

CCDC 5A

Construction Management Contract – for Services

2010

Name of Project

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CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
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AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER – FOR SERVICES

This agreement made on the _____ day of _____ in the year _____
by and between _____

hereinafter called the *Owner*
and _____

hereinafter called the *Construction Manager*

The *Owner* and *Construction Manager* agree as follows:

ARTICLE A-1 THE SERVICES

The *Construction Manager* shall

1.1 perform the *Services* for _____

located at _____

insert above the title of the Project

and as further described in Article A-3 – DESCRIPTION OF THE PROJECT, for which the Agreement has been signed
by the parties, and for which _____

insert above the Place of the Project

is acting as and is hereinafter called the “*Consultant*”, and _____

insert above the name of the Consultant

1.2 do and fulfill everything indicated by the *Contract Documents*, and

1.3 commence the *Services* by the _____ day of _____ in the year _____ and continue in
accordance with any schedule provided in Article A-3 – DESCRIPTION OF THE PROJECT. The *Construction
Manager’s* obligation to provide *Services* shall end no later than one year after the *Project In-Use Date*.

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any
manner to the *Services*.

2.2 This *Contract* may be amended as provided in the *Contract Documents*.

ARTICLE A-3 DESCRIPTION OF THE PROJECT

- 3.1 The following is a description of the *Project* including intended use, scope, budget, schedule, phases if applicable, the anticipated *Project In-Use Date*, and any other information which further generally describes the nature of the *Project*:

SAMPLE

ARTICLE A-4 CONTRACT DOCUMENTS

4.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE SERVICES:

- the Agreement Between *Owner* and *Construction Manager* (including the Schedules to the Agreement)
- the Definitions
- the General Conditions
- *

SAMPLE

* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents)

ARTICLE A-5 COMPENSATION FOR SERVICES

- 5.1 The *Construction Manager's* compensation shall be equal to the sum of the *Construction Manager's* fee as specified in paragraph 5.2 and the reimbursable expenses as described in paragraph 5.3.
- 5.2 The *Construction Manager's* fee is comprised of one or more of the following:
- .1* A fixed amount of _____; and
 - .2* A percentage amount of _____ percent (_____ %) of the *Construction Cost*. In the event that the *Owner* furnishes labour or material below market cost or materials are re-used beyond that anticipated in the original scope of the *Project*, the *Construction Cost* for purposes of establishing the *Construction Manager's* fee is the cost of all materials and labour necessary to complete the *Project* as if all materials had been new and as if all labour had been paid for at market prices at the time of construction or, in the event that the construction does not proceed, at existing market prices at the anticipated time of construction. Where the actual cost has not been determined for all or part of the *Project*, the *Construction Cost* shall be the *Construction Cost Estimate*, as agreed by the *Owner* and the *Construction Manager*, at market rates at the anticipated time of construction; and
 - .3* An amount based on the time-based rates for personnel employed by the *Construction Manager* as described in Schedule C to the Agreement and engaged in performing the *Services* to the level of effort agreed prior to the commencement of the *Services*.
- * Strike out inapplicable paragraph(s).
- 5.3 The reimbursable expenses are the actual expenses, supported by receipts or invoices, that the *Construction Manager* incurred in performing the *Services*, and as identified in Schedules A2 and B2 to the Agreement plus the administrative charge of _____ percent (_____ %). If there are no receipts or invoices, the expenses shall be at rates prevailing in the area of the *Place of the Project* and supported with suitable documentation.
- 5.4 The *Owner* may by written request require the *Construction Manager* to:
- .1 provide prior to commencement of the *Services* an estimate of the total amount of the *Construction Manager's* fee for the *Services* as described in paragraph 5.2.3;
 - .2 provide prior to commencement of the *Services* an estimate of the total amount of the reimbursable expenses as described in paragraph 5.3 for evaluation and verification purposes; and
 - .3 inform the *Owner* in writing prior to incurring reimbursable expenses as described in paragraph 5.3.
- 5.5 All amounts are in Canadian funds.

ARTICLE A-6 PAYMENT

- 6.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Project*. The *Owner* shall pay the *Construction Manager*:
- .1 payments on account of the compensation described in Article A-5 of the Agreement – COMPENSATION FOR SERVICES together with such *Value Added Taxes* as may be applicable to such payments, and
 - .2 upon completion of the *Services*, the unpaid balance of the compensation together with such *Value Added Taxes* as may be applicable to such payments.
- 6.2 Should the *Owner* 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.

ARTICLE A-7 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 7.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 7.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 7.3 A *Notice in Writing* delivered by one party in accordance with this *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.
- 7.4 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 thereof.
- 7.5 An address for a party may be changed by *Notice in Writing* setting out the new address delivered to the other party in accordance with this Article.

Owner

name of Owner*

address

facsimile number

email address

Construction Manager

name of Construction Manager*

address

facsimile number

email address

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

ARTICLE A-8 LANGUAGE OF THE CONTRACT

- 8.1 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.
- 8.2 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.

Complete this statement by striking out inapplicable term.

ARTICLE A-9 SUCCESSION

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

In witness whereof the parties hereto have executed this Agreement by their respective hands or 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

signature

name and title of person signing

CONSTRUCTION MANAGER

name of Construction Manager

signature

name and title of person signing

signature

name and title of person signing

N.B. Where legal jurisdiction, local practice, or Owner or Construction Manager 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.

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

1. PRECONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)	Not Applicable
1.1 General Services .1 Attend regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i> . .2 Provide advice to the <i>Owner</i> and the <i>Consultant</i> with respect to construction and market conditions.			
1.2 Predesign .1 Estimating: (1) Confirm or prepare a <i>Class D Construction Cost Estimate</i> . (2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action. .2 Scheduling: Prepare a preliminary overall <i>Project</i> schedule.			
1.3 Schematic Design Phase .1 Constructability: Provide advice on site use and possible improvements, selection of materials, assembly systems, and, equipment and provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to alternative designs and possible economies. .2 Estimating: (1) Prepare a <i>Class C Construction Cost Estimate</i> at the end of the Schematic Design Phase. (2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action. .3 Scheduling: Prepare in consultation with the <i>Consultant</i> and the <i>Owner</i> a preliminary <i>Project</i> schedule for the <i>Owner's</i> review; such <i>Project</i> schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the <i>Project-In-Use Date</i> . .4 Other Services: Assist in providing liaison and coordination among government authorities, utility companies, and other authorities having jurisdiction over the <i>Place of the Project</i> .			
1.4 Design Development Phase .1 Constructability: (1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies. (2) Make recommendations to the <i>Owner</i> and the <i>Consultant</i> regarding the scope of <i>Work</i> packages, to help facilitate the subsequent bidding and awarding of trade and supply contracts. (3) Review the specifications and drawings and at the end of the Design Development Phase, make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to constructability and coordination among the <i>Trade Contractors</i> . (4) Prepare general functional layout of construction site access and organization and <i>Temporary Work</i> . .2 Estimating and Cost Control: (1) Prepare a <i>Class B Construction Cost Estimate</i> at the end of the Design Development Phase. (2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendations for corrective action. (3) Establish a cost control program, and prepare a cash flow forecast for the <i>Project</i> . .3 Scheduling: (1) Review and update the <i>Project</i> schedule with appropriate details. (2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> , update the <i>Project</i> schedule, and make recommendations for corrective action. (3) Make recommendations to the <i>Owner</i> regarding any equipment or materials, which should be pre-ordered to meet the <i>Project</i> schedule.			

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

1. PRECONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)	Not Applicable
1.5 Construction Document Phase .1 Constructability: (1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies. (2) Review the specifications and drawings and make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to clarity, consistency, constructability, and coordination among the <i>Trade Contractors</i> . (3) Assist the <i>Owner</i> and the <i>Consultant</i> in preparing bid documents for <i>Trade Contractors</i> . (4) Assist the <i>Owner</i> in determining the contract security requirements of <i>Trade Contractors</i> . .2 Estimating and Cost Control: (1) Update the <i>Class B Construction Cost Estimate</i> at defined intervals of <i>Construction Documents</i> completion. (2) Prepare a <i>Class A Construction Cost Estimate</i> at the end of the Construction Document Phase. (3) Update the cash flow forecasts for the <i>Project</i> . (4) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget and make recommendations for corrective action. .3 Scheduling: (1) Review and update the <i>Project</i> schedule with appropriate details. (2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> , and make recommendations for corrective action, including changes to <i>Project</i> scope, schedule or budget. .4 Make recommendations to the <i>Owner</i> regarding any equipment or materials which should be pre-ordered to meet the <i>Project</i> objective. .5 Prepare general requirements. .6 Collate, assemble and distribute bid documents.			
1.6 Construction Procurement Phase .1 Scheduling: (1) Review and update the <i>Project</i> schedule with appropriate details. .2 Contracting: (1) Develop methods of solicitation for <i>Trade Contractors</i> and the distribution of addenda. (2) Prepare the prequalification criteria for <i>Trade Contractors</i> and <i>Suppliers</i> as required by the <i>Owner</i> . (3) Review for completeness and coordinate all bid documents for the solicitation of competitive bids for the <i>Work</i> of each <i>Trade Contractor</i> . .3 Solicit bids. .4 Assist the <i>Owner</i> in the evaluation and awarding of contracts. .5 Update the cash flow forecasts for the <i>Project</i> .			

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

2. CONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
2.1 General Services .1 Chair and minute regular <i>Project</i> meetings with the <i>Owner</i> , the <i>Consultant</i> and <i>Trade Contractors</i> . .2 Organize and distribute all documents related to the performance of the contract and execution of the <i>Work</i> of each <i>Trade Contractor</i> . .3 Provide administration as described in the trade contract documents including. (1) Facilitate all communications among the <i>Owner</i> , the <i>Consultant</i> , the <i>Payment Certifier</i> , and <i>Trade Contractors</i> that relate to the <i>Project</i> . (2) In the first instance, receive all questions in writing by the <i>Owner</i> or <i>Trade Contractors</i> for interpretations and findings relating to the performance of the <i>Work</i> or the interpretation of the trade contract documents except with respect to financing information required of the <i>Owner</i> . (3) In the first instance, give interpretations and make findings on matters in question relating to the performance of any <i>Work</i> or the requirements of the trade contract documents, except with respect to any and all architectural and engineering aspects of the <i>Project</i> or financing information required of the <i>Owner</i> . (4) During the progress of the <i>Work</i> , issue supplemental instructions to <i>Trade Contractors</i> with reasonable promptness or in accordance with a schedule for such instructions agreed to by the <i>Construction Manager</i> and <i>Trade Contractors</i> . (5) Promptly investigate, make findings and inform the <i>Owner</i> , <i>Trade Contractors</i> and the <i>Consultant</i> concerning all concealed or unknown conditions which are discovered by the <i>Construction Manager</i> or of which <i>Notice in Writing</i> is given to the <i>Construction Manager</i> . (6) Make findings upon all claims for a change in any trade contract price, and provide <i>Notice in Writing</i> of such findings to all parties within 30 <i>Working Days</i> after receipt of such claim or within such other time period as may be agreed by the parties. (7) Give instructions necessary for the proper performance of <i>Work</i> of each <i>Trade Contractor</i> during any dispute so as to prevent delays pending settlement of such dispute. (8) Investigate the impact on <i>Work of each Trade Contractor</i> of the discovery of any fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the <i>Place of the Project</i> , and advise the <i>Owner</i> concerning the issuance of appropriate instructions for any change in <i>Work</i> as a result of such discovery. (9) Act on behalf of the <i>Owner</i> , <i>Trade Contractors</i> and the <i>Consultant</i> for the purpose of adjusting the amount of any loss or damage payment with insurers under property or boiler and machinery policies affecting any <i>Work</i> .		
2.2 Project Control and Scheduling .1 (1) Establish and implement organization and procedures with respect to all aspects of the <i>Project</i> . (2) Provide to <i>Trade Contractors</i> the <i>Project</i> schedule that indicates the timing of major activities of the <i>Project</i> in sufficient detail for <i>Trade Contractors</i> to schedule their <i>Work</i> . (3) Provide coordination and general direction for the progress of the <i>Project</i> . (4) Monitor the <i>Work</i> of each <i>Trade Contractor</i> . (5) Coordinate all <i>Trade Contractors</i> in the performance of their respective <i>Work</i> , with one another and with the activities and responsibilities of the <i>Owner</i> and the <i>Consultant</i> . (6) Review the performance of <i>Trade Contractors</i> ' personnel and equipment and the availability of materials and supplies to meet the <i>Project</i> schedule and recommend courses of action to the <i>Owner</i> when requirements of a trade contract are not being met. (7) Provide regular monitoring of the schedule as construction progresses. Identify potential variances to planned completion dates. Review schedule for work not started or incomplete and recommend to the <i>Owner</i> and <i>Trade Contractors</i> adjustments in the schedule to achieve the <i>Project In-Use Date</i> . Provide summary reports of each monitoring and document all changes in schedule.		

2. CONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
2.3 Common Construction Facilities and Services .1 Arrange for the required <i>Temporary Work</i> .		
2.4 Cost Control and Accounting .1 (1) Prepare and update the <i>Construction Cost</i> cash flow forecasts in accordance with the <i>Project</i> budget as specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> . (2) Develop, implement and maintain a system of <i>Project</i> cost control and accounting. (3) Advise the <i>Owner</i> and the <i>Consultant</i> on the variances between actual cost and <i>Construction Cost Estimate</i> . (4) Provide reasonable assistance and information to permit recovery of all tax rebates where applicable. (5) Jointly with each <i>Trade Contractor</i> , prepare a schedule showing when items called for under cash allowances must be ordered to avoid delaying the progress of <i>Work</i> . (6) Provide recommendations to the <i>Owner</i> for necessary changes to maintain <i>Project</i> budget and <i>Project</i> schedule.		
2.5 Changes in Work .1 (1) Develop and implement a system for processing changes in any <i>Work</i> . (2) Recommend appropriate changes in any <i>Work</i> to the <i>Owner</i> and the <i>Consultant</i> . (3) Review requests for changes in any <i>Work</i> and provide recommendations to the <i>Owner</i> and the <i>Consultant</i> and, if necessary, assist in negotiation. (4) Prepare and issue to <i>Trade Contractors</i> change orders and change directives, including written descriptions of proposed changes in <i>Work</i> , all of which are to be prepared in consultation with the <i>Consultant</i> when they are related to the specifications and drawings.		
2.6 Payments to Trade Contractors and Suppliers .1 (1) Develop and implement a procedure for timely process of payments to <i>Trade Contractors</i> and <i>Suppliers</i> . (2) Promptly inform the <i>Owner</i> of the date of receipt of the <i>Trade Contractors</i> ' applications for payment. (3) Promptly forward to the <i>Payment Certifier</i> the applications for payment received from the <i>Trade Contractors</i> . .2 (1) Determine the amounts owing to <i>Trade Contractors</i> and issue certificates for payment based on the <i>Construction Manager</i> 's observations and evaluation of <i>Trade Contractors</i> ' applications for payment.		
2.7 Field Review .1 (1) Develop, implement and maintain a system for quality assurance and quality control. (2) Reject work that in the opinion of the <i>Construction Manager</i> or the <i>Consultant</i> does not conform to the requirements of the trade contract documents and whenever it is considered necessary or advisable, require inspection or testing of work.		
2.8 Health and Construction Safety .1 (1) Subject to paragraph 3.1.2 of GC 3.1 – PROVISION OF INFORMATION AND OBLIGATIONS, be responsible for establishing, initiating, maintaining, and overseeing the health and safety precautions and programs required to be put in place at the <i>Place of the Project</i> and review with the <i>Owner</i> all safety programs for adequacy. (2) Review with the <i>Owner</i> the <i>Trade Contractors</i> ' safety programs for compliance.		

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

2. CONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
2.9 Submittals .1 (1) Establish procedures for processing submittals. (2) Coordinate all relevant information required to perform any <i>Work</i> . (3) Upon request by any <i>Trade Contractor</i> or the <i>Consultant</i> , jointly prepare a schedule of the dates for provision, review and return of shop drawings. (4) Forward to the <i>Consultant</i> for review all shop drawings that are considered to be complete. (5) Indicate in writing the <i>Consultant's</i> acceptance or rejection of all deviations in the shop drawings from the requirements of the trade contract documents. (6) Return all shop drawings in accordance with the agreed schedule, or in the absence of such agreed schedule, with reasonable promptness so as to cause no delay in the performance of any <i>Work</i> .		
2.10 Reports and Project Site Documents .1 (1) Keep a daily log available to the <i>Owner</i> and the <i>Consultant</i> . (2) Maintain copies of all necessary documents at the <i>Place of the Project</i> . (3) Collate and compile record documents and operating and maintenance manuals in accordance with the <i>Owner's</i> requirements.		
2.11 Start-up .1 (1) Assist the <i>Owner</i> in coordinating and monitoring initial start-up and testing conducted by <i>Trade Contractors</i> . (2) Coordinate the commissioning of utilities, systems and equipment.		
2.12 Substantial Performance of the Work .1 (1) Subject to applicable legislation, arrange for the issuance of the necessary certificates respecting <i>Substantial Performance of the Work</i> of each <i>Trade Contractor</i> or designated portions thereof, lists of incomplete or unsatisfactory items, and schedules for their completion. (2) Distribute certificates of <i>Substantial Performance of the Work</i> and final certificates for payment of <i>Work</i> of each <i>Trade Contractor</i> . (3) Arrange with <i>Trade Contractors</i> to finish <i>Work</i> to be completed or corrected.		
2.13 Project In-Use Date .1 (1) Determine, in consultation with the <i>Owner</i> and the <i>Consultant</i> , and advise <i>Trade Contractors</i> in writing of, the <i>Project In-Use Date</i> .		
2.14 Handover .1 (1) Inform the <i>Owner</i> and the <i>Consultant</i> in writing when <i>Work</i> of each <i>Trade Contractor</i> is ready for final review prior to issuance of final certificate for payment. (2) Seek, obtain and transmit to the <i>Owner</i> warranties (in consultation with the <i>Consultant</i> , if applicable), affidavits, releases, bonds, insurances, and waivers received from <i>Trade Contractors</i> . (3) Turn over to the <i>Owner</i> all keys and maintenance stocks. (4) Arrange for the issuance of the final certificate for payment for each <i>Trade Contractor</i> . (5) Assist the <i>Owner's</i> operating staff to facilitate a smooth and proper takeover of <i>Work</i> of each <i>Trade Contractor</i> and the <i>Project</i> , including all necessary training and instruction of the <i>Owner's</i> operating staff.		

3. POST-CONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
3.1 General Services .1 (1) Chair and minute <i>Project</i> meetings with the <i>Owner</i> , the <i>Consultant</i> , and <i>Trade Contractors</i> . (2) Prepare final <i>Construction Cost</i> report.		
3.2 Occupancy Review .1 Assist the <i>Owner</i> in conducting post-construction occupancy review.		
3.3 Warranties .1 Assist the <i>Owner</i> in administering warranties.		

SCHEDULE A2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to *Services* are included in the *Construction Manager's* fee as described in paragraph 5.2 of Article of the Agreement A-5 – COMPENSATION FOR SERVICES.

	Costs Included in the Construction Manager's Fee (A5.2)	Reimbursable Expenses (A5.3)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Project</i> .		
2. Charges for long distance telephone and facsimile communications, courier services, and reproduction of trade contract documents incurred in relation to the performance of this <i>Contract</i> .		
3. The cost of <i>Project</i> specific information technology support in accordance with the method determined by the parties.		
4. Deposits lost, provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		
5. The costs to the <i>Construction Manager</i> that result from any <i>Trade Contractor's</i> insolvency or failure to perform.		
6. Charges levied by authorities having jurisdiction at the <i>Place of the Project</i> .		
7. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.		
8. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.		
9. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 8.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable.		
10. The costs incurred due to emergencies affecting the safety of persons or property.		
11. Legal costs incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Services</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		
12. Such other costs directly incurred by the <i>Construction Manager</i> in the performance of this <i>Contract</i> as follows:		

SCHEDULE B1 – ADDITIONAL SERVICES AND COMPENSATION

The *Construction Manager* will provide the following additional services and *Temporary Work* that are within the scope of the *Services*:

	Method of Compensation (*F1/F2/F3)
	

SCHEDULE B2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE B1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to additional services are included in the *Construction Manager's* fee as described in paragraph 5.2 of Article of the Agreement A-5 – COMPENSATION FOR SERVICES.

	Costs Included in the Construction Manager's Fee (A5.2)	Reimbursable Expenses (A5.3)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Project</i> .		
2. Charges for long distance telephone and facsimile communications, courier services, reproduction of trade contract documents incurred in relation to the performance of this <i>Contract</i> .		
3. Deposits lost provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		
4. The costs to the <i>Construction Manager</i> that result from any <i>Trade Contractor's</i> insolvency or failure to perform.		
5. The cost of all products purchased by the <i>Construction Manager</i> for the <i>Project</i> , including cost of transportation thereof.		
6. The cost of all equipment and services required for the <i>Construction Manager's</i> field office.		
7. The amounts of all contracts between the <i>Construction Manager</i> and subcontractors and suppliers.		
8. The cost of quality assurance such as independent inspection and testing services.		
9. Any adjustment in premiums for insurance which the <i>Construction Manager</i> is required, by this <i>Contract</i> , to purchase and maintain.		
10. If applicable, the cost of time-based rate for labour in the direct employ of the <i>Construction Manager</i> in performing the additional services described in Schedule B1.		
11. Charges levied by authorities having jurisdiction at the <i>Place of the Project</i> .		
12. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.		
13. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.		
14. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 8.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, are within the deductible amounts or are not insurable.		
15. The costs incurred due to emergencies affecting the safety of persons or property.		
16. Legal costs, incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Project</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		
17. Such other costs directly incurred by the <i>Construction Manager</i> in performing the additional services as follows:		

SCHEDULE C – TIME-BASED RATES FOR PERSONNEL EMPLOYED BY THE CONSTRUCTION MANAGER

[illegible]

DEFINITIONS

The following Definitions apply to the *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

Class A Construction Cost Estimate

The *Class A Construction Cost Estimate* is an estimate of the *Construction Cost* based on the completed *Construction Documents*. *Class A Construction Cost Estimate* is the final estimate before the bid or proposal call. *Class A Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class B Construction Cost Estimate

The *Class B Construction Cost Estimate* is an estimate of the *Construction Cost* with a level of precision that is based on the degree of completion of the *Construction Documents* at the time of preparation of the estimate. The *Class B Construction Cost Estimate* is typically prepared when all site or installation investigations are completed and the design of the major systems and sub-systems of the *Project* (including outline specifications and preliminary drawings and models) are well underway. *Class B Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class C Construction Cost Estimate

The *Class C Construction Cost Estimate* is an estimate of the *Construction Cost* based on updated *Owner* requirements, general description of the *Project*, preliminary site information and existing conditions, and takes into consideration market conditions as well as basic implementation logistics. *Class C Construction Cost Estimate* shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Class D Construction Cost Estimate

The *Class D Construction Cost Estimate* is an estimate of the *Construction Cost* based on the *Owner's* functional requirements to the degree known at the time. The *Class D Construction Cost Estimate* shall as a minimum be based on historical cost data for similar projects, suitably adjusted for such factors as inflation, location, risk, quality, size, and time. All related factors affecting cost are considered to the extent possible. The *Class D Construction Cost Estimate* provides the *Owner* an indication of the order of magnitude of the *Construction Cost* for a project completed within the estimated completion date, and shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Construction Cost

Construction Cost means the actual cost of all elements of the *Project* including all applicable taxes but excluding the applicable value added taxes, whether recoverable or not. *Construction Cost* does not include the compensation of the *Construction Manager* and the *Consultant*.

Construction Cost Estimate

Construction Cost Estimate is either a *Class A Construction Cost Estimate*, a *Class B Construction Cost Estimate*, a *Class C Construction Cost Estimate*, or a *Class D Construction Cost Estimate*, as the context shall require and is prepared with a level of precision commensurate with the level of detail of information available at the time.

Construction Documents

The *Construction Documents* consist of the specifications and drawings that are consistent with the *Contract Documents* and are prepared by the *Consultant* and accepted by the *Owner* after execution of the Agreement for the performance of the *Project*.

Construction Manager

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

Consultant

The *Consultant* is the person or entity engaged by the *Owner* and 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 Project*.

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-4 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE SERVICES.

Notice in Writing

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

Owner

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

Payment Certifier

The *Payment Certifier* is either the *Construction Manager* or the *Consultant* identified as such in a trade contract.

Place of the Project

The *Place of the Project* is the designated site or location of the *Project* identified in this Agreement.

Project

The *Project* means the total construction as described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT contemplated by the *Owner*.

Project In-Use Date

Project In-Use Date shall have been reached when the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*.

Services

The *Services* means all services described in Schedule A1 to the Agreement – SERVICES AND COMPENSATION and Schedule B1 to the Agreement – ADDITIONAL SERVICES AND COMPENSATION to be performed by the *Construction Manager* under this *Contract*.

Substantial Performance of the Work

Substantial Performance of the Work is defined in the lien legislation applicable to the *Place of the Project* with respect to each *Trade Contractor*. 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* of each *Trade Contractor* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Owner* to supply products.

Temporary Work

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

Trade Contractor

Trade Contractor is the person or entity identified as such in a trade contract between the *Owner* and the *Trade Contractor* to perform *Work*.

Value Added Taxes

Value Added Taxes means such sums as shall be levied upon the *Owner's* payment to the *Construction Manager* by the Federal or any Provincial or Territorial government and is computed as a percentage of such payment and includes the Goods and Services Tax, the Quebec Sales Tax, The Harmonized Sales Tax, and any other similar tax, the collection and payment of which have been imposed on the *Construction Manager* by tax legislation.

Work

Work means the construction and related services required to be performed by a *Trade Contractor*.

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 Project*.

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

1.1.1 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 *Construction Manager* (including the Schedules to the Agreement),
 - the Definitions,
 - Supplementary Conditions, if any
 - the General Conditions.
- .2 later dated documents shall govern over earlier documents of the same type.
- .3 amendments to documents shall govern over documents so amended.

GC 1.2 LAW OF THE CONTRACT

1.2.1 The law of the *Place of the Project* shall govern the interpretation of this *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 thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner* or the *Construction Manager* shall constitute a waiver of any right or duty afforded either of them under this *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 in writing.

GC 1.4 ASSIGNMENT

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

GC 1.5 PROJECT REPRESENTATIVES

1.5.1 The *Owner*, *Construction Manager* and *Consultant* may appoint one or more project representatives to assist in carrying out their responsibilities under this *Contract*. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing.

PART 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

GC 2.1 SERVICES

- 2.1.1 The *Construction Manager* shall provide the basic services identified in Schedule A1 to the Agreement and additional services identified in Schedule B1 to the Agreement.
- 2.1.2 The *Construction Manager* shall retain the personnel named in the Agreement in their designated roles for the duration of the assignment and promptly inform and obtain approval by the *Owner* of any change.
- 2.1.3 In providing the *Services*, the *Construction Manager* assumes no responsibility for, nor offers any professional advice with respect to, any and all architectural or engineering aspects of the *Project* or the *Consultant's* services.
- 2.1.4 The authority of the *Construction Manager* as agent of the *Owner* is expressly limited to the provision of the *Services* more particularly described in Schedules A1 and B1 to the Agreement.
- 2.1.5 Interpretations and findings of the *Construction Manager* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Construction Manager* will not show partiality to either the *Owner* or *Trade Contractors*.

PART 3 OWNER'S RESPONSIBILITIES

GC 3.1 PROVISION OF INFORMATION AND OBLIGATIONS

3.1.1 The *Owner* shall:

- .1 retain the *Consultant* who shall be responsible for the design and design-related services required for the *Project*;
- .2 inform the *Construction Manager* of the scope and terms of the *Consultant's* services;

- .3 inform the *Consultant* of the scope and terms of the *Services*;
- .4 coordinate and facilitate the services of the *Construction Manager* and the *Consultant*;
- .5 enter into contracts or written agreements with *Trade Contractors* to perform the *Work*. Such agreements shall be consistent with the requirements of CCDC 17 – STIPULATED PRICE CONTRACT BETWEEN OWNER AND TRADE CONTRACTOR FOR CONSTRUCTION MANAGEMENT PROJECTS;
- .6 inform the *Construction Manager* of the scope and terms of each trade contract;
- .7 upon request by the *Construction Manager*, furnish to the *Construction Manager* reasonable evidence that financial arrangements have been made and that adequate financing is available in order to ensure the completion of the *Project*;
- .8 communicate with *Trade Contractors* through the *Construction Manager* except:
 - (1) for direct communications with the *Payment Certifier*,
 - (2) with respect to formal notices in writing, or
 - (3) when expressly specified in a trade contract.
- .9 pay *Trade Contractors* in accordance with the terms and conditions of each trade contract;
- .10 furnish promptly to the *Construction Manager* all information that is required for the *Project* regarding the *Place of the Project* including surveys as to the physical characteristics of the site, soils reports, subsurface investigations, legal limitations, utility locations, and legal description. The *Construction Manager* shall be entitled to rely on such information;
- .11 provide full and timely information and approvals regarding the requirements of the *Project* for the orderly progress of the *Services*;
- .12 review documents submitted by the *Construction Manager* and give the *Construction Manager* timely decisions for the orderly progress of the *Services*;
- .13 obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits;
- .14 provide, maintain and pay for the insurance coverages required for the *Project* in accordance with Part 8 of the General Conditions – INSURANCE;
- .15 immediately notify the *Construction Manager* if the *Owner* observes or otherwise becomes aware of any fault or defect in the *Work*, the *Project* or any non-conformity with the requirements of the *Contract*;
- .16 designate in writing a representative who shall be fully acquainted with the *Project* and shall have the authority to act on the *Owner's* behalf in relation to all duties and responsibilities of the *Owner* under this *Contract*; and
- .17 designate in writing a *Payment Certifier* and advise the *Construction Manager* and the *Consultant*.

3.1.2 The *Owner* shall be responsible for construction health and safety at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable health and construction safety legislation.

PART 4 PAYMENT

GC 4.1 APPLICATIONS FOR PAYMENT

- 4.1.1 The *Construction Manager's* applications for payment shall be made monthly as the *Services* progress or in accordance with such other period agreed to by the *Owner* and the *Construction Manager*.
- 4.1.2 The amount claimed shall be in accordance with a schedule agreed to by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, equal to the value of the *Services* provided as of the last day of the payment period.

GC 4.2 PAYMENT

- 4.2.1 The *Owner* shall make payment to the *Construction Manager* on account in accordance with the provisions of Article A-6 of the Agreement – PAYMENT no later than 20 calendar days following the date of receipt of an application for payment.
- 4.2.2 No deductions shall be made by the *Owner* from amounts payable to the *Construction Manager* other than those for which the *Construction Manager* is proven to be responsible as in accordance with Part 7 – DISPUTE RESOLUTION or has agreed to pay.
- 4.2.3 Variance from the *Construction Cost Estimate* established under this *Contract* shall not constitute grounds for the *Owner* to withhold fees due to the *Construction Manager*.
- 4.2.4 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Project*.

PART 5 CHANGES

GC 5.1 CHANGES TO THE PROJECT

- 5.1.1 The *Owner*, without invalidating this *Contract*, may make changes in the *Project* provided they are within the general scope of the *Project* and of the *Services*.
- 5.1.2 The *Construction Manager* shall promptly advise the *Owner* if a change contemplated by the *Owner* under paragraph 5.1.1 will change the *Construction Manager's* compensation or the *Project In-Use Date*.
- 5.1.3 If the *Owner* and the *Construction Manager* agree on an adjustment to the *Construction Manager's* compensation or *Contract Time*, such agreement shall be recorded in writing.
- 5.1.4 If the *Owner* and *Construction Manager* cannot agree on the change in *Construction Manager's* compensation, the matter shall be determined in accordance with the provisions of Part 7 of the General Conditions – DISPUTE RESOLUTION.
- 5.1.5 If the *Contract Time* is exceeded or extended through no fault of the *Construction Manager*, the *Construction Manager's* compensation shall be adjusted accordingly to cover the *Construction Manager's* additional costs.

GC 5.2 CHANGES IN SERVICES

- 5.2.1 Any agreement between the *Owner* and the *Construction Manager* on a change to the *Services* shall be recorded in writing.

PART 6 DEFAULT NOTICE

GC 6.1 OWNERS' RIGHT TO TERMINATE THE CONTRACT

- 6.1.1 If a party is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or a receiver is appointed because of its insolvency, the other party may, without prejudice to any other right or remedy it may have, terminate this *Contract* by giving the party or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 6.1.2 If the *Construction Manager* neglects to properly perform the *Service* or otherwise fails to comply with the requirements of this *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Construction Manager Notice in Writing* that the *Construction Manager* is in default of the *Construction Manager's* contractual obligations and instruct the *Construction Manager* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 6.1.3 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 *Construction Manager* shall be in compliance with the *Owner's* instructions if the *Construction Manager*:
 - .1 commences the correction of the default within the specified time, and
 - .2 provides an acceptable schedule to the *Owner* for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 6.1.4 If the *Construction Manager* 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 to the *Construction Manager*, or
 - .2 terminate the *Construction Manager's* right to continue with the *Services* in whole or in part or terminate this *Contract*.
- 6.1.5 If the *Owner* terminates this *Contract* as provided in paragraphs 6.1.1 and 6.1.4, the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* properly performed to the effective termination date, including reimbursable expenses and applicable taxes then due.
- 6.1.6 The *Owner* may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 6.1.1 and 6.1.4, terminate this *Contract* by giving *Notice in Writing* to that effect to the *Construction Manager*.
- 6.1.7 Suspension of the *Project* shall be deemed to have occurred if:
 - .1 the *Project* has been stopped at the *Owner's* request or due to no fault of the *Construction Manager*, and
 - .2 such stoppage or stoppages have continued individually for a period of 30 calendar days or collectively for a period of 60 calendar days.

- 6.1.8 If the *Owner* terminates this *Contract* as provided in paragraph 6.1.6 or suspends the *Project* as described in paragraph 6.1.7:
- .1 the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* performed to the effective termination date, including reimbursable expenses and applicable taxes then due; and
 - .2 the *Construction Manager* shall be entitled to reasonable termination costs and an amount for anticipated loss of profit.

GC 6.2 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE THE CONTRACT

- 6.2.1 If the *Owner* fails to comply with the requirements of this *Contract* to a substantial degree, including but not limited to the non-payment of compensation for *Services* described in Article A-5 – COMPENSATION FOR SERVICES, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, give the *Owner Notice in Writing* that the *Owner* is in default of the *Owner's* contractual obligations and notify the *Owner* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 6.2.2 If the *Owner* 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 *Construction Manager* may have, the *Construction Manager* may terminate this *Contract*.
- 6.2.3 If the *Construction Manager* terminates this *Contract* as described in paragraph 6.2.2:
- .1 the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* performed to the effective termination date, including reimbursable expenses and applicable taxes then due; and
 - .2 the *Construction Manager* shall be entitled to reasonable termination costs and an amount for anticipated loss of profit.

PART 7 DISPUTE RESOLUTION

GC 7.1 NEGOTIATION, MEDIATION AND ARBITRATION

- 7.1.1 Differences between the parties to this *Contract* 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 settled in accordance with the requirements of this General Condition.
- 7.1.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 7.1.3 If the parties so agree the dispute shall be submitted to mediation or arbitration in accordance with the provisions of the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect as at the date of this *Contract*.
- 7.1.4 If no agreement is made for mediation or arbitration as described in paragraph 7.1.3, the parties may refer the unresolved dispute to the courts or to any other agreed form of dispute resolution.

PART 8 INSURANCE

GC 8.1 INSURANCE

- 8.1.1 The *Owner* shall obtain, maintain and pay for 'wrap-up' general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, all *Trade Contractors*, all subconsultants, and all trade subcontractors with limits of not less than \$10,000,000 per occurrence and a deductible not more than \$10,000. 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 90 calendar days after the *Project In-Use Date*. The *Owner* is responsible to provide coverage for completed operations hazards from the *Project In-Use Date* for a period of 2 years.

- 8.1.2 The *Owner* shall obtain, maintain and pay for ‘broad form’ property insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less than the sum of 1.1 times the *Construction Cost Estimate* with a deductible not more than \$10,000. The “Broad Form” property insurance shall be provided from the date of commencement of the *Project* until the earliest of:
- .1 10 calendar days after the *Project In-Use Date*;
 - .2 on the commencement of use or occupancy of any part or section of the *Work* of any *Trade Contractors* 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 *Project*;
 - .3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- 8.1.3 The *Owner* shall or cause to obtain, maintain and pay for an Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Project*. The policy shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard.
- 8.1.4 The *Construction Manager* shall provide, maintain and pay for general liability insurance that has limits of not less than \$5,000,000 per occurrence and a deductible not more than \$5,000. The policy shall be maintained from the date of commencement of the *Project* until the *Construction Manager* completes the *Services*. Liability coverage shall be provided for completed operations hazards on an ongoing basis for a period of 6 years following the *Project In-Use Date*.
- 8.1.5 The *Construction Manager* shall provide, maintain and pay for Automobile Liability Insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy. The policy shall have limits not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all vehicles owned or leased by the *Construction Manager*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Construction Manager* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Construction Manager*.
- 8.1.6 Prior to commencement of the *Project* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the parties shall promptly provide each other with confirmation of coverage that they are responsible for and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Project*.
- 8.1.7 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of this *Contract*.
- 8.1.8 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Project*.

PART 9 INDEMNIFICATION AND WAIVER OF CLAIMS

GC 9.1 INDEMNIFICATION

- 9.1.1 The *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Project In-Use Date* or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Project*.
- The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 9.1.2 The obligation of either party to indemnify as set forth in paragraph 9.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 8.1 – INSURANCE, the insurance limit for the loss so covered as prescribed in GC 8.1 – INSURANCE.

- .2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 8.1 – INSURANCE, the *Construction Manager*'s compensation as recorded in Article A-5 of the Agreement – COMPENSATION FOR SERVICES.
- .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 9.1.2.1 and 9.1.2.2 shall apply.

9.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 9.1.1 and 9.1.2 shall be inclusive of interest and all legal costs.

9.1.4 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:

- .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 to the party required to give such *Notice in Writing*;
- .2 should either party be required as a result of its obligation to indemnify the other 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 9.2 WAIVER OF CLAIMS

9.2.1 As of the date of one year from the *Project In-Use Date*, the *Construction Manager* waives and releases the *Owner* from all claims which the *Construction Manager* has or reasonably ought to have knowledge of that could be advanced by the *Construction Manager* against the *Owner* arising from the *Construction Manager*'s involvement in the *Project*, 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 *Project In-Use Date*, except as follows:

- .1 claims arising prior to or on the *Project In-Use Date* for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* no later than 20 days after the *Project In-Use Date*;
- .2 indemnification for claims advanced against the *Construction Manager* by third parties for which a right of indemnification may be asserted by the *Construction Manager* against the *Owner* pursuant to the provisions of this *Contract*;
- .3 claims resulting from acts or omissions which occur after the *Project In-Use Date*.

9.2.2 The *Construction Manager* waives and releases the *Owner* from all claims referenced in paragraph 9.2.1.3 except for those referred in paragraph 9.2.1.2 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* within 395 calendar days following the *Project In-Use Date*.

9.2.3 As of the date of one year from the *Project In-Use Date*, the *Owner* waives and releases the *Construction Manager* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Construction Manager* arising from the *Owner*'s involvement in the *Project*, 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 *Project In-Use Date*, except as follows:

- .1 claims arising prior to or on the *Project In-Use Date* for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* no later than 20 days from the *Project In-Use Date*;
- .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 *Construction Manager* pursuant to the provisions of this *Contract*;
- .3 damages arising from the *Construction Manager*'s actions which result in substantial defects or deficiencies in the *Project*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Project* which affect the *Project* to such an extent or in such a manner that a significant part or the whole of the *Project* is unfit for the purpose intended by this *Contract*;
- .4 claims arising from acts or omissions which occur after the *Project In-Use Date*.

9.2.4 The *Owner* waives and releases the *Construction Manager* from all claims referred to in paragraph 9.2.3.3 except for those referred in paragraph 9.2.3.2 and claims for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* within a period of six years from *Project In-Use Date* should any limitation statute of the Province or Territory of the *Place of the Project* 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 Project*; or
- .2 the Civil Code of Quebec if the *Place of the Project* is the Province of Quebec.

- 9.2.5 The *Owner* waives and releases the *Construction Manager* from all claims referenced in paragraph 9.2.3.4 except for those arising from claims for which *Notice in Writing* has been received by the *Construction Manager* from the *Owner* within 395 calendar days following the *Project In-Use Date*.
- 9.2.6 *Notice in Writing* of claim as provided for in GC 9.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 9.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
 - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 9.2.7 The party giving *Notice in Writing* of claim as provided for in GC 9.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 9.2.8 Where the event or series of events giving rise to a claim made under paragraphs 9.2.1 or 9.2.3 has a continuing effect, the detailed account submitted under paragraph 9.2.7 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 that gave rise to the claim.
- 9.2.9 If a *Notice in Writing* of claim pursuant to paragraph 9.2.1.1 is received on the 18th or 19th calendar day after the *Project In-Use Date*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 9.2.3.1 shall be extended to 24 calendar days after the *Project In-Use Date*.
- 9.2.10 If a *Notice in Writing* of claim pursuant to paragraph 9.2.3.1 is received on the 18th or 19th calendar day after the *Project In-Use Date*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 9.2.1.1 shall be extended to 24 calendar days after the *Project In-Use Date*.