

CCDC 14

**Design-Build
Stipulated Price Contract**

2 0 1 3

[Name of the Work]

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*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.



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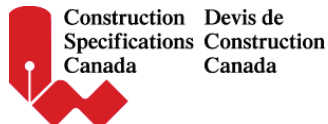


TABLE OF CONTENTS

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

- A-1 Design Services and the Work
- A-2 Agreements and Amendments
- A-3 Contract Documents
- A-4 Contract Price
- A-5 Payment
- A-6 Receipt of and Addresses for Notices in Writing
- A-7 Language of the Contract
- A-8 Succession

DEFINITIONS

- Change Directive
- Change Order
- Construction Documents
- Construction Equipment
- Consultant
- Contract
- Contract Documents
- Contract Price
- Contract Time
- Design-Builder
- Design Services
- Drawings
- Notice in Writing
- Other Consultant
- Owner
- Owner's Advisor
- Owner's Statement of Requirements
- Payment Certifier
- Place of the Work
- Product
- Project
- Shop Drawings
- Specifications
- Subcontractor
- Substantial Performance of the Work
- Supplemental Instruction
- Supplier
- Temporary Work
- Value Added Taxes
- Work
- Working Day

GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT

PART 1 GENERAL PROVISIONS

- GC 1.1 Contract Documents
- GC 1.2 Law of the Contract
- GC 1.3 Rights and Remedies
- GC 1.4 Assignment
- GC 1.5 Confidentiality

PART 2 OWNER'S RESPONSIBILITIES

- GC 2.1 Owner's Information
- GC 2.2 Role of the Owner
- GC 2.3 Owner's Advisor
- GC 2.4 Role of the Payment Certifier
- GC 2.5 Owner's Review of the Design and the Work
- GC 2.6 Work by Owner or Other Contractors

PART 3 DESIGN-BUILDER'S RESPONSIBILITIES

- GC 3.1 Control of the Design Services and the Work
- GC 3.2 Design-Builder's Review of Owner's Information
- GC 3.3 Role of the Consultant
- GC 3.4 Other Consultants, Subcontractors, and Suppliers
- GC 3.5 Construction Documents
- GC 3.6 Design Services and Work Schedule
- GC 3.7 Supervision
- GC 3.8 Labour and Products
- GC 3.9 Documents at the Site
- GC 3.10 Shop Drawings
- GC 3.11 Non-Conforming Design and Defective Work

PART 4 ALLOWANCES

- GC 4.1 Cash Allowances
- GC 4.2 Contingency Allowance

PART 5 PAYMENT

- GC 5.1 Financing Information Required of the Owner
- GC 5.2 Applications for Progress Payment
- GC 5.3 Progress Payment
- GC 5.4 Substantial Performance of the Work
- GC 5.5 Payment of Holdback upon Substantial Performance of the Work
- GC 5.6 Progressive Release of Holdback
- GC 5.7 Final Payment
- GC 5.8 Deferred Work
- GC 5.9 Non-conforming Design Services and Work

PART 6 CHANGES IN THE CONTRACT

- GC 6.1 Owner's Right to Make Changes
- GC 6.2 Change Order
- GC 6.3 Change Directive
- GC 6.4 Concealed or Unknown Conditions
- GC 6.5 Delays
- GC 6.6 Claims for a Change in Contract Price

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
- GC 7.2 Owner's Right to Perform the Design Services or Work, Terminate the Design-Builder's Right to Continue with the Design Services or Work, or Terminate the Contract
- GC 7.3 Design-Builder's Right to Suspend the Design Services or Work, or Terminate the Contract

PART 8 DISPUTE RESOLUTION

- GC 8.1 Negotiation, Mediation and Arbitration
- GC 8.2 Retention of Rights

PART 9 PROTECTION OF PERSONS AND PROPERTY

- GC 9.1 Protection of Work and Property
- GC 9.2 Toxic and Hazardous Substances and Materials
- GC 9.3 Artifacts and Fossils
- GC 9.4 Construction Safety
- GC 9.5 Mould

PART 10 GOVERNING REGULATIONS

- GC 10.1 Taxes and Duties
- GC 10.2 Laws, Notices, Permits, and Fees
- GC 10.3 Patent Fees
- GC 10.4 Workers' Compensation

PART 11 INSURANCE AND CONTRACT SECURITY

- GC 11.1 Insurance
- GC 11.2 Contract Security

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

- GC 12.1 Definition and Survival
- GC 12.2 Indemnification
- GC 12.3 Limitation of Liability for Design Services
- GC 12.4 Waiver of Claims
- GC 12.5 Warranty

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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

signature

name of person signing

signature

name of person signing

WITNESS

signature

name of person signing

signature

name of person signing

OWNER

name of Owner

signature

name and title of person signing

DESIGN-BUILDER

name of Design-Builder

signature

name and title 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*.

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- 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, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*; 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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These Supplementary Conditions modify, delete and/or add to the Agreement between Owner and Design-Builder, the Definitions, and the General Conditions of the Design- Build Stipulated Price Contract, Standard Construction Document CCDC 14 – 2013.

SC 1. AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

SC 1.1 ARTICLE A-5 PAYMENT

1.1.1 Delete paragraph 5.3 and replace it with the following:

“5.3 Should either party fail to make payments as they become due under this *Contract*, or in an award by adjudication, arbitration or court, interest will begin to accrue on the amount that is not paid from the date when it is due until the date it is paid at the prejudgment interest rate prescribed by the *Judicature Act (Nunavut)*.”

SC 1.2 ARTICLE A-9 TIME IS OF THE ESSENCE

1.2.1 Add a new Article A-9 as follows:

“ARTICLE A-9 TIME IS OF THE ESSENCE

9.1 The *Design-Builder* represents and warrants that it will attain *Substantial Performance of the Work* by the date stipulated in paragraph 1.3 of Article A-1 of the Agreement – DESIGN SERVICES AND THE WORK, as such date may be adjusted in accordance with this *Contract* and acknowledges that it has been advised by the Owner that it is critical to the Owner that *Substantial Performance of the Work* is attained by such date. The Design-Builder acknowledges and agrees that time shall be of the essence in the performance of the *Design- Builder’s* obligations under this *Contract*.

9.2 The *Design-Builder* acknowledges and agree that the civil works portion of the Work is to start by Fall 2026 and that time is of the essence with respect to the commencement of the Project”

SC 2. DEFINITIONS

2.1.1 Amend the following Definitions so they read as follows:

(a) Payment Certifier

“*Payment Certifier*” means the person or entity appointed or identified as such by the *Owner* and is the person or entity responsible for the issuance of certificates for payment.”

(b) Substantial Performance of the Work

“*Substantial Performance of the Work*” is deemed to have been achieved when all of the following requirement have been met:

- (i) the *Work* can be used for its intended purposes;
- (ii) the value of the Work to be performed under the *Contract* is capable of completion or, where there is a known defect, correction at a cost of not more than (i) 2% of the *Contract Price* and (ii) \$150,000;
- (iii) the *Design-Builder* has provided evidence of compliance with the requirements for occupancy or occupancy permit as prescribed by the authorities having jurisdiction;
- (iv) the *Design-Builder* has made available a copy of the As-Built drawings completed to date on site;
- (v) the *Design-Builder* has carried out and achieved the testing required for immediate occupancy, as required by the *Contract Documents*

- (vi) The ability to secure access to the *Work* has been provided to the *Owner*, if required by the *Contract Documents*;
- (vii) Demonstration and training, as required by the *Contract Documents*, is scheduled by the *Design-Builder* acting reasonably; and
- (viii) All pre-requisites to applying for *Substantial Performance of the Work* as outlined in GC 5.4.6 have been achieved by the Design-Builder.

2.1.2 Add the following new Definitions:

(a) **Act**

“*Act* means the Mechanics Lien Act (Nunavut), as amended or replaced from time to time.”

(b) **As-Built Drawings**

“*As-Built Drawings* are the drawings prepared by the *Design-Builder* by marking on a copy of the *Drawings* the changes from the *Drawings* which occur during the course of the *Work* including, but not limited to, the exact location of major building components and structures that were shown generally on the *Drawings*. For certainty, *As-Built Drawings* shall be in computer-aided design (CAD) format, as well as in paper copy and PDF formats.”

(c) **OHS LEGISLATION**

“*OHS LEGISLATION* means the Occupational Health and Safety Regulations (Nunavut), as amended and replaced from time to time.”

(d) **Proper Invoice**

“*Proper Invoice* means an application for payment given by the *Design-Builder* to the *Owner* that fully complies with the requirements of GC 5.1A – PROPER INVOICE.”

(e) **Proposal Form**

“*Proposal Form* means the Proposal Form submitted by the Design-Builder to during the procurement process for this Project.”

(f) **WSCC**

“*WSCC* means the Workers Safety and Compensation Commission (Nunavut).”

SC 3. GENERAL CONDITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT

SC 3.1 GC 1.1 CONTRACT DOCUMENTS

3.1.1 Amend paragraph 1.1.3 by adding the following to the end of that paragraph:

“The intent of the *Contract Documents* is to include all labour, *Products*, materials, *Construction Equipment* and services necessary or normally considered necessary for the performance of the *Work* in accordance with the *Contract Documents*. Any item of *Work* mentioned in the *Contract Documents* or reasonably inferable from the *Contract Documents* but not otherwise shown or described, shall be provided by the *Design-Builder* as if shown or otherwise described or inferable.”

3.1.2 Amend paragraph 1.1.6.1 by changing the order of the first four bullet points so that, as reordered, the bullet points read as follows:

“1.1.6.1 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

3.1.3 Delete paragraph 1.1.8 and replace it with the following:

“1.1.8 The *Design-Builder* shall cause the *Consultant* to deliver to the *Owner* reproducible copies of plans, sketches, *Drawings*, electronic files, graphic representations and *Specifications* including, but not limited to, computer generated and computer-aided design documents (CADs) (collectively “*Instruments of Service*”) as they are developed, in editable electronic and digital formats as well as paper formats, and the *Owner* and its successors and assigns shall have a perpetual, irrevocable, non-transferable and royalty-free license and right to use, reproduce, disclose, and provide such *Instruments of Service* to others, including without limitation to other contractors, architects or consultants, for information, use and reference in connection with the *Project* and, without limitation (1) for information, use and reference in connection with the *Owner’s* design, construction, correction and completion of the *Project*, (2) in connection with the *Owner’s* general use, occupancy and maintenance of the *Project*, (3) for archival and exhibition purposes, and (4) for alterations, renovations, modifications, repairs, additions and services to the completed *Project*. Where the *Owner* discloses or provides the *Instruments of Services* to a third party in furtherance of one of the above permitted uses, the *Owner* will take reasonable steps to have such third party treat such *Instruments of Service* as confidential information. Such license shall continue in the event that this *Contract* is terminated and regardless of whether or not there is any dispute between the *Owner* and the *Design-Builder*, including a dispute relating to the *Contract Price*, damages or any other amount owing to or claimed by the *Design-Builder* at the time of or as a result of the termination of this *Contract*.”

SC 3.2 GC 1.4 ASSIGNMENT

3.2.1 Delete paragraph 1.4.1 and replace it with the following:

“1.4.1 The *Owner* may assign the *Contract*, or any portion thereof, upon written notice to the *Design-Builder*. The *Design-Builder* may not assign the *Contract*, or any portion thereof, without the prior written consent of the *Owner*, which consent shall not be unreasonably withheld.”

SC 3.3 GC 2.5 OWNER’S REVIEW OF THE DESIGN AND THE WORK

3.3.1 Amend paragraph 2.5.5 by adding the following to the end of the second sentence:

“, and there shall be no extensions of the *Contract Time* resulting from any delay caused by such examination and correction.”

SC 3.4 GC 2.6 WORK BY OWNER OR OTHER CONTRACTORS

3.4.1 Amend paragraph 2.6.2 by deleting the words “*Owner*” in the second line and replacing it with the words “*Design-Builder*”.

3.4.2 Add new paragraphs 2.6.7 and 2.6.8 as follows:

“2.6.7 Entry by the *Owner’s* own forces and by other contractors shall not constitute acceptance of the *Work* and shall not relieve the *Design-Builder* of its responsibility to complete the *Work*.

2.6.8 The placement, installation, application and connection of work by the *Owner’s* own forces or by other contractors on and to the *Work* shall not relieve the *Design-Builder* of its responsibility to provide and maintain the warranties specified in this *Contract*. If the *Design-Builder* is of the view that the work of other contractors or the work of the *Owner’s* own forces will compromise, void or nullify any of the warranties provided pursuant to this *Contract*, the *Design-Builder* shall immediately give written notice the *Owner* and shall include the reasons why, a warranty or warranties will be compromised, voided or nullified, together with the *Design-Builder’s* recommendations for avoiding such result.”

SC 3.5 GC 3.0 PRE-CONSTRUCTION SUBMITTALS

3.5.1 Add a new GC 3.0 as follows:

“GC 3.0 PRE-CONSTRUCTION SUBMITTALS

3.0.1 Ten (10) Working Days prior to commencing the Work, the Design-Builder shall submit to the Owner:

- .1 a copy of the Notice filed with the Chief Safety Officer or appropriate Ministry under the OHS Legislation naming the *Design-Builder* as “Principal Contractor” for the Project;
- .2 the bonds described in GC 11.2 – CONTRACT SECURITY;
- .3 certificates of insurance confirming the insurance policies required by this *Contract* are in place;
- .4 the construction schedule referred to in paragraph 3.6.1.1 of GC 3.6 – Design Services and Work Schedule;
- .5 a current WSCC clearance certificate; and
- .6 a copy of the *Design-Builder’s* safety program to be implemented for the *Project*.”

SC 3.6 GC 3.4 OTHER CONSULTANTS, SUBCONTRACTORS AND SUPPLIERS

3.6.1 Amend paragraph 3.4.2 by adding the following to the end of that paragraph:

“The *Design-Builder* shall not change *Other Consultants*, *Subcontractors* or *Suppliers* without the *Owner’s* prior written approval, which approval will not be unreasonably withheld.”

SC 3.7 GC 3.6 DESIGN SERVICES AND WORK SCHEDULE

3.7.1 Delete paragraph 3.6.1 and replace it with the following:

“3.6.1 The *Design-Builder* shall:

- .1 within ten (10) *Working Days* of signing this *Contract* submit to the *Owner*, for the *Owner’s* approval, a *Design Services* and *Work* schedule (in the format(s) requested by the *Owner*) that indicates the timing of major activities, critical path, and critical milestone dates for the *Design Services* and the *Work*, demonstrating that the *Design Services* and the *Work* will be performed in conformity with the *Contract Time* (“**Baseline Construction Schedule**”). Such *Baseline Construction Schedule* shall be prepared in collaboration with the *Consultant*, *Other Consultants*, *Subcontractors* and *Suppliers* whose activities affect the critical path of the *Design Services* and the *Work*; and
- .2 provide the expertise and resources, including manpower and *Construction Equipment*, as are necessary to maintain progress under the *Baseline Construction Schedule* or any successor or revised schedule approved by the *Owner*; and
- .3 monitor the progress of the *Design Services* and the *Work* relative to the *Baseline Construction Schedule* and provide an updated schedule each month or as otherwise requested by the *Owner* and showing the current progress of the *Design Services* and the *Work* as against the *Baseline Construction Schedule*. The *Design-Builder* shall advise the *Owner* in writing of any variation from the baseline or slippage within two (2) *Working Days* of such variation or slippage becoming apparent. No variation from the baseline or slippage in the schedule shall amend or otherwise modify the *Baseline Construction Schedule* without the *Owner’s* prior written consent; and
- .4 at the *Owner’s* request, provide the *Owner* with a look-ahead schedule indicating the major activities to be undertaken in the next month.

- 3.6.2 If at any time it should appear that the actual progress of the *Design Services* or the *Work* is behind schedule or is likely to fall behind schedule, or if the *Design-Builder* has so advised the *Owner*, the *Design-Builder* shall take appropriate steps, at the *Design-Builder's* own expense, to cause the actual progress of the *Design Services* and the *Work* to conform to the schedule and shall produce and present to the *Owner*, for review and approval, a recovery plan demonstrating how the *Design-Builder* will achieve the recovery of the schedule.
- 3.6.3 The *Design-Builder* shall not amend the *Baseline Construction Schedule* or date for the *Substantial Performance of the Work* without the *Owner's* prior written consent."

SC 3.8 GC 3.7 SUPERVISION

- 3.8.1 Delete paragraph 3.7.1 and replace it with the following:

"The *Design-Builder* shall, within reason, 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, which may be a subcontractor when the *Design-Builder* is not at the *Place of Work*, shall not be changed except for valid reason, and upon the *Design-Builder* obtaining the *Owner's* prior written consent, which consent will not be unreasonably withheld."

SC 3.9 GC 3.8 LABOUR AND PRODUCTS

- Amend paragraph 3.8.2 by adding the following sentence to the end:

"The *Design-Builder* represents and warrants that the *Products* are not subject to any conditional sales contracts and are not subject to any security rights claimed or obtained by any third party which may subject any of the *Products* to seizure and/or removal from the *Place of the Work*."

- 3.9.1 Amend paragraph 3.8.3 by inserting the words ", agents, Subcontractors and Suppliers" after the word "employees" in the first line.
- 3.9.2 Add new paragraphs 3.8.4 to 3.8.6 as follows:

"3.8.4 The *Design-Builder* is responsible for the safe transportation and on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and *Other Contractors*) so as to avoid dangerous conditions, deterioration, damage or contamination to the *Products*, persons or property. The *Design-Builder* shall store the *Products* in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Owner's Advisor*. If the *Design-Builder* is required to store the *Products* at locations other than the *Place of the Work*, the *Design-Builder* shall first obtain the *Owner's* written approval regarding the location, conditions, and terms of such storage.

3.8.5 Without in any way limiting the *Design-Builder's* obligations under this *Contract*, the *Design-Builder* shall prepare and implement job site rules which shall govern work on the *Project*. Such job site rules shall be consistent with the *Design-Builder's* duties and obligations under the *OHS Legislation*, with the *Owner's* health and safety policies, if any, and shall include provisions making smoking, vaping and the consumption of alcohol or non-prescription drugs on the *Project* the subject of discipline proceedings and/or termination of employment.

3.8.6 The *Owner* or the *Owner's Advisor*, acting reasonably, shall have the right to order the *Design-Builder* to remove from the *Project*, without cost to the *Owner*, any representative or employee of the *Design-Builder* or any representative or employee of a *Subcontractor* or *Supplier* whose conduct, in the opinion of the *Owner* or the *Owner's Advisor*, jeopardizes the safety or security of the *Project*, any person, the *Owner's* operations, is a detriment to the *Project*, or whose behaviour may be considered as harassment in the workplace. Immediately upon receipt of such order the *Design-Builder* shall make arrangements for the appointment of a replacement representative or employee acceptable to the *Owner*."

SC 3.10 GC 3.10 SHOP DRAWINGS

3.10.1 Add new paragraphs 3.10.6 to 3.10.7 as follows:

“3.10.6 Reviewed *Shop Drawings* shall not authorize a change in the *Contract Price* or the *Contract Time*, unless there is a scope of work or design change initiated by the *Owner*.

3.10.7 The *Owner's* review of *Shop Drawings* will be for general detail and arrangement only. The *Owner's* review shall not relieve the *Design-Builder* from its responsibility for deviations from the *Contract Documents*, unless the *Design-Builder* in writing has notified the *Owner* of such deviations at the time of submission of the *Shop Drawings* and the *Owner* has given written approval to the specific deviations. The *Owner's* review shall not relieve the *Design-Builder* from responsibility for defective *Work* resulting from errors or omissions of any kind on the reviewed *Shop Drawings* and shall not constitute authorization to the *Design-Builder* to perform additional *work* or changed *work*. The *Design-Builder* is responsible for dimensions to be confirmed and correlated at the job site, for information that pertains solely to fabrication processes, or techniques of construction and installation.”

SC 3.11 GC 3.11 NON-CONFORMING DESIGN AND DEFECTIVE WORK

3.11.1 Amend paragraph 3.11.1 by deleting the words “, by *Notice in Writing*,” in the first line of that paragraph and by adding the words “, at the *Design-Builder's* sole cost and expense” to the end of that paragraph.

3.11.2 Amend paragraph 3.11.2 by inserting the words “, at the *Design-Builder's* sole cost and expense,” after the words “The *Design-Builder* shall” in the first line and by deleting the words “by *Notice in Writing*” in the first line of that paragraph.

3.11.3 Add new paragraphs 3.11.5 and 3.11.6 as follows:

“3.11.5 The *Design-Builder* shall forthwith perform, without cost or expense to the *Owner*, any and all services or work required to correct or remedy any act, error, omission, default, negligence or breach of *Contract* by or attributable to the *Design-Builder* or the *Consultant* or anyone for whom they are in law responsible, whether or not specifically identified by the *Owner*.

3.11.6 The *Design-Builder* shall give priority to the correction of any defective work or deficiencies identified as priorities by the *Owner*.”

SC 3.12 GC 3.12 CLEANUP

3.12.1 Add a new GC 3.12 as follows:

“GC 3.12 CLEANUP

3.12.1 The *Design-Builder* shall ensure the *Place of Work* is maintained in a safe and tidy condition and that waste products and debris are removed on a daily basis. Where the *Design-Builder* fails to remove waste and debris as required, upon the *Owner* providing twenty-four (24) hours written notice in which to cure this default, the *Owner* may remove such waste and debris and deduct the costs of doing so from payments which may be otherwise due to the *Design-Builder*.

3.12.2 Before applying for *Substantial Performance of the Work* the *Design-Builder* shall remove waste products and debris and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. The *Design-Builder* shall remove *Products*, tools, *Construction Equipment* and *Temporary Work* not required for the performance of the remaining *Work*.

3.12.3 Prior to application for the final payment, the *Design-Builder* shall remove any remaining *Products*, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris.”

SC 3.13 GC 3.13 EARLY OCCUPANCY OR USE OF THE PROJECT

3.13.1 Add a new GC 3.13 as follows:

“GC 3.13 EARLY OCCUPANCY OR USE OF THE PROJECT

3.13.1 The *Owner* reserves the right to enter, occupy, take possession of or use for any intended purpose any portion or all of the undelivered portion of the *Project*, even though *Substantial Performance of the Work* may not have been attained, provided that such entry, occupation, taking of possession or use will not interfere, in any material way, with the progress of the *Work*. The entry, occupation, taking of possession or use of any such portion of the *Project* shall not be deemed to be the *Owner’s* acknowledgement or acceptance of the *Work* or the *Project*, nor shall it be deemed to be an acknowledgement or acceptance by the *Owner* that such *Work*, or portions of the *Work*, have met the requirements for *Substantial Performance of the Work* described in the *Contract Documents*, nor shall it entitle the *Design-Builder* to an adjustment in the Contract Time or Contract Price.

3.13.2 The entry, occupation, taking of possession or use of any portion of the *Work* or the *Project* by the *Owner*, its agents or *Other Contractors* pursuant to this GC 3.13 – EARLY OCCUPANCY OR USE OF THE PROJECT shall not relieve the *Design-Builder* of any of its obligations under the *Contract*, including the *Design-Builder’s* designation and obligations as “Principal Contractor” under *OHS Legislation* and the *Design-Builder’s* obligations respecting construction health and safety and all of the *Design-Builder’s* other obligations, rules, regulations and practices shall continue to apply notwithstanding such entry, occupation, taking of possession or use.”

SC 3.14 GC 3.14 DESIGN-BUILDER’S STANDARD OF CARE

3.14.1 Add a new GC 3.14 as follows:

“GC 3.14 DESIGN-BUILDER’S STANDARD OF CARE

3.14.1 In performing this *Contract* the *Design-Builder* shall exercise a standard of care, skill, judgment and diligence that would normally be exercised by an experienced, skilled and prudent design-builder supplying similar services for similar projects. The *Design-Builder* acknowledges and agrees that, throughout this *Contract*, the *Design-Builder’s* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Design-Builder* shall exercise the same standard of care, skill, judgment and diligence in its employment of the *Consultant*, *Other Consultants*, and in respect of any *Products*, *Subcontractors*, *Suppliers*, personnel or procedures which it may employ on the *Project*.”

SC 3.15 GC4.2 CASH ALLOWANCE

3.15.1 Add a new GC 4.1.8 as follows:

“4.1.8 The *Owner* reserves the right to call, or to have the *Design-Builder* call for competitive bids for portions of the *Work* to be paid for from any cash allowances.”

SC 3.16 GC4.2 CONTINGENCY ALLOWANCE

3.16.1 Delete GC 4.2

SC 3.17 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

3.17.1 Delete GC 5.1

SC 3.18 GC 5.1A PROPER INVOICE

3.18.1 Add a new GC 5.1A as follows:

“GC 5.1A PROPER INVOICE

- 5.1 In this *Contract* a *Proper Invoice* shall mean an application for payment made by the *Design-Builder* that:
- .1 given to the *Owner's Representative* on a monthly basis by email to [REDACTED] and concurrently to [REDACTED], and
 - .2 includes all of the following:
 - .1 the *Design-Builder's* name and address and GST registration number;
 - .2 the date of the application for payment and the period during which the services or materials were supplied;
 - .3 information identifying the *Contract* under which the services or materials were supplied;
 - .4 a description, including quantities where appropriate, of the services and materials supplied;
 - .5 the amount payable for the services or materials supplied, and the payment terms;
 - .6 the name, title, telephone number and mailing address of the person to whom payment is to be sent;
 - .7 a progress draw breakdown based on the schedule of values for the Work;
 - .8 where the invoice amount includes amounts charged on the basis of hourly rates, documentation in support of the amount claimed, including dates that services were performed, identity of the person(s) involved, the hours spent, and a description of the services performed;
 - .9 where the invoice includes amounts expended under a cash allowance, documentation in support of the amount claimed, including copies of all invoices and charges incurred;
 - .10 copies of any *Change Orders* or *Change Directives* for which the *Design-Builder* is claiming payment;
 - .11 a detailed update on the *Design Services* and *Work* schedule highlighting any areas which might endanger the scheduled date for *Substantial Performance of the Work*;
 - .12 a look-ahead schedule indicating the major activities to be undertaken during the next month;
 - .13 for the second and all subsequent applications for payment, a CCDC 9A Statutory Declaration;
 - .14 a current valid clearance certificate issued by the *WSCC*."

SC 3.19 GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

3.19.1 Delete paragraphs 5.2.1 and 5.2.2 and replace it with the following:

"5.2.1 The *Contract Price* shall be payable in accordance with the following

- a. The Owner agrees to pay two advances to the *Design-Builder*, in the aggregate amount of \$_____ (the "**Advances**") on account of the *Contract Price*, in accordance with the following:
 - a. A first advance, in the amount of \$_____ ("**Advance 1**"), less statutory holdback, will be made within ten (10) Business Days following the execution of the *Contract* by both parties.

- b. A second advance, in the amount of \$_____ (“**Advance 2**”), less statutory holdback, will be made within ten (10) Business Days following the date on which the *Design-Builder* has delivered all of the documents required by **GC 3.0 PRE-CONSTRUCTION SUBMITTALS**,

provided, however, the *Advances* shall be held in trust by the *Design-Builder* and, subject to the agreement of the *Owner*, may only be applied towards the undisputed amounts of a *Proper Invoice* and the *Contract Price*. To the extent that the *Contract* is terminated, for any reason, any remaining balance of the *Advances* that has not been applied to a *Proper Invoice* with the *Owner*’s approval shall be immediately reimbursed to the *Owner* within five (5) Business Days of such termination.

- b. The *Owner* shall pay the remaining balance of the *Contract Price* to the *Design-Builder* as progress payments as the *Design Services* and the *Work* progresses.

5.2.2 Notwithstanding the foregoing, the *Design-Builder* shall not give a *Proper Invoice* between:

- a. December 5th and January 6th, inclusive; and
- b. the date certified as the date of *Substantial Performance of the Work* and the date that the *Contract* is completed.”

3.19.2 Amend paragraph 5.2.6 by adding the following to the end:

“, as modified by paragraph 5.1A.1 of GC 5.1A – PROPER INVOICE.”

3.19.3 Amend paragraph 5.2.8 by adding the following to the end of that paragraph:

“Subject to the *Owner*’s absolute discretion, claims for Products not yet delivered to the Place of the Work shall not be considered by the *Owner*’s Advisor or the *Owner* for payment until such time as they have been delivered and installed at the Place of the Work. Any Products delivered to the Place of the Work but not yet incorporated into the Work shall remain at the risk of *Design-Builder* notwithstanding that title has passed to the *Owner* pursuant to 13.2 – OWNERSHIP OF MATERIALS.”

SC 3.20 GC 5.3 PROGRESS PAYMENT

3.20.1 Delete paragraph 5.3.1 and replace it with the following:

“5.3.1 After receipt by the *Payment Certifier* and the *Owner* of an application for payment submitted by the *Design-Builder* in accordance with GC 5.2 – APPLICATIONS FOR PAYMENT, the *Payment Certifier* will issue to the *Owner* and copy to the *Design-Builder*, no later than ten (10) calendar days after the date of receipt of a *Proper Invoice* a certificate for payment in the amount applied for, or in such other amount as the *Payment Certifier* determines to be properly due. For clarity no certificate of payment shall be issued where the invoice delivered by the *Design-Builder* does not meet the requirements of a *Proper Invoice* as provided for in GC 5.1A – PROPER INVOICE.

5.3.2 Subject to the *Owner*’s right of setoff and subject to the holdback provisions of the *Act*, the *Owner* will pay the amount payable under a *Proper Invoice* for progress payment no later than thirty (30) calendar days after the date the *Owner* receives the certificate of payment from the *Payment Certifier*. Provided that the *Owner*’s obligation to make payment shall not arise unless and until the *Design-Builder*’s application for payment constitutes a complete *Proper Invoice* as provided in GC 5.1A – PROPER INVOICE.

For certainty, and without limitation, the *Owner* may refuse to pay all or any portion of an application for progress payment where:

- .1 the application does not comply with all of the requirements of a *Proper Invoice* in GC 5.1A – PROPER INVOICE; and/or
- .2 the *Owner* is entitled to deduct and retain amounts in accordance with the *Contract*

Documents; and/or

- .3 the amount applied for exceeds the amount stated in the certificate for payment issued by the Payment Certifier pursuant to paragraph 5.3.1.
- 5.3.3 Payment by the *Owner* shall not preclude the *Owner* from thereafter disputing any of the items for which payment was made and shall not be construed as acceptance of any part of the *Work*.”

SC 3.21 GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

3.21.1 Add new paragraphs 5.4.6 to 5.4.8 as follows:

“5.4.6 Before submitting the written application referred to in paragraph 5.4.1, the *Design-Builder* shall submit to the *Owner* all:

- .1 a copy of all guarantees, warranties, certificates, testing and balancing reports and spare parts, *Shop Drawings*, maintenance and operating manuals, correspondence from authority having jurisdiction, and all other close-out documents or materials specified in the *Contract Documents*;
- .2 testing and balancing reports and spare parts;
- .3 distribution system diagrams and *Shop Drawings*;
- .4 maintenance and operating manuals, instructions and materials;
- .5 existing reports and correspondence from authorities having jurisdiction at the *Place of the Work*;
- .6 all other close-out materials or documentation required to be submitted under the *Contract* (excluding the *As-Built Drawings*),

together with written proof acceptable to the *Payment Certifier* that the *Work* has been performed in conformance with the requirements of municipal, governmental, and utility authorities having jurisdiction at the *Place of the Work*.

5.4.7 The failure of the *Design-Builder* to deliver the documents and materials described in paragraph 5.4.6, shall be grounds for the *Payment Certifier* to refuse to certify *Substantial Performance of the Work*. In the alternative, and in the *Owner*’s absolute discretion, the *Owner* may permit the certification of *Substantial Performance of the Work* notwithstanding that some of the required documents may not have been delivered, however if it does so, the *Owner* shall be entitled to withhold any payments otherwise owing to the *Design-Builder* until the required documents and materials are delivered to the *Owner*.

5.4.8 Within thirty (30) days of the date of *Substantial Performance of the Work* the *Design-Builder* shall deliver to the *Owner* final *As-Built Drawings*, failing which the *Owner* may hold payment owing to the *Design-Builder* until the *As-Built Drawings* are delivered to the *Owner*.”

SC 3.22 GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

3.22.1 Delete paragraph 5.5.3, 5.5.4 and 5.5.5 and replace them with the following:

“5.5.3 The *Owner* will pay the amount authorized by the certificate for payment of the holdback amount in accordance with the provisions of the *Act*. For certainty, and without limitation, the *Owner* may refuse to pay a portion of the holdback where the *Owner* is entitled to deduct and retain amounts in accordance with paragraphs 5.4.7 and/or 5.4.8.”

SC 3.23 GC 5.7 FINAL PAYMENT

3.23.1 Delete paragraph 5.7.1 and replace it with the following:

“5.7.1 When the *Design-Builder* considers that the *Contract* is completed, the *Design-Builder* shall

deliver to the *Owner* a *Proper Invoice* for final payment.”

3.23.2 Amend paragraph 5.7.2 by adding the following to the end of that paragraph:

“Without limiting the generality of the foregoing, the application for final payment will not be considered valid until *Products* installed are tested and conform to the requirements specified in the *Contract Documents* and all documentation required by the *Contract Documents* including but not limited to the documents and materials listed in paragraphs 5.4.6 and 5.4.8 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK have been received and accepted by the *Owner*.”

3.23.3 Delete paragraph 5.7.4 and replace it with the following:

“5.7.4 Subject to the *Owner’s* right of setoff, the *Owner* will pay the amount payable under a *Proper Invoice* for final payment no later than thirty (30) calendar days after issuance of a final certificate for payment. Provided that the *Owner’s* obligation to make payment shall not arise unless and until the *Design-Builder’s* application for payment constitutes a complete *Proper Invoice* as provided in GC 5.1A – PROPER INVOICE. For certainty, and without limitation, the *Owner* may refuse to pay all or any portion of the application for final payment where:

- .1 the application does not comply with all of the requirements of a *Proper Invoice* in GC 5.1A – PROPER INVOICE; and/or
- .2 the *Owner* is entitled to deduct and retain amounts in accordance with the *Contract Documents*; and/or
- .3 the amount applied for exceeds the amount stated in the certificate for payment issued by the *Payment Certifier* pursuant to paragraph 5.7.3.

5.7.5 Payment by the *Owner* shall not preclude the *Owner* from thereafter disputing any of the items for which payment was made and shall not be construed as acceptance of any part of the *Work*.”

SC 3.24 GC 5.10 WITHHOLDING OF PAYMENT

3.24.1 Add a new GC 5.10 as follows:

“GC 5.10 WITHHOLDING OF PAYMENT

5.10.1 Notwithstanding any provision in the *Contract Documents* to the contrary, the *Owner* may withhold payment of any amount claimed in an application for payment, in a *Proper Invoice*, or in any certificate for payment to the extent required to offset any claims the *Owner* may have against the *Design-Builder*, or to offset previous over-payment made to the *Design-Builder*, damages or costs incurred by the *Owner*, or to the extent as may be necessary to protect and/or indemnify the *Owner* from loss, claims, and/or damage.

5.10.2 Where the *Owner* has withheld payment to the *Design-Builder* pursuant to the provisions of this *Contract*, the *Owner* shall be entitled to apply the funds withheld toward the cost of any required remedial work, completion costs, or toward damages or losses suffered and for which the *Owner* is entitled to compensation under the *Contract*, including legal costs and expenses.”

SC 3.25 GC 6.1 OWNER’S RIGHT TO MAKE CHANGES

3.25.1 Amend paragraph 6.1.2 by adding the following to the end of that paragraph:

“The requirement that the *Design-Builder* obtain a *Change Order* or a *Change Directive* is of the essence and it is the express intention of the parties that any claims by the *Design-Builder* for a change in the *Contract Price* and/or *Contract Time* shall be barred unless there is strict compliance with PART 6 – CHANGES IN THE CONTRACT. No course of conduct or dealing between the parties, no express or implied acceptance of changes to the *Contract*, the *Design Services*, and/or the *Work*, and no claims that the *Owner* has been unjustly enriched by any change to the *Design*

Services and/or the Work, whether or not there is any such unjust enrichment, shall be the basis of a claim for damages or additional payment or for a change in the *Contract Price* or *Contract Time*, or a claim for an amendment to the *Contract*. Without limiting the generality of the foregoing, under circumstances of expediency and provided that the change in the *Contract Price* will be less than \$ [redacted], the *Design-Builder* shall perform a change in the *Design-Services* or the *Work* without first obtaining a *Change Order* or a *Change Directive* where it has received from the *Owner's* [insert title] some form of written or e-mail direction agreeing to the change, in which case such change, and the value of such change, if any, will be determined pursuant to GC 6.2 or GC 6.3, at the option of the *Owner*.”

3.25.2 Add a new paragraph 6.1.3 as follows:

“6.1.3 The *Design-Builder* agrees that changes resulting from construction coordination or *Subcontractor* or *Supplier* coordination are included in the *Contract Price* and shall not entitle the *Design-Builder* to claim any increase to the *Contract Price*.”

SC 3.26 GC 6.2 CHANGE ORDER

3.26.1 Amend paragraph 6.2.1 by adding the following to the end:

“Such adjustments and method of adjustment must be submitted by the *Design-Builder* to the *Owner* in sufficient time to prevent interruption of the orderly progress of the *Design Services* or construction and, in any event, no later than ten (10) days from the *Design-Builder's* receipt of the proposed change in the *Design-Services* or the *Work*.”

3.26.2 Amend paragraph 6.2.2 by adding the following to the end:

“An adjustment to the *Contract Time* will be considered only when the *Design-Builder* demonstrates to the *Owner* that a change in the *Design-Services* or the *Work* affects the critical path of the *Design Services* and/or the *Work*. Any costs associated with an adjustment to the *Contract Time* shall be identified by the *Design-Builder* and shall be limited to the reasonable direct costs directly attributable to the adjustment to the *Contract Time*.”

3.26.3 Delete paragraph 6.2.3 and replace it with the following:

“6.2.3 The *Contract Time* arising out of changes to the *Design Services* or the *Work* aside from the amounts stated in a *Change Order*. In no event shall the *Owner* be liable to the *Design-Builder* for any costs, including indirect, impact or consequential costs, arising out of changes to the *Design Services* or the *Work* beyond the agreed upon amount of the *Change Order*.”

SC 3.27 GC 6.3 CHANGE DIRECTIVE

3.27.1 Amend paragraph 6.3.7 as follows:

- (a) insert the words “Subject to paragraph 6.3.14,” at the beginning of that paragraph; and
- (b) delete paragraphs 6.3.7.7, 6.3.7.14 to and including 6.3.7.17.

3.27.2 Amend paragraph 6.3.12 by adding the following to the beginning of that paragraph:

“An adjustment of the *Contract Time* will be considered only where the change affects the critical path of the *Work*.”

3.27.3 Add a new paragraph 6.3.14 as follows:

“6.3.14 Without limitation, the following shall not form part of the cost of performing the work attributable to a *Change Directive*, and shall not be recoverable by the *Design-Builder*:

- .1 head office salaries and benefits and all other overhead or general expenses, except only for the amounts described in paragraph 6.3.7.1;
- .2 capital expenses and interest on capital;

- .3 general cleanup, except where the performance of the work attributed to the *Change Directive* causes specific additional cleanup requirements;
- .4 wages paid for field supervision of *Subcontractors*;
- .5 wages, salaries, rentals or other expenses that exceed the rates that are standard in the locality of the Place of the Work or that are otherwise deemed unreasonable;
- .6 costs or expenses attributable to the negligence, improper work, deficiencies or breaches of contract by the *Design-Builder* or any *Subcontractor* or *Supplier*; and
- .7 costs of quality assurance, such as inspection and testing services, charges levied by authorities having jurisdiction, and any legal fees unless any such costs or fees are pre-approved in writing by the Owner.”

SC 3.28 GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

3.28.1 Add a new paragraph 6.4.0 as follows:

“6.4.0 The *Design-Builder* confirms that, before signing this *Contract*, it carefully investigated and examined the *Place of the Work* and the *Contract Documents* and any other documents made available by the *Owner*, and has satisfied itself as to the conditions, circumstances, limitations and requirements necessary for the *Design-Builder* to perform the *Design Services* and the *Work* in accordance with the *Contract Documents*. No allowances will be made for additional costs and no claims by the *Design-Builder* will be considered for an adjustment in the *Contract Price* or *Contract Time* in connection with conditions which were reasonably apparent or which could reasonably have been discovered by such investigations or examinations made before the signing of the *Contract*.”

3.28.2 Amend paragraphs 6.4.1.1 and 6.4.1.2 by adding the following to the end of each paragraph:

“and which were concealed from discovery notwithstanding the conduct of the investigations and examinations described in paragraph 6.4.0”

3.28.3 Amend paragraph 6.4.2 by inserting the words “and were concealed from discovery notwithstanding the conduct of the investigations and examinations described in paragraph 6.4.0” after the word “materially” in the second line.

SC 3.29 GC 6.5 DELAYS

3.29.1 Amend paragraph 6.5.1 by deleting the last sentence and replacing it with the following:

“The *Design-Builder* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding the costs of the *Design-Builder’s* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages, arising from or caused by such delay regardless of whether any such excluded costs, damages or claims are made or incurred by the *Design-Builder* or any *Subcontractor* or *Supplier*.”

3.29.2 Amend paragraph 6.5.2 by deleting the last sentence and replacing it with the following:

“The *Design-Builder* shall be reimbursed by the *Owner* for reasonable direct costs directly flowing from the delay, but excluding the costs of the *Design-Builder’s* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages, arising from or caused by such delay regardless of whether any such excluded costs, damages or claims are made or incurred by the *Design-Builder* or any *Subcontractor* or *Supplier*. Provided that this paragraph 6.5.2 shall not apply where the stop work order is issued as a result of a declaration of a state of emergency or the occurrence of an epidemic or pandemic, in which case any resulting delay shall be governed by paragraph 6.5.3.”

3.29.3 Amend paragraph 6.5.3 as follows:

- (a) Add a new subparagraph 6.5.3.0 as follows:

“6.5.3.0 acts, orders, legislation, regulations or directives of any court, government or other public authority, including stop work orders or *Project* closures or suspensions, made or issued as a result of a declaration of a state of emergency or the occurrence of an epidemic or pandemic,”

- (b) Delete the last sentence of that paragraph and replace it with the following:

“The *Design-Builder* shall not be entitled to payment for costs incurred by such delays.”

- 3.29.4 Amend paragraph 6.5.4 by adding the following to the end of that paragraph:

“For greater certainty, it is the intention of the parties that an extension for delay will be considered only when the *Design-Builder* demonstrates that the delay affects the critical path of the *Work* and that all mitigation efforts have been attempted to reduce the delay and the costs associated therewith, and any adjustment to the *Contract Time* shall only be to the extent that the critical path of the *Work* is affected. Without in any way limiting the generality of the foregoing, it is a condition precedent to the *Design-Builder's* claim for extension of the *Contract Time* and for additional compensation or reimbursement of costs that the notice provisions in this paragraph be strictly adhered to in each instance.”

- 3.29.5 Add a new paragraphs 6.5.6 to 6.5.9 as follows:

6.5.6 The *Design-Builder* shall take all reasonable steps to reschedule the *Design Services* and the *Work* and to minimize the effect of the delay referred to in paragraphs 6.5.1, 6.5.2 and 6.5.3. If the *Design-Builder* fails to do so, the extension of the *Contract Time* and/or any amounts which may otherwise be payable to the *Design-Builder* will be reduced accordingly.

6.5.7 The *Design-Builder* shall be responsible for the care, maintenance and protection of the *Project* in the event of any suspension of the *Work* as a result of the delay described in paragraphs 6.5.1, 6.5.2, or 6.5.3. In the event of such suspension, the *Design-Builder* shall be reimbursed by the *Owner* for the reasonable direct costs incurred by *Design-Builder* for such care, maintenance, and protection, but excluding the *Design-Builder's* head office personnel and overhead costs.

6.5.8 The parties acknowledge and agree that the *Owner* shall not be liable for any delay or part thereof that occurs concurrently with an independent cause of delay for which the *Owner* is not responsible. In addition, in the event the *Owner* is responsible for two or more separate causes of delay that run in whole or in part parallel to each other, those two or more events shall be considered as one for the purpose of determining the duration of the extension of the *Contract Time* and/or any amount payable to the *Design-Builder*.

6.5.9 If the *Design-Builder* is delayed in the performance of the *Design Services* or the *Work* by an act or omission of the *Design-Builder* or anyone directly or indirectly employed or engaged by the *Design-Builder* or by any cause within the *Design-Builder's* control, then the *Contract Time* shall be extended for such reasonable time as the *Owner* may decide in consultation with the *Design-Builder*. The *Owner* shall be reimbursed by the *Design-Builder* for all reasonable costs and expenses incurred by the *Owner* as a result of such delay including, but not limited to, the cost of all additional services required by the *Owner* from a consultant or any subconsultants, project managers or others employed or engaged by the *Owner*.”

SC 3.30 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

- 3.30.1 Amend paragraph 7.2.2 by inserting the words “or fails or neglects to maintain the latest approved *Design Services* and *Work* schedule prepared pursuant to GC 3.6 – DESIGN SERVICES AND WORK SCHEDULE,” after the words “*Design Services* or *Work*” in the first line of that paragraph.

- 3.30.2 Amend paragraph 7.2.3 by replacing “5 Working Days” with “ten (10) Working Days.”
- 3.30.3 Delete paragraph 7.2.4.1 and replace it with the following
 “7.2.4.1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Design-Builder*, or”
- 3.30.4 Add a new paragraphs 7.2.5A and 7.2.5B as follows:
 “7.2.5A The *Owner* may terminate this *Contract* at any time for any or no reason. In such event, the *Owner* shall pay for the value of the *Design Services* and the *Work* performed up to the effective date of termination, including the *Design-Builder’s* reasonable demobilization costs, and for reasonable direct costs directly flowing from the termination, but excluding the costs of the *Design-Builder’s* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages, arising from or caused by the termination, and regardless of whether any such costs, damages or claims are made or incurred by the *Design-Builder*, *Consultant* or any *Other Consultant*, *Subcontractor* or *Supplier*. The *Owner* shall not be liable to the *Design-Builder* for any other claims, costs or damages whatsoever arising from such termination of this *Contract*.
 7.2.5B If the *Owner* terminates the *Design-Builder’s* right to continue with the *Design-Services* or the *Work* in whole or in part or terminates the *Contract* as provided in this GC 7.2, the *Design-Builder* shall deliver to the *Owner*, within five (5) days of the effective date of the termination, all of the materials listed in paragraph 5.4.6 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK then in the possession of or available to the *Design-Builder*.”

SC 3.31 GC 7.3 DESIGN-BUILDER’S RIGHT TO SUSPEND THE DESIGN SERVICES OR WORK, OR TERMINATE THE CONTRACT

- 3.31.1 Delete paragraph 7.3.2 in its entirety.
- 3.31.2 Amend paragraph 7.3.3 as follows:
 (a) Delete paragraphs 7.3.3.1 and 7.3.3.2;
 (b) Amend paragraph 7.3.3.3 by adding the words “, except where the *Owner* has a bona fide claim for setoff,” after the words “*Payment Certifier*”;
 (c) Add the following to the end of the paragraph:
 “The foregoing defaults in contractual obligations shall not apply to the withholding of certificates or payments, or both, in accordance with the *Contract Documents*.”
- 3.31.3 Amend paragraph 7.3.4, by deleting “5” in the second line and replacing it with “10”.
- 3.31.4 Add a new paragraph 7.3.4A immediately following paragraph 7.3.4 as follows:
 “7.3.4A If the default cannot be corrected within the 10 *Working Days* specified in paragraph 7.3.4, the *Owner* shall be deemed to have cured the default if it:
 .1 commences the correction of the default within the specified time; and
 .2 provides the *Design-Builder* with an acceptable schedule for such correction; and
 .3 completes the correction in accordance with such schedule.”
- 3.31.5 Delete paragraph 7.3.6 and replace it with the following:
 “7.3.6 If the *Design-Builder* terminates the *Contract* under the conditions described in this GC 7.3, the *Design-Builder* shall ensure the *Work* and the *Place of the Work* are left in a safe and secure condition as required by authorities having jurisdiction and the *Contract Documents* and shall be entitled to be paid for all *Design Services* and *Work* performed to the date of termination. Subject to the *Design-Builder’s* obligation to mitigate costs, the *Design-Builder*

shall also be entitled to recover the costs directly flowing from and which are a reasonable consequence of the termination, but excluding the costs of the *Design-Builder's* head office personnel and overhead costs, and excluding any consequential, indirect or special damages, and excluding any loss of profit or loss of opportunity costs and damages, both direct and indirect, arising from or caused by such termination, and regardless of whether any such costs, damages or claims are made or incurred by the *Design-Builder, Consultant* or any *Other Consultant* or *Subcontractor*. The *Owner* shall not be liable to the *Design-Builder* for any other claims, costs or damages whatsoever arising from such termination of the *Contract*."

SC 3.32 GC 8.1 NEGOTIATION, MEDIATION AND ARBITRATION

3.32.1 Delete paragraphs 8.1.1 through 8.1.10 and replace them with the following:

- “8.1.1 Differences between the parties as to the interpretation, application or administration of this Contract or any failure to agree where agreement between the parties is called for, herein collectively called “*Disputes*”, shall be resolved in accordance with the provisions of this GC 8.1.
- 8.1.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations conducted by senior representatives of the parties for a period of up to thirty (30) days, having such written and verbal communications and meetings as appropriate. The parties 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 Dispute is not resolved through negotiations, the parties may jointly agree to refer the Dispute to mediation; provided that there shall be no mediation unless both parties jointly agree to mediate and agree on a mediator. The fees and expenses of the mediator and the venue shall be shared equally by the parties.
- 8.1.4 If the Dispute is not resolved through negotiations or mediation, the parties may jointly refer the Dispute to confidential final binding arbitration. Unless both parties jointly refer a Dispute to arbitration, there shall be no arbitration of such Dispute.
- 8.1.5 Any arbitration under paragraph 8.1.4 shall be conducted by a single arbitrator agreed upon by the parties to the Dispute. If the parties cannot agree upon a single arbitrator, the arbitration shall be conducted by a single arbitrator appointed by a Court of competent jurisdiction in the Place of the Work upon the application of any party to the Dispute, with notice to the other parties to the Dispute. The venue for the arbitration shall be in Iqaluit, NU, unless otherwise agreed to by the parties. The costs of the arbitrator and the venue shall be shared equally among the parties to the arbitration. The arbitrator shall issue an award supported by written reasons. The award of such arbitrator shall be final and binding upon all the parties hereto and their representatives and nominees and there shall be no appeal therefrom. The arbitration shall be conducted in accordance with the provisions of the Arbitrations Act applicable to the Place of the Work, and any amendments thereto for the time being in force.
- 8.1.6 Unless the Owner determines that the Dispute should be addressed immediately, all Disputes shall be:
 - .1 held in abeyance until:
 - (a) *Substantial Performance of the Work* has been achieved in accordance with the *Contract*;
 - (b) the *Contract* has been terminated; or
 - (c) the *Design-Builder* has abandoned the *Design Services* and/or the *Work*.which ever earlier, and
 - .2 consolidated, where permitted by the applicable legislation, into a single arbitration or

proceeding.

- 8.1.7 If a Dispute is not resolved promptly, the *Owner* shall give instructions for the proper performance of the *Design-Services* and Work and to prevent delays pending resolution of the Dispute. The *Design-Builder* shall act immediately according to such instructions, it being understood that by doing so neither party will jeopardize, waive, or renounce any rights or claim the party may have.
- 8.1.8 Nothing in this GC 8.1- NEGOTIATION, MEDIATION, ARBITRATION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation. If the parties refer a Dispute to arbitration, as provided in paragraph 8.1.4, the *Design-Builder* agrees that this paragraph 8.1.8 shall be construed as a formal consent to the stay of any lien proceedings commenced by the *Design-Builder* in relation to the Dispute until an award is rendered in the arbitration or such Dispute is otherwise resolved between the parties. Provided nothing in this paragraph shall prevent the *Design-Builder* from taking the steps required by the Lien Legislation in the jurisdiction of the *Place of the Work* to preserve and/or perfect a lien to which it may be entitled.
- 8.1.9 The *Design-Builder* acknowledges and agrees that it may be called upon by the *Owner* to provide information, documentation and/or other reasonable assistance with respect to any disputes between the *Owner* and any other party, and the *Design-Builder* agrees that it shall provide such information, documentation and other reasonable assistance if requested to do so by the *Owner*.
- 8.1.10 Notwithstanding any other provisions of this *Contract*, the *Owner* shall not be liable to the *Design-Builder* for consequential, indirect, aggravated, punitive or exemplary damages.”

SC 3.33 GC 9.1 PROTECTION OF WORK AND PROPERTY

3.33.1 Amend paragraph 9.1.1.1 by adding the following to the end:

“, which the Design-Builder could not reasonably have discovered applying the degree of care and skill described in this Contract.”

3.33.2 Add a new paragraph 9.1.5 as follows:

“9.1.5 Without in any way limiting the *Design-Builder’s* obligations under this GC 9.1, should the *Design-Builder* or any *Subcontractor* or *Supplier* cause loss or damage to property, including roads, buildings, structures, paving, grass, sod, trees or other plantings, whether owned by the *Owner* or others, and whether at the *Place of the Work* or adjoining it, the *Design-Builder* shall be liable for the cost of making good such damage and for the repair and replacement costs, including the costs of any consultants, and such costs may be deducted by the *Owner* from amounts otherwise owing to the *Design-Builder*.”

SC 3.34 GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

3.34.1 Amend paragraph 9.2.3 by deleting the words “The *Owner*” in the first line and replacing them with “The *Design-Builder*”.

3.34.2 Amend paragraph 9.2.4 by deleting the words “Unless the *Contract* expressly provides otherwise, the *Owner*” in the first line and replacing them with “The *Design-Builder*”.

3.34.3 Add a new paragraph 9.2.5.3 as follows:

“9.2.5.3 take all necessary steps to mitigate the impact on *Contract Time* and *Contract Price*.”

3.34.4 Amend paragraph 9.2.7.3 by adding the following after the words “as a result of the delay” at the end of the second line:

“ but excluding the costs of the *Design-Builder’s* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and

damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Design-Builder* or any *Subcontractor* or *Supplier*.”

3.34.5 Amend paragraph 9.2.8 by adding the following after the word “responsible” in the second line:

“, or that any toxic or hazardous substances already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Design-Builder* or anyone for whom the *Design-Builder* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment or material damage to the property of the *Owner* or others,”

3.34.6 Add new paragraphs 9.2.10 and 9.2.11 as follows:

“9.2.10 The *Design-Builder* shall, immediately upon becoming aware of any environmentally toxic and hazardous substance or materials (within the meaning of applicable environmental legislation), notify the *Owner* in writing setting out particulars concerning the type of the environmentally toxic and hazardous substance or materials, where it was discovered, and all other information that the *Design-Builder* has at the time of the notice.

9.2.11 The *Design-Builder* shall indemnify the *Owner* and its manager, officers, directors, employees, and agents in respect of any loss, costs, expense or fine which might be imposed in respect of any failure by the *Design-Builder* to satisfy its obligations under this GC 9.2 and, without limiting the general nature of this indemnity, the *Design-Builder* shall indemnify the *Owner* and its manager, officers, directors, employees, and agents in respect of any loss, costs, expense or fine if the *Project* is made subject to an order from a court or government agency requiring remediation of any contamination caused as a result of the *Work* performed by the *Design-Builder* or its *Subcontractors* or *Suppliers*.”

SC 3.35 GC 9.4 CONSTRUCTION SAFETY

3.35.1 Delete the first line of paragraph 9.4.1 and replace the second line of paragraph 9.4.1 with:

“9.4.1 The *Design-Builder* shall, within reason, assume overall responsibility for”.

3.35.2 Add new paragraphs 9.4.2 to 9.4.4 as follows:

“9.4.2 Without limiting the generality of paragraph 9.4.1, the *Design-Builder* shall be and shall assume all of the responsibilities of the “*Principal Contractor*” under the *OHS LEGISLATION*.

9.4.3 The *Design-Builder* represents and warrants to the *Owner* that appropriate health and construction safety instruction and training have been provided and will be provided to the *Consultant*, *Other Consultants* and the *Design-Builder’s* employees, *Subcontractors*, *Suppliers* and all others attending at the *Place of the Work*, including the *Owner’s* representatives and the *Owner’s* own forces and other contractors. The *Design-Builder* represents and warrants to the *Owner* that appropriate health and construction safety instruction and training have been provided and will be provided to the *Design-Builder’s* employees, *Subcontractors*, *Suppliers* and all others attending at the *Place of the Work*, including the *Owner’s* representatives, the *Owner’s* own forces and *Other Contractors*. No comments, suggestions or instructions from the *Owner*, the *Owner’s Advisor*, the *Payment Certifier* or any other representative of the *Owner* are to be relied upon or assumed to reduce or replace the *Design-Builder’s* designation as the “*Principal Contractor*” or its responsibility for construction safety on the *Project*.

9.4.4 The *Design-Builder* shall indemnify and save harmless the *Owner* and its manager, officers, directors, employees, agents and elected officials, as well as the *Owner’s* consultants, successors and assigns from and against any and all liability, costs, expenses, fines, damages and all other consequences arising from any and all safety infractions on the *Project*, including the payment of legal fees and disbursements on a full indemnity basis.”

SC 3.36 GC 9.5 MOULD

3.36.1 Amend paragraph 9.5.4.3 by adding the following after the words “as a result of the delay”:

“, but excluding the costs of the *Design-Builder’s* head office personnel and overhead costs, any consequential, indirect or special damages, and any loss of profit or loss of opportunity costs and damages arising from or caused by such delay, regardless of whether any such excluded costs, damages or claims are made or incurred by the *Design-Builder* or any *Subcontractor* or *Supplier*.”

SC 3.37 GC 11.1 INSURANCE

3.37.1 Add a new paragraphs 11.1.1.10 to 11.1.1.13 as follows:

- .10 In addition to the insurance requirements specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the *Design-Builder* shall obtain, maintain and pay for ‘wrap-up’ general liability insurance in the joint names of the *Owner*, the *Payment Certifier*, the *Design-Builder*, any affiliated company or assignee of the *Owner* established by the *Owner* for this Project, all *Subcontractors*, all subconsultants, and all trade subcontractors with limits of not less than \$10,000,000 per occurrence. The insurance coverage shall be primary to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of commencement of the *Project* until 30 calendar days after the date of *Substantial Performance of the Work*. The *Design-Builder* is responsible to provide coverage for completed operations hazards from the date of *Substantial Performance of the Work* for a period of 30 calendar days.
- .11 In addition to the insurance requirements specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the *Design-Builder* shall obtain, maintain and pay for Marine Cargo Insurance covering the replacement value of any goods in transit by water or land including, without limitation, the prefabricated modular homes. This policy must have extensions for craning and storage.
- .12 In addition to the insurance requirements specified in CCDC 41 – CCDC INSURANCE REQUIREMENTS, the *Design-Builder* shall obtain, maintain and pay for Course of Construction/All risk insurance for the amount of the Contract Price from the commencement of the Services and/or Work until Completion and turn-over of the Project to the Owner.
- .13 The Design-Builder shall without limiting its obligations or liabilities hereto, obtain, maintain and pay for during the period of this Agreement, WSCC coverage, as applicable. The Design-Builder confirms that it will consult with the WSCC, and will register with the WSCC as required in accordance with direction provided by WSCC. The Design-Builder agrees that if the Design-Builder is assessed any fee by the WSCC, including, but not limited to, any extra levies or assessment as a result of an injury or death to an employee (worker) of the Design-Builder or subcontractor or due to unsafe working conditions, these extra amounts will not be reimbursed by the Owner.”

SC 3.38 GC 11.2 CONTRACT SECURITY

3.38.1 Delete paragraphs 11.2.1 and 11.2.2 and replace them with the following:

- “11.2.1 The Design-Builder shall deliver to the Owner a performance bond and a labour and material payment bond, each in the amount of fifty percent (50%) of the Contract Price plus Value Added Taxes, and each in the most recent form of the CCDC 221- Performance Bond Specimen and CCDC 222 – Labour and Material Bond Specimen.
- 11.2.2 Such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in Nunavut and shall be maintained in good standing until the

fulfillment of the Contract. All premiums and other costs of the bonds are included in the Contract Price.”

SC 3.39 GC 12.2 INDEMNIFICATION

3.39.1 Delete paragraphs 12.2.1 through 12.2.6 and replace them with the following:

“12.2.1 The *Design-Builder* shall defend, indemnify and hold harmless the *Owner*, Qikiqtaaluk Business Development Corporation, Qikiqtani Inuit Association, and their respective officers, directors, employees, consultants, agents, successors and assigns from and against all claims, demands, damages, losses, expenses, costs including legal fees, actions, suits or proceedings (collectively “**Claims**”) by whomsoever made, brought or prosecuted in any manner, arising out of, resulting from or attributable to, directly or indirectly, the *Design-Builder’s* or any *Subcontractor’s* performance or non-performance of the *Design-Services* or the *Work* or the *Contract*, including *Claims* arising out of the condition of the *Work*, the *Project* site, adjoining land, driveways, streets or alleys used in connection with the performance of the *Work*, regardless of whether or not caused in part by a party indemnified hereunder. It is expressly understood that the *Design-Builder* will save harmless the *Owner* from all Claims made by any person other than the *Design-Builder* itself, financial or otherwise, relating to or arising from the Design Services and/or the *Work*.

12.2.2 The *Owner* shall indemnify and hold harmless the *Design-Builder* and the *Design-Builder’s* agents and employees 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 a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.”

SC 3.40 GC 12.3 LIMITATION OF LIABILITY FOR DESIGN SERVICES

3.40.1 Delete GC 12.3 in its entirety.

SC 3.41 GC 12.4 WIAVER OF CLAIMS

3.41.1 Delete paragraphs 12.4.1 through 12.4.10 and replace the preamble with the following:

“12.4.1 As of the date on which the *Owner* makes final payment to the *Design-Builder*, the *Owner* expressly waives and releases the *Design-Builder* from all claims against the *Design-Builder* including, without limitation, those that might arise from negligence or breach of contract by the *Design-Builder*, except for one or more of the following:

- .1 those made in writing prior to the date of the final certificate for payment and still unsettled;
- .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 the *Contract*, including without limitation, GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.4 – CONSTRUCTION SAFETY, GC 12.2 – INDEMNIFICATION, GC 12.5 – WARRANTY;
- .4 damages arising from the *Design-Builder’s* actions which result in substantial defects or deficiencies in the Design Services and/or the *Work*. “Substantial defects or deficiencies” mean those defects or deficiencies in the Design Services and/or *Work* which affect the *Work* to such an extent or in such a manner that a material part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
- .5 claims arising from acts or omissions which occur after or are reasonably discovered the date of *Substantial Performance of the Work*.

12.4.2 As of the date *Substantial Performance of the Work*, the *Design-Builder* expressly waives and releases the *Owner* from all claims which it has or reasonably ought to have knowledge of that could be advanced against the *Owner* including, without limitation, those that might arise from the negligence or breach of contract by the *Owner* except:

- .1 those for which Notice in Writing was given prior to the *Design-Builder's* application for *Substantial Performance of the Work* and still unsettled; and
- .2 claims for payment for *Work* completed after the *Design-Builder's* application for *Substantial Performance of the Work*.”

SC 3.42 GC 12.5 WARRANTY

3.42.1 Amend paragraph 12.5.1 by adding the following to the end of that paragraph:

“Notwithstanding the foregoing, if an item of *Work* is not completed at *Substantial Performance of the Work*, except for extended warranties as described in paragraph 12.5.6, the warranty period for such item of *Work* shall be one year from the date that such item of *Work* has been completed and accepted in writing by the *Owner*.”

3.42.2 Amend paragraph 12.5.4 by adding the following to the end of that paragraph:

“The *Design-Builder* shall perform all remedial and warranty work at its own cost and expense and at a time convenient to the *Owner*, which may be outside of normal working hours. Prior to performing the remedial and warranty work the *Design-Builder* shall provide, for the *Owner's* review and approval, a proposed schedule for the performance of such work.”

SC 3.43 PART 13 – OTHER PROVISIONS

3.43.1 Add new “PART 13 – OTHER PROVISIONS” as follows:

“PART 13 OTHER PROVISIONS

GC 13.1 LIENS AND ACTIONS

13.1.1 The *Design-Builder* shall save and keep the *Owner* and the *Place of the Work* free from all construction liens and all other liens whatsoever arising out of the *Project*. If any lien is claimed, filed or registered or any written notice of a lien is delivered by reason of services or materials or any *Work* or *Design Services* supplied or claimed to have been supplied by or through the *Consultant*, *Other Consultant*, a *Subcontractor* or *Supplier*, and provided that the *Owner* has paid all uncontested amounts owing under the *Contract*, the *Design-Builder* shall, at its own expense, within ten (10) *Working Days* of being notified of the lien or written notice of a lien, secure the discharge, release, vacating or withdrawal of such lien or written notice of a lien by payment or by giving security or in such other manner as is or may be required or permitted by law, failing which the *Owner* may, but shall not be required, take such steps as it, in its absolute discretion, may deem necessary to release, vacate or discharge the lien or written notice of a lien.

13.1.2 If a lien action or any other action or legal proceeding arising out of the *Project* is commenced the *Design-Builder* shall take all reasonable steps to remove the *Owner* from such action or legal proceeding and shall indemnify the *Owner* and hold it harmless in such action or legal proceeding.

13.1.3 All amounts, including legal costs on a full indemnity basis, disbursements, interest, borrowing, premium or other bonding costs and/or charges incurred by the *Owner* in releasing, vacating, discharging and/or otherwise dealing with a lien, written notice of a lien and/or defending or otherwise dealing with an action or legal proceeding, shall be charged to the *Design-Builder* and shall be set off and deducted from any amount owing to the *Design-Builder*. If there is no amount owing by the *Owner* to the *Design-Builder* at that time, then the *Design-Builder* shall reimburse the *Owner* for all of the said costs and associated

expenses.

GC 13.2 OWNERSHIP OF MATERIALS

13.2.1 Unless otherwise specified, all materials existing at the *Place of the Work* at the time this *Contract* is entered into shall remain the property of the *Owner*. All *Work* and *Products* delivered to the *Place of the Work* shall be the property of the *Owner* and shall be free of any encumbrances. The *Design-Builder* shall remove all surplus or rejected materials from the *Place of the Work*.

GC 13.3 LOCAL COMMUNITY

13.3.1 The *Design-Builder* understands that the *Owner* is committed to providing opportunities for the local community when possible. Where the *Design-Builder* is subcontracting the supply of any *Products*, materials, equipment or other services (including *Design Services*) in connection with the *Contract*, the *Design-Builder* will promote the *Owner's* objectives of maximizing employment and business opportunities for local communities, and will, subject to availability, retain or employ qualified *Subcontractors*, *Suppliers*, and other personnel from the local communities.

13.3.2 Where the *Owner* has established a pre-trades training program, the *Design-Builder* agrees that it will directly (or indirectly through subcontractors) hire trainees who have successfully completed the program for the performance of the *Work*. The number of trainees hired, whether directly or indirectly, shall be not less than the number specified on the *Design-Builder's Proposal Form*, subject to the availability of trainees and the *Owner's* agreement to such change, which will not be unreasonably withheld.

GC 13.4 DAILY REPORTS / DAILY LOGS

13.4.1 The *Design-Builder* shall cause its supervisor, or such competent person as it may delegate, to prepare and maintain a daily site log or diary recording, at least, the following: (a) daily weather conditions and temperatures at the *Place of the Work*, (b) the number of workers of the *Design-Builder*, *Subcontractors*, *Suppliers* and any other forces at the *Place of the Work*, (c) the *Construction Equipment* at the *Place of the Work*, (d) the descriptions and quantities of *Products* delivered and utilized, and (e) the general nature of *Project* activities. Such log or diary shall also record any extraordinary or emergency events which may occur and also the identities of any persons who visit the *Place of the Work* who are not part of the day-to-day workforce. The *Design-Builder* shall also take or arrange for the taking of *Project* photographs to record the progress of the *Work*.

13.4.2 The *Design-Builder* shall maintain, either at its head office or at the *Project* site, records recording labour and material resourcing on the *Project*, including the records identified in paragraph 13.4.1 and other records which document the activities of the *Design-Builder*.

13.4.3 Upon request by the *Owner* or the *Owner's Advisor*, the *Design-Builder* shall make available for inspection and copying all of the records generated pursuant to this GC 13.4, along with any other routine *Project* records ordinarily maintained by the *Design-Builder*.

GC 13.5 ADVERTISING AND PUBLIC STATEMENTS

13.5.1 The *Design-Builder* shall not publish, issue or make any statements, social media posts, or news release, electronic or otherwise, concerning the *Contract*, the *Work*, or the *Project*, and shall not use the *Owner's* name, logo, etc. without the prior express written consent of the *Owner*. For greater certainty, the *Design-Builder* shall obtain the prior written approval of the *Owner* for any public advertising, social media posts, written public sales promotions, press release or other general publicity matter, in which the name or logo of the *Owner* is mentioned or used, or in which words are used from which any connection with the *Owner* may be inferred. The *Design-Builder* will 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*.

GC 13.6 AMENDMENTS TO THE CONTRACT

- 13.6.1 No alteration or amendment to this *Contract*, no course of conduct or dealing between the parties, and no express or implied acceptance of alterations or amendments to the *Contract* shall be binding unless it is in writing and signed by each party.
- 13.6.2 No waiver by or on behalf of a party of any breach of a provision of this *Contract* shall be binding upon the party unless it is expressed in writing and duly executed by the party or signed by its fully authorized representatives, and such a waiver shall not operate as a waiver of any future breach, whether of a like or different character. No waiver shall be inferred from or implied by the conduct of either party.
- 13.6.3 Should any provision of this *Contract* be held to be void or unenforceable, the remaining provisions shall remain in full force and effect, to be read and construed as if the void or unenforceable provisions were originally deleted

GC 13.7 CUSTOMS DUTIES AND TARIFFS

- 13.7.1 Any increase or decrease in costs to the *Design-Builder* due to changes in taxes and duties imposed by the Territory of Nunavut or by the Government of Canada after the execution of this *Contract* shall increase or decrease the *Contract Price* accordingly. The *Design-Builder* shall not be entitled to any fee or mark-up on any increase in the *Contract Price* due to changes in taxes and duties.
- 13.7.2 Increases or decreases in the *Design-Builder's* costs as a result of tariffs shall be dealt with as set out in this CG13.7.2:
- .1 the *Design-Builder* will only be entitled to claim an increase in the *Contract Price* if a tariff is imposed by the Government of Canada after the execution of this *Contract*, or if a tariff imposed by the Government of Canada at the time of execution of this *Contract* is increased after the execution of this *Contract* (each a "**Subject Tariff**") on materials, goods, *Products* or anything else which is specified in the *Contract Documents* or which is used in the manufacture or production of goods, *Products* or anything else which is specified in the *Contract Documents* (each a "**Subject Item**"). For certainty, the *Design-Builder* shall not be entitled to any increase in the *Contract Price* as a result of any increase in costs as a result of any tariffs announced or imposed by the government of the United States of America or any other government, state or province.
 - .2 If, as a result of a *Subject Tariff* there will be or there is an increase in costs to the *Design-Builder*, the *Design-Builder* shall immediately give *Notice in Writing* to the *Owner* that includes all of the following:
 - (a) a description of the *Subject Item* to which the *Subject Tariff* applies or will be applied and, if the *Subject Tariff* does not yet apply, the date on which the *Subject Tariff* will be applied to the *Subject Item*;
 - (b) an extract from or a reference to the section of the *Contract Documents* where the *Subject Item* is specified or an explanation of how the *Subject Item* is used in the manufacture or production of goods, *Products* or anything else which is specified in the *Contract Documents*;
 - (c) an estimate of the increase of the costs to the *Design-Builder* and an estimate of the increase to the *Contract Price* as a result of the imposition of the *Subject Tariff*;
 - (d) a list of suggested product or supplier alternatives for the *Subject Item*, and the estimated change in the *Contract Price* and the *Contract Time* if any of the suggested alternatives are implemented;

- (e) other mitigation steps that may be taken to reduce costs, such as bulk purchasing or advance purchase and storage of *Subject Items* ahead of the imposition of the *Subject Tariff*;
 - (f) such other information and documents which the *Owner* may request.
- .3 After reviewing the information and documents provided pursuant to GC 13.7.2.2, the *Owner* may make additions, deletions or other revisions to the *Design Services* or the *Work* by *Change Order* or *Change Directive* in relation to a *Subject Tariff* or a *Subject Item*. If the *Change Order* or *Change Directive* includes an increase to the *Contract Price* resulting from the imposition of a *Subject Tariff*, then:
- (a) such increase shall be limited to the actual amount paid to Canada Customs on account of the imposition of the *Subject Tariff* on the *Subject Item*, as stated in and as evidenced by a copy of the Commercial Invoice and a printout of the Commercial Accounting Declaration to be provided by the *Design-Builder* to the *Owner*. For certainty, the *Design-Builder* is not entitled to recover any amount paid on account of tariffs that were in effect at the time the *Contract* was executed; and
 - (b) the *Design-Builder* shall not be entitled to any fee or mark-up on any part of a *Change Order* or a *Change Directive* which results from a *Subject Tariff*.
- .4 If any tariff imposed by the Government of Canada is reduced or removed after the time the execution of the *Contract*, the *Contract Price* shall be reduced accordingly. the *Design-Builder* shall provide to *Owner*, upon request, copies of invoices, quotations, estimates, Canada Customs documents, and any other relevant documents which *Owner* may request, for the purpose of determining the reduction in the *Contract Price*.

END OF SUPPLEMENTAL CONDITIONS