot roofing or installation of hot membrane operations with a limit of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence against bodily injury and property damage. This insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance will be treated as primary coverage and the *Owner's* Commercial General Liability - Wrap up Insurance will be treated as excess coverage.

Such insurance shall include, but not be limited to:

- .01 Premises and Operations Liability;
- .02 Products and Completed Operations;
- .03 Owner's and Contractor's Protective Liability;
- .04 Contractual Liability;
- .05 Contingent Employer's Liability;
- .06 Personal Injury Liability;
- .07 Non-Owned Automobile Liability;
- .08 Cross Liability;
- .09 Employees as Additional Insureds; and
- .10 Broad Form Property Damage.

This insurance shall be maintained continuously from commencement of hot roofing or installation of hot membrane work until such work is completed.

- 11.1.4 Any insurance required under clauses 11.1.1 (a), 11.1.2 and 11.1.3 (b), (c), (d) and (e) must be endorsed to provide the *Owner* with 30 days' advance written notice of cancellation.
- 11.1.5 As may be applicable, the *Design-Builder* must cause its *Subcontractors* to comply with the insurance requirements outlined in clauses 11.1.2 and 11.1.3 (a) (b), (c), (d) and (e). Notwithstanding the foregoing, the *Owner* may agree to lower amounts of Automotive Liability insurance for *Subcontractors* on a case by case basis.
- 11.1.6 **The *Owner* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance and coverages:**

- (a) Commercial General Liability – Wrap Up Insurance** with a limit of not less than TEN MILLION DOLLARS (\$10,000,000) inclusive per occurrence, TWENTY MILLION DOLLARS (\$20,000,000) general aggregate for third party bodily injury, death, and damage to property

including loss of use thereof, product/completed operations liability with a limit of not less than TEN MILLION DOLLARS (\$10,000,000) aggregate.

This insurance will cover the *Owner*, the *Design-Builder*, *Subcontractors*, *Consultant*, sub-consultants and anyone employed by them to perform a part or parts of the *Work* but excludes all professional services and excluding suppliers whose only function is to supply and/or transport products to the project site, or security protection persons or organizations providing project site protection on or at the insured project. The insurance does not extend to any activities, works, jobs or undertakings of the insureds other than those directly related to the *Work* of this *Contract*.

The insurance will contain a waiver of the *Owner's* rights of subrogation against all protected entities except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omission.

Such insurance shall include, but not be limited to:

- .01 Premises and Operations Liability;
- .02 Products and Completed Operations Liability (24 months);
- .03 Contractual Liability;
- .04 Cross Liability and/or Severability of Interests;
- .05 Contingent Employer's Liability;
- .06 Personal Injury Liability;
- .07 Shoring, Blasting, Excavating, Underpinning, Demolition, Piledriving, Subsurface and Grading, as applicable;
- .08 Limited Pollution Liability (TWO MILLION DOLLARS (\$2,000,000))
- .09 Broad Form Tenants Legal Liability (ONE MILLION DOLLARS (\$1,000,000))
- .10 Operation of Attached Machinery
- .11 Forest Fire Fighting Expenses (ONE MILLION DOLLARS (\$1,000,000))

There will be a deductible not exceeding FIFTY THOUSAND DOLLARS (\$50,000) per occurrence except with respect to completed operations, to which a deductible not exceeding ONE HUNDRED THOUSAND DOLLARS (\$100,000) per occurrence will apply.

This insurance will be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant* in consultation with the *Design-Builder* and the *Owner*, plus with respect to completed operations cover a further period of twenty-four (24) months.

(b) Course of Construction (Builders Risk) coverage, against "All Risks" of direct physical loss or damage including the peril of equipment breakdown, and will cover all materials, property, structures and equipment purchased for, entering into, or forming part of the *Work* while located anywhere within Canada and continental United States of America during construction, erection, installation and testing and commissioning, but such coverage may be subject to off-site storage and transit exposure sub-limits and shall not include coverage for the *Design-Builder* and *Subcontractor's* equipment of any description.

There will be a deductible not exceeding FIFTY THOUSAND DOLLARS (\$50,000) for each and

every occurrence except for the following:

Earthquake with a deductible not exceeding FIVE PERCENT (5%) of the total project value at the time of the loss, subject to a minimum TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000);

Water Damage perils (includes Flood and Sewer and Drain Back Up) with a deductible not exceeding ONE HUNDRED THOUSAND DOLLARS (\$100,000);

Soft Costs with a one day waiting period for each month of the estimated project term subject to a minimum waiting period of 30 days will apply with respect to soft costs.

The coverage will include as a protected entity, the *Owner*, the *Design-Builder*, *Consultant* and each *Subcontractor* who is engaged in the *Project*.

The coverage will contain a waiver of the *Owner's* rights of subrogation against all protected entities except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omissions, or manufacturers (not employees of a protected entity).

The *Design-Builder* will, at its own expense, take precautions to prevent fires occurring in or about the *Work* and will observe, and comply with, all insurance policy warranties and all laws and regulations in force respecting fires.

This insurance will be maintained continuously from commencement of the *Work* and will be kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant* in consultation with the *Design-Builder* and the *Owner*.

- 11.1.7 The description of the *Owner* arranged insurance described herein is provided on a summary basis only and is not a statement of the actual policy terms and conditions. The *Owner* does not represent or warrant that the *Owner* arranged insurance contains insurance for any and all losses. It is the *Design-Builder's* responsibility to ascertain the exact nature and extent of coverage provided by the *Owner* arranged insurance, to review all policies pertaining thereto and to obtain any other insurance that it may be prudent for the *Design-Builder* to obtain.
- 11.1.8 The *Design-Builder* will also provide, maintain and pay for any other insurance that the *Design-Builder* is required by law to carry, or which the *Design-Builder* considers necessary.
- 11.1.9 The *Design-Builder* and/or its *Subcontractors*, the *Consultant* and sub-consultants as may be applicable, will be responsible for any deductible amounts under the policies of coverage and insurance except for the perils of flood and earthquake.
- 11.1.10 The *Owner* will, upon request, provide the *Design-Builder* with proof of insurance of those coverages and insurances required to be provided by the *Owner* prior to commencement of the *Work* and subsequent certified copy of policies within a reasonable time period thereafter.
- 11.1.11 The *Design-Builder* will provide the *Owner* with proof of insurance for those insurances required

to be provided by the *Design-Builder* prior to the commencement of the *Work* in the form of a completed Certificate of Insurance and will also provide a certified copy of any required policies upon request.

11.1.12 The *Owner* will not be responsible for injury to the *Design-Builder's* employees or for loss or damage to the *Design-Builder's* or to the *Design-Builder's* employees' machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the project site during construction and which may, from time to time, or at the termination of this *Contract*, be removed from the project site. The *Design-Builder* hereby waives all rights of recourse against the *Owner* with regard to damage to the *Design-Builder's* property.

11.1.13 If the *Design-Builder* fails to provide, maintain and pay for insurance as required by this schedule, other than automobile liability insurance, the *Owner* may obtain and pay for the required insurance, the cost of which will be payable on demand by the *Owner*. The *Owner* may offset such amounts from any monies due to the *Design-Builder* if not paid within 15 days.

11.2 **CONTRACT SECURITY**

11.2.1 The *Design-Builder* shall prior to commencement of the *Work* furnish performance and labour and material payment bonds within fourteen (14) days of the date of this *Contract*. Each bond must be in a sum equal to 50% of the total *Contract Price*. The bonds must be issued on the latest CCDC-221 or CCDC-222 approved forms or other such forms approved by the Surety Association of Canada and issued by a surety company registered in the Province of British Columbia or another surety company acceptable to the *Owner*. The *Design-Builder* must maintain the bonds in good standing until the fulfilment of the *Contract*.

PART 12 INDEMNIFICATION, LIMITATION OF LIABILITY, WAIVER OF CLAIMS, AND WARRANTY

Delete GC 12.2.1 in its entirety and replace with the following:

12.2.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.2.4 and 12.2.5, and excepting always losses caused or contributed to by the acts of the party for whom indemnification is sought, the *Owner* and the *Design-Builder* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:

.1 caused by:

- (1) the acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or;
- (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

.2 made by *Notice in Writing* within such periods as prescribed by the Limitation Act of the

Province of British Columbia.

Delete GC 12.2.2 in its entirety and replace with the following:

- 12.2.2 The obligation of either party to indemnify as set forth in paragraph 12.2.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the limit of:
 - (1) Commercial General Liability coverage – GC 11.1.1(a)
 - (2) Commercial General Liability – Wrap Up Insurance GC 11.1.6 (a); or
 - (3) Course of Construction (Builders Risk) – GC 11.1.6 (b)whichever is pertinent to the loss.
 - .2 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of:
 - (1) the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or;
 - (2) TWO MILLION DOLLARS (\$2,000,000.00),but in no event shall the sum be greater than TWENTY MILLION DOLLARS (\$20,000,000.00).
 - .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.2.2.1 and 12.2.2.2 shall apply.

GC 12.3 LIMITATION OF LIABILITY FOR DESIGN SERVICES, delete entirely and replace with the following:

GC 12.3 – LIMITATION OF LIABILITY FOR DESIGN SERVICES

- 12.3.1 Notwithstanding any other provisions of this *Contract*, the *Design-Builder's* liability for claims which the *Owner* may have against the *Design-Builder*, including the *Design-Builder's* officers, directors, employees and representatives, that arise out of, or are related to, the *Design Services*, shall be limited to claims arising from errors, omissions, or negligent performance of *Design Services* by the *Consultant* or *Other Consultant*. For greater certainty, no dollar limit applies.

GC12.4 WAIVER OF CLAIMS

Delete paragraphs 12.4.3, 12.4.4 and 12.4.5.

Add the following new paragraph 12.4.11:

- 12.4.11 The correction of defects and deficiencies in the *Work* shall be at the sole expense of the *Design-Builder* and shall be executed at times determined by the *Owner*, acting reasonably.

GC 12.5 WARRANTY

12.5.3 Add at the end thereof:

“Such notice may specify the time within which the defects or deficiencies must be rectified.”

12.5.4 Delete and replace with the following:

“Except for the provisions of paragraphs 12.5.6 and 12.5.7, the *Design-Builder* shall correct promptly, at the *Design-Builder's* expense, to the satisfaction of the *Owner* defects or deficiencies in the *Work* due to faulty workmanship or *Products* or architectural, engineering or design errors or omissions by the *Design-Builder*, the *Consultant* or any *Subcontractor* or *Supplier* or by any of their respective *consultants* which appear prior to and during the warranty periods specified in the *Contract Documents*.”

Add:

“12.5.9 Where specific warranties or guarantees are required by the *Contract Documents* relating to the *Work* and including without limitation those relating to any fixtures, improvements, appliances, equipment or other chattels for the *Project*, the *Design-Builder* shall secure such warranties or guarantees from the *Subcontractors* and *Product* suppliers and they shall be assigned to or addressed to and in favour of the *Owner*. The *Design-Builder* shall cooperate and assist in the enforcement of such warranties or guarantees. The *Design-Builder* shall deliver the originals plus two copies of such warranties or guarantees to the *Owner* upon completion of the *Work*.”

Add the following General Conditions:

GC13.1 PUBLIC STATEMENTS AND SIGNS

14.1.1 The *Design-Builder* shall not make any public statement with respect to the *Project* without the prior written consent of the *Owner*.

14.1.2 The *Design-Builder* shall not erect or permit the erection of any sign or advertising at the *Place of the Work* without the prior written approval of the *Owner*.

GC14.1 LIENS

15.1.1 The *Design-Builder* will pay or cause to be paid promptly when due all claims, debts and charges against the *Design-Builder* or *Subcontractors* engaged by the *Design-Builder* which might become a lien upon the *Project* arising out of the *Work* performed or materials furnished by the *Design-Builder* or any *Subcontractors* under the *Contract*, and will not permit any lien or encumbrance of any kind to be filed against or upon the *Project*, regardless of whether the basis of such lien is a claim against the *Design-Builder* or any *Subcontractor*.

15.1.2 If the *Owner* is not in default in making payment to the *Design-Builder* as required under this *Contract* and if a claim of builders lien is filed against title to the *Project* by anyone claiming

under or through the *Design-Builder*, the *Owner* may notify the *Design-Builder* in writing that the filing of such claim or claims of builders lien is a material default by the *Design-Builder* of its contractual obligations and instruct the *Design-Builder* to obtain and file a release of the said claim or claims in the Land Title Office within 7 *Working Days* immediately following receipt of such notice.

- 15.1.3 If such default is not corrected within the time specified or subsequently agreed upon in writing, the *Owner*, without prejudice to any other right or remedy it may have, may:
- .1 pay, settle or compromise, or pay into Court (together with a reasonable amount for costs) the amount of, any such claim or claims of builders lien and deduct the amount of any such payment from the next ensuing payment which may become due to the *Design-Builder*; or
 - .2 pay into Court from the holdback account established by the *Owner* in accordance with the *Builders Lien Act* the total amount of the claim or claims filed and this provision shall constitute the agreement of the *Design-Builder* to make such payment as required under Section 5(2)(c) of the *Builders Lien Act*;
 - .3 and the *Owner* may deduct from the next ensuing payment which may become due to the *Design-Builder* all costs and expenses thereby incurred by the *Owner*, including any account for legal fees and disbursements incurred by the *Owner*.
- 15.1.4 If the *Owner* is not in default in making payment to the *Design-Builder* as required under this *Contract*, the *Design-Builder* will indemnify and save the *Owner* harmless from and against the costs of any and all actions commenced by any lien claimant claiming under or through the *Design-Builder* against the *Owner* pursuant to the *Builders Lien Act*, including solicitor and client costs.
- 15.1.5 Notwithstanding any other provision of the *Contract*, no payments whatsoever shall be due or owing to the *Design-Builder* so long as any liens filed by anyone claiming under or through the *Design-Builder* remain registered against title to the *Project*.”