

Project Name:	Date:	
Project Location:	Section Name:	
Owner's Name:	Section:	

**SUPPLEMENTARY GENERAL CONDITIONS FOR THE AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER – FOR SERVICES – for use with CCDC-5A, 2010**

**GENERAL CONDITIONS**

**PART 1 GENERAL PROVISIONS**

**GC 1.5 PROJECT REPRESENTATIVES**

Add:

1.5.2 The Consultant will, receive all questions in writing from the Owner or the Construction Manager and will give interpretations and provide recommendations on matters relating to the performance of the Services or terms of the Contract Documents.

**PART 4 PAYMENT**

**GC 4.2 PAYMENT**

4.2.1 Delete in its entirety and replace with:

The Owner shall make payment of the Construction Manager's fee to the Construction Manager, based on submission of an acceptable application for payment and in accordance with Article A-6 of the Agreement – PAYMENT, on or before:

- twenty-eight (28) calendar days after the last day of the payment period for which an application for payment is made.

**GC 4.3 RIGHT TO SET-OFF**

Without restricting any right of set-off as set out in s. 38 of the Financial Administration Act the Owner may set-off against any amount payable under the Contract Documents to the Construction Manager any amount including expenses and damages owing to the Owner by the Construction Manager.

**GC 4.4 APPROPRIATION**

The Owner's obligation to pay money to the Construction Manager is subject to the Financial Administration Act, which makes that obligation subject to an appropriation being available in the fiscal year of the Owner during which payment becomes due.

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## PART 7 DISPUTE RESOLUTION

### GC 7.1 NEGOTIATION, MEDIATION AND ARBITRATION

Amend the title for GC 7.1 to:

**“GC 7.1 NEGOTIATION AND ARBITRATION”**

Add the following at the end of paragraph 7.1.1:

“...except for any claim, disagreement or dispute arising out of the Owner's actions or determinations under GC 6.1 – OWNER'S RIGHT TO TERMINATE THE CONTRACT.”

Replace paragraphs 7.1.2, 7.1.3 and 7.1.4 with the following:

#### Resolution Process

- 7.1.2 Any of the times specified in this GC 7.1 – NEGOTIATION AND ARBITRATION may be varied by mutual agreement of the parties.
- 7.1.3 Pursuit of the resolution of a dispute under any part of this GC 7.1 - NEGOTIATION AND ARBITRATION does not relieve either party of its responsibility to continue to comply with its obligations under this Contract and ensure timely performance of those obligations.
- 7.1.4 The Construction Manager agrees that, if the Owner has reasonably determined that the Construction Manager has any involvement in, or has pertinent information related to, a dispute involving any or all of the Consultant, any Trade Contractor, any Trade Subcontractor or any other contractor or subcontractor involved in the Project then, upon request by the Owner, the Construction Manager will attend and participate in that dispute resolution process.
- 7.1.5 The parties will bear their own costs in any dispute.

#### Amicable Negotiations

- 7.1.6 The Owner and the Construction Manager agree that during performance of the Work of the Trade Contractors and before and after the Project in Use Date, each of them shall:
- .1 make bona fide efforts to resolve any dispute arising between them by amicable negotiations; and
  - .2 provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate the resolution of any dispute.
- 7.1.7 In order to facilitate negotiations, a party initiating a dispute shall promptly provide to the other party:
- .1 full written particulars of the dispute including:
    - the nature of the dispute;
    - entitlement to additional money;
    - magnitude of the dispute; and
    - any request for an extension of time (including number of days of such extension); and
  - .2 relevant provisions of the Contract; and
  - .3 any other relevant facts, information and documents.

Upon receipt of the above information, the other party shall, within five (5) business days, provide to the party initiating the dispute a summary of its position regarding the dispute including relevant

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provisions of the Contract, any counter-claim being advanced and any other relevant facts, information and documents.

- 7.1.8 After the party initiating the dispute has received the summary of the position of the other party as described in paragraph 7.1.7, the Construction Manager's representative and the Owner's representative shall use all reasonable efforts to resolve the dispute. If the parties fail to resolve the dispute within ten (10) business days after receipt of the summary, then either party may give notice to the other that the dispute must be referred to binding arbitration under paragraph 7.1.9.

### Arbitration

- 7.1.9 Where a dispute has not been resolved through amicable negotiations and upon receipt of the notice described in paragraph 7.1.8 requiring arbitration, the parties shall refer the dispute to a single arbitrator who shall resolve the dispute by final and binding arbitration under the rules of the British Columbia Mediation and Arbitration Institute and based solely on the basis of written material provided in accordance with paragraph 7.1.11.
- 7.1.10 The arbitrator shall be chosen by mutual agreement between the Construction Manager and the Owner. If the Construction Manager and the Owner cannot reach agreement on an arbitrator within ten (10) business days, the Owner and Construction Manager agree that they will jointly request the British Columbia Mediation and Arbitration Institute to appoint an arbitrator.
- 7.1.11 Upon appointment of the arbitrator, the parties shall provide the arbitrator with copies of the material and documents described in paragraph 7.1.7 as well as any initial determinations made by the Consultant. The party initiating the dispute shall provide a brief of its position to the arbitrator and the other party within ten (10) business days of appointment of the arbitrator. The other party will then, within ten (10) business days of receipt of that brief, provide a response to the arbitrator and the party initiating the dispute. If the arbitrator determines that it will be of assistance, he or she may request the party initiating the dispute to provide a reply to the response within ten (10) business days of the arbitrator's request.
- 7.1.12 The Owner and the Construction Manager shall share the costs of the arbitration and the arbitrator equally.

## PART 8 INSURANCE

### GC 8.1—INSURANCE, REPLACE ENTIRELY WITH THE FOLLOWING:

Without restricting the generality of GC 9.1—INDEMNIFICATION, insurance and coverage will be arranged and paid for as under-noted:

- 8.1.1 The Construction Manager shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in British Columbia and in forms and amounts acceptable to the Owner:

- (a) **Commercial General Liability Insurance** in an amount not less than Five Million Dollars (\$5,000,000.00) inclusive per occurrence against bodily injury and property damage. The Owner is to be added as an additional insured under this policy and it must be endorsed to provide the Owner with thirty (30) days advance written notice of cancellation, or adverse material change. Any deductible applicable to property damage shall not exceed Five Thousand Dollars (\$5,000.00) or such other reasonable deductible.

This insurance shall be maintained continuously from commencement of the Services (including Temporary Work) until the date of final certificate for payment is issued or

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when the insured Project is completed and accepted by or on behalf of the Owner, whichever occurs first, plus with respect to completed operations cover a further period of twenty-four (24) months. This insurance shall include coverage for cross liability.

**(b) Wrap-up Liability Insurance**

- 1) The Owner shall provide, maintain and pay for Commercial General Liability Insurance with a limit of Ten Million Dollars (\$10,000,000.00), inclusive per occurrence, Twenty Million Dollars (\$20,000,000.00) general aggregate for bodily injury, death, and damage to property including loss of use thereof, product/completed operations liability with a limit of Ten Million Dollars (\$10,000,000.00) annual aggregate.
- 2) The insurance shall cover the Owner, Construction Manager, Contractors, Trade Contractors and Trade Subcontractors, Architects, Engineers, Consultants and anyone employed by them to perform a part or parts of the Project but excluding suppliers whose only function is to supply and/or transport products to the project site. The insurance does not extend to any activities, works, jobs or undertakings of the insureds other than those directly related to the Project of this Contract.
- 3) The insurance shall preclude subrogation claims by the insurer against anyone insured hereunder.
- 4) The insurance shall include coverage for:
  - 01 Products and Completed Operations Liability (twenty-four (24) months);
  - 02 Cross Liability (or Severability of Interests);
  - 03 Shoring, Blasting, Excavating, Underpinning, Demolition, Piledriving and Caisson Work, Work Below Ground Surface, Tunneling and Grading, as applicable;
  - 04 Limited Pollution Liability (Two Million Dollars (\$2,000,000.00));
  - 05 Broad Form Tenants Legal Liability (One Million Dollars (\$1,000,000.00));
  - 06 Operation of Attached Machinery; and
  - 07 Forest Fire Fighting Expenses (One Million Dollars (\$1,000,000.00)).
- 5) Any applicable deductible shall not exceed Ten Thousand Dollars (\$10,000.00) except with respect to loss or damage arising from hot roofing operations where the deductible shall not exceed Twenty Five Thousand Dollars (\$25,000.00).
- 6) This insurance shall be maintained continuously from commencement of the Project until the date of final certificate for payment is issued or when the insured Project is completed and accepted by or on behalf of the Owner, whichever occurs first, plus with respect to completed operations cover a further period of twenty-four (24) months.

**(c) Property Coverage**

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- 1) The Owner shall provide, maintain and pay for Course of Construction coverage, against "All Risks" of physical loss or damage, and will cover all materials, property, structures and equipment purchased for, entering into, or forming part of the Project whilst located anywhere within Canada and continental United States of America (excluding Alaska) during construction, erection, installation and testing, but such coverage shall not include coverage for Trade Contractor's or Construction Managers' equipment of any description. Such coverage shall be maintained until Substantial Performance of the Work. There will be a deductible of Ten Thousand Dollars (\$10,000.00) for each and every occurrence where the project value is Ten Million Dollars (\$10,000,000.00) or less and a deductible of Twenty Five Thousand Dollars (\$25,000.00) for each and every occurrence where the project value is exceeding Ten Million Dollars (\$10,000,000.00) except for the peril of earthquake which shall have a five percent (5%) (subject to minimum Two Hundred Fifty Thousand Dollars (\$250,000.00)) deductible based upon the total project value insured. A one day waiting period for each month of the estimated project term subject to a minimum waiting period of thirty (30) days shall apply with respect to soft costs.
- 2) The coverage shall include as a protected entity, each Construction Manager, Trade Contractor, Trade Subcontractor, Architect or Engineer who is engaged in the Project.
- 3) The coverage will contain a waiver of the Owner's rights of subrogation against all protected entities except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omission.
- 4) The Construction Manager shall, at his own expense, take special precaution to prevent fires occurring in or about the Project and shall observe, and comply with, all insurance policy warranties and all laws and regulations in force respecting fires.

**(d) Automobile Liability Insurance**

The Construction Manager shall provide, maintain and pay for Automobile Liability Insurance in respect of all owned or leased vehicles if used directly or indirectly in the performance of the Services and Project, subject to limits of not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence. The insurance shall be placed with such company or companies and in such form and deductibles as may be acceptable to Owner.

- 8.1.2 The description of the Owner arranged insurance described herein is provided on a summary basis only and is not a statement of the actual policy terms and conditions. The Owner does not represent or warrant that the Owner arranged insurance contains insurance for any and all losses. It is the Construction Manager's responsibility to ascertain the exact nature and extent of coverage provided by the Owner arranged insurance, to review all policies pertaining thereto and to obtain any other insurance that it may be prudent for the Construction Manager to obtain.

The Construction Manager shall provide, maintain and pay for any additional insurance which they are required to provide by law or which they consider necessary.

- 8.1.3 The Owner shall, upon request, provide the Construction Manager with proof of insurance for those coverages and insurances required to be provided by the Owner prior to commencement of the Project and subsequent certified copy of policies within a reasonable time period thereafter.

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- 8.1.4 The Construction Manager, as may be applicable, shall be responsible for any deductible amounts under the policies of coverage and insurance except for perils of flood and earthquake.
- 8.1.5 The Construction Manager shall provide the Owner with proof of insurance for those insurances required to be provided by the Construction Manager prior to the commencement of the Services and Project in the form of a completed certificate of insurance. The Construction Manager shall also provide a certified copy of any required policies to the Owner upon request.
- 8.1.6 The Owner shall not be responsible for injury to the Construction Manager's employees or for loss or damage to the Construction Manager's or to the Construction Manager's employees' machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the premises during construction and which may, from time to time, or at the termination of the contract, be removed from the premises. The Construction Manager hereby waives all rights of recourse against the Owner or any other contractor with regard to damage to the Construction Manager's property.

## **PART 9 INDEMNIFICATION AND WAIVER OF CLAIMS**

### **GC 9.1 – INDEMNIFICATION, DELETE GC 9.1.1 - 9.1.2 AND REPLACE WITH THE FOLLOWING:**

#### **GC 9.1 – INDEMNIFICATION**

9.1.1 Excepting always losses arising out of the independent acts of the party for whom indemnification is sought, 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 acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
- 2) a failure of the party to the Contract from whom indemnification is sought to fulfill its terms or conditions; and

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

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 the Construction Manager or Owner as applicable pursuant to GC 8.1 – INSURANCE, the limit of the GENERAL LIABILITY COVERAGE – GC 8.1.1(a) or GENERAL LIABILITY COVERAGE – GC 8.1.1(b) or the limit of the PROPERTY COVERAGE – GC 8.1.1(c) whichever is pertinent to the loss.

.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 greater of the Construction Manager's compensation as recorded in

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Article A-5 – COMPENSATION FOR SERVICES or Two Million Dollars (\$2,000,000.00), but in no event shall the sum be greater than Twenty Million Dollars (\$20,000,000.00).

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 9.1.2.1 and 9.1.2.2 shall apply.