

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION – BC BUILDS**  
**SUPPLEMENTARY GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT**  
**CCDC14 - 2013**  
**DESIGN-BUILD AGREEMENT**  
**(Owner Procured Land)**  
**(29 Jan 2025 Version)**

The Agreement is amended as follows:

Add:

**“ARTICLE A-0 BC HOUSING RIGHTS AND INVOLVEMENT**

"If *BC Housing* is not identified as the *Owner* in the Agreement between *Owner* and *Design-Builder*, then, notwithstanding anything else in the *Contract*, the *Design-builder* shall:

- .1 include *BC Housing* as a dual/multiple obligee on the bonds required by Part 11;
- .2 indemnify *BC Housing* to the same extent as the *Design-Builder* indemnifies the *Owner* pursuant to Part 12 (as modified by these Supplementary Conditions)
- .3 agrees and acknowledges that *BC Housing* has the same right of inspection, review and audit as the *Owner* under GC 1.6 (as modified by these Supplementary Conditions) and as otherwise identified in the *Contract*.”

**“ARTICLE A - 1A CONDITION PRECEDENT**

It is a condition precedent to the *Owner's* obligation to fulfill the terms and conditions of this *Contract*, but not to there being a binding agreement between the *Owner* and the *Design-Builder*, that *BC Housing* has issued a *Loan Commitment* for the *Project*. The *Owner* will provide to the *Design-Builder* a letter confirming that the *Loan Commitment* for the *Project* has been issued.”

**ARTICLE A-1 DESIGN SERVICES AND THE WORK**

Add:

- “1.4 The *Design-Builder* shall properly design and fully construct the *Work* in accordance with *BC Housing* requirements, the requirements of all federal, provincial and local government authorities having jurisdiction and the rules and customs of best trade practice (meaning practice of the industry and not necessarily “local practice”) with the object of

constructing modestly priced housing. Without limiting the generality of the foregoing, the *Work* shall include:

- .1 the provision of all professional design and engineering services necessary to properly prepare fully detailed and professionally sealed plans and *specifications* which meet, as determined by *BC Housing*, the applicable BC Housing requirements;
  - .2 inspection during and upon completion of construction by the *Consultant* to ensure conformance of the *Work* to the *Contract Documents*; and
  - .3 all necessary approvals, licences, permits, charges and certificates including the building permit for the *Work*.
- 1.5 The *Design-Builder* shall at all times be fully responsible to the *Owner* for any errors, omissions, or deficiencies in the *Contract Documents*, including any revisions and addenda thereto and shall be fully liable for all direct, consequential and additional costs incurred by the *Owner* as a direct or indirect result of such errors, omissions or deficiencies.
- 1.6 At least 7 calendar days prior to the commencement of construction, the *Design-Builder* shall deliver to the *Owner* all of the following:
- .1 Proof of all necessary permits, licences, certificates and other authorizations required by all municipal, provincial or federal authorities, for the *Work* and proof of payment of all applicable fees;
  - .2 Certified copies of all insurance policies required by this *Contract*;
  - .3 The performance and labour and material payment bonds required by this *Contract*;
  - .4 A construction schedule satisfactory to the *Owner* as required by paragraph 3.6.1 of the Supplementary Conditions of the *Contract* including, in a graphic form, the proposed dates of commencement and completion of each of the various subdivisions of the *Work*, and corresponding to the breakdown of *work* shown on the schedule of values, as required by paragraph 5.2.4 of the *Contract* so as to facilitate evaluation of applications for payment;
  - .5 A schedule of values of the various parts of the *Work* as required by paragraph 5.2.4 of the *Contract*;
  - .6 A schedule of anticipated monthly progress payments as required by paragraph 5.2.5 of the Supplementary Conditions of the *Contract*;
  - .7 Proof that the *Design-Builder* has obtained Workers' Compensation Board registration and clearance;

- .8 Proof that the *Design-Builder* is in compliance with all applicable Licensing & Consumer Services regulations and requirements, including the following:
- (1) proof that the *Design-Builder* has a residential builder licence (provide licence number and expiry date);
- .9 A statutory declaration pursuant to *BC Housing's* Conflict of Interest Guidelines.
- 1.7 The *Design-Builder* will give to the *Owner* a minimum of forty-five (45) calendar days' written notice that the *Design-Builder* will meet the date set in Article A-1 for *Substantial Performance of the Work, or the latest revision to this date that is executed through the endorsement of the Contract or change order/s.*
- 1.8 The *Owner* supports the provision of opportunities for *work* experience and training in the construction industry for entry level workers to trade apprentices. This includes recruitment from programs intended to grow skilled trades such as the Skilled Trades Employment Program (STEP) and registration in programs committing employers to supply a safe and productive *work* environment such as the Builders Code.
- The *Design-Builder's* work force is required, where such programs exist, to include individuals placed through agencies such as Bladerunners and Embers that provide ongoing training and support to persons with barriers to employment. Individual placed through these programs will be considered employees of the *Design-Builder* or *Subcontractor*. If no applicable program(s) exist within the geographic area of the *Work* the *Design-Builder* may seek a waiver from the *Owner*. The *Owner*, at its discretion, may require the *Design-Builder* or *Subcontractor* to provide sufficient evidence of the involvement of these employees in the *Work*.
- 1.9 The *Owner* is committed to reducing waste in all aspects of business. Targets for C&D waste diversion from landfill in the Lower Mainland and on Vancouver Island *projects* is 80%, and 60% for *projects* elsewhere in the province. The *Design-Builder* is advised to submit a Waste Management Plan before signing the construction *contract*, track waste diversion rates throughout the construction *project* and submit the completed Waste Management Reporting Form”

## ARTICLE A-3 CONTRACT DOCUMENTS

3.1 Add the following:

- “\* *BC Housing Supplementary General Conditions of the Stipulated Price Contract CCDC 14-2013 Design- Build Agreement Owner Procured Land. Applicable BC Housing requirements , as agreed upon between the Owner and BC Housing.*
- \* *BC Housing’s Supplier Code of Conduct latest version at the effective date of this Contract. The detail of BC Housing’s Supplier Code of Conduct is posted on BC Housing’s website at the following hyperlink:  
[Add:](https://www.bchousing.org/about/doing-business/supplier-centre/contract-essentials.”</a></i></li></ul></div><div data-bbox=)*

“3.2: The *Design-Builder* acknowledges that it has reviewed and satisfied itself as to the *Contract Documents*, including without limitation, the plans, *specifications*, *consultant* reports, and other materials referred to in this Article, the observable site conditions, and all other materials it desires, prior to execution of this *Contract*. The *Design-Builder* agrees that, on execution of this *Contract*, the *Design-Builder* will assume full responsibility for completion of the *Project*, notwithstanding any defect or deficiency or incompleteness in any of the foregoing, it being acknowledged that, since this is intended to be a turnkey *contract*, the *Design-Builder* is taking the risk of any defects, deficiencies or incompleteness in any of the foregoing.”

## ARTICLE A-4 CONTRACT PRICE

Add:

- “4.6 The *Contract Price* includes all costs of the *Work*, including, without limitation, all costs incurred in the design and construction of the *Work*, whether foreseen or unforeseen, save and except for those costs which are the responsibility of the *Owner* as specifically set out in this *Contract*, and the *Contract Price* shall include, without limitation:
- .1 all professional design, engineering and construction services and *products* reasonably necessary to properly perform the *Work* and to permit the *Project* to operate as contemplated following *Substantial Performance of the Work*;
  - .2 all labour and materials;
  - .3 all permits, fees, licences and certificates of inspection and insurance in connection with the *Work* required by all authorities having jurisdiction including residential builder licensing fees, the building permit, the plumbing, electrical, sewer, water, and gas connections permits, and the gas, electricity and telephone service connection fees;

- .4 all inspections required for specific warranty conditions;
- .5 all inspections by all authorities having jurisdiction;
- .6 all material testing required under bylaws, ordinances, rules, regulations, orders and approvals of all public authorities having jurisdiction;
- .7 an updated survey of the *Place of the Work* prepared by a British Columbia Land Surveyor confirming the exact area of the property, the location of all registered easements or statutory rights of way, and confirming that the position of the buildings, including foundations and overhangs, building heights and finish grades comply with all municipal requirements;
- .8 all required soils reports;
- .9 a *Project* sign mutually agreed to between the *Owner* and the *Design-Builder*;
- .10 all warranties required under the *Contract*;
- .11 all bonds required under the *Contract*;
- .12 all insurance required under the *Contract*;
- .13 the construction or installation of all off site services or payments in lieu thereof as may be required by all authorities having jurisdiction to be constructed or installed as a condition of the construction of the *Project*;
- .14 two (2) complete sets of white prints and CAD file of all as built *drawings* for the *Project*; and
- .15 all requirements of any subdivision, site plan, development or other agreement with the municipality.”

#### **ARTICLE A-5 PAYMENT**

In paragraph 5.1, line 3, after the words “the *Owner*” add:

“, after receiving the prior written approval of *BC Housing*,”.

Add:

**“ARTICLE A-9 THE CONSULTANT**

9.1 The *Design-Builder* will provide the architectural and engineering services required for the *Project* through the *Consultant* and the *Sub-Consultants*. The *Consultant* and *Sub-Consultants* will be:

<b><i>Consultant/Sub-Consultant</i></b>	<b>Full Legal Name</b>
<i>Consultant</i>	
Architect (if not the <i>Consultant</i> )	
Certified Professional	
Electrical Engineer	
Mechanical Engineer	
Structural Engineer	
Geotechnical Engineer	
Landscaping Consultant	
Civil Engineer	
Surveyor	
Construction & Project Manager	
Management Consulting Professional	

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

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

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

- .2 consents to an assignment to the *Owner* of the agreement between it and the *Design-Builder* effective on any default under this *Contract* by the *Design-Builder*, provided however that such party will not be obligated to provide services thereunder unless and until all payments then due thereunder are made in full, and the form of such agreement will be subject to the approval of both the *Owner* and *BC Housing*. Notwithstanding such agreements, acknowledgements and assignments, the *Design-Builder* will remain fully liable for defects or deficiencies in the *Work*, even if the parties to such agreements and acknowledgements are also liable.

#### **ARTICLE A-10 LIQUIDATED DAMAGES**

- 10.1 If the *Design-Builder* fails to achieve *Substantial Performance of the Work* on or before the date set out in paragraph 1.3 of Article A-1 THE WORK, as may be adjusted in accordance with this *Contract* (the “Scheduled Substantial Performance Date”), the *Design-Builder* will pay to the *Owner* by way of liquidated damages and not as a penalty the sum of \$[POPULATE] per day for each and every day after the *Scheduled Substantial Performance Date* that *Substantial Performance of the Work* is not achieved (or if the *Owner* has extended the *Contract Time* in accordance with this *Contract*, such other date established for the *Scheduled Substantial Performance Date*). The maximum aggregate amount of such liquidated damages will be ten percent (10%) of the *Contract Price*. If this *Contract* is terminated, the reference in this Article A-10 to the “*Contract Price*” will be deemed only for purposes of this Article A-10 to be the amount to which the *Design-Builder* would have been entitled if the *Design-Builder* had properly performed and completed the *Work* and this *Contract* had not been terminated. The liquidated damages will not relieve the *Design-Builder* from its obligation to complete the *Work* or from any other duties, obligations or responsibilities of the *Design-Builder* under this *Contract*, and will not limit the *Owner’s* rights to terminate this *Contract* for default of the *Design-Builder* under this *Contract*.
- 10.2 The *Owner* and the *Design-Builder* agree that the amount in Article A-10 represents a genuine pre-estimate of the damages and expenses that the *Owner* is likely to incur for such failure to meet the *Scheduled Substantial Performance Date* and both parties expressly agree that such amount is not a penalty. The *Owner* may, in its discretion, either deduct the daily sums in respect of liquidated damages from any amounts payable to the *Design-Builder* under this *Contract* or may require payment thereof by the *Design-Builder* on demand.

#### **ARTICLE A-11 TIME OF THE ESSENCE**

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

## DEFINITIONS

### Substantial Performance of the Work

Delete and replace with the following:

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

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

### Other Consultant

Delete and replace with the following:

*“Other-Consultant” means the person(s) or entity (entities) retained by the Design-Builder and identified as such in the Agreement. Other Consultant may be an architect, engineer or entity licensed to practice in British Columbia. The term Other Consultant means an Other Consultant or an Other Consultant’s authorized representative.”*

Add New Definitions:

### “BC Housing

*BC Housing means the British Columbia Housing Management Commission and its authorized agents or representatives.*

### Builders Lien Act

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

### Certificate of Completion

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



## **GENERAL CONDITIONS**

### **PART 1 GENERAL PROVISIONS**

#### **GC 1.1 CONTRACT DOCUMENTS**

1.1.6.1 Delete and Replace with the following:

- “.1 the order of priority of documents, from highest to lowest, shall be:
- Supplementary Conditions (if any),
  - the Agreement between the *Owner* and the *Design Builder*,
  - the Definitions,
  - the General Conditions,
  - the *Owner's Statement of Requirements*,
  - the *Construction Documents*.”

Add:

1.1.11 “The *Design-Builder* will provide to the *Owner*, without charge, sufficient copies of the *Contract Documents* to allow the *Owner* to monitor the *Work*.”

Add:

1.1.12 “The *Owner* and its successors and assigns may use the *Contract Documents* for additions or alterations to the *Project*, without obtaining any consent or permission or making any payment. The *Design-Builder* warrants that it has and shall obtain any and all waivers, assignments and approvals needed to confer this perpetual right and license.”

#### **GC1.3 RIGHTS AND REMEDIES**

Add:

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

#### **GC1.4 ASSIGNMENT**

Add:

“1.4.2 Notwithstanding paragraph 1.4.1, the *Owner* may assign its interest in the *Contract* and any of its rights and remedies available at law to *BC Housing* at any time without the consent of the *Design-Builder* and, upon receipt of written notice as to the effective date thereof from *BC Housing*, the *Design-Builder* shall thereafter be bound thereunder to *BC Housing* for the performance of the *Design-Builder's* covenants and warranties.”

Add a new GC 1.6 as follows:

**“GC 1.6 RECORDS AND AUDIT**

- 1.6.1 The *Design-Builder* will keep and maintain full and detailed records for six years after expiry of the warranty period pursuant to Part 12 all records, reports and other documentation required under this *Contract*. During this period, the *Owner*, the *Consultant* and the *Owner’s* representatives may on request, and acting reasonably, require copies of, inspect and audit all books, invoices and records of the *Design-Builder* that relate to any *Changes Order*, *Change Directives*, delay claims or disputes by the *Design-Builder*, including but not limited to quotations and invoices by *Subcontractors* or *Suppliers*. The *Owner* may be assisted by a third-party audit firm of the *Owner’s* choice. In conducting the audit, the *Owner* will have all powers necessarily incidental to conducting an audit, including the right to have reasonable access to the *Design-Builder*, its offices and its personnel and to inspect and take copies of any record.
- 1.6.2 If the *Owner* provides notice to the *Design-Builder*, that the *Owner* is conducting an audit, the *Design-Builder* will promptly provide all other information reasonably requested by the *Owner* or its audit firm. The *Design-Builder* will cooperate with the *Owner* and its audit firm in the conduct of any audit and the parties will promptly review and settle all matters arising from such audit, including the refunding or payment of monies to the other, if applicable.
- 1.6.3 The *Design-Builder* must ensure that all direct and indirect contracts with *Subcontractors* and *Suppliers* include an agreement to be bound by the terms of this GC 1.5 and to provide access to the *Owner* and its third-party audit firm to perform an audit in accordance with GC 1.6. The *Design-Builder* acknowledges that both the *Owner* and its third-party audit firm may request information to support an audit directly from any of its *Subcontractors* or *Suppliers* and the *Design-Builder* will not prevent or influence its *Subcontractors* or *Suppliers* from supplying the information.
- 1.6.4 Notwithstanding the above, subject to applicable law, the right to review, inspect audit or copy will not extend to financial statements **and other information not directly associated with the Project** or to the composition of agreed upon lump sums, fixed unit rates or percentages except to the extent the *Owner* requires such information to validate the cost make-up of a *Change Order*.”

## **PART 2 OWNERS RESPONSIBILITIES**

### **GC2.4 ROLE OF THE PAYMENT CERTIFIER**

Add:

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

### **GC2.6 WORK BY OWNER OR OTHER CONTRACTORS**

Delete 2.6.2.2

Add:

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

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

Add:

“2.6.3.6 If the *Design-Builder* has caused damage to the *work* of another contractor on the *Project*, the *Design-Builder* agrees to settle the matter with the other contractor by negotiation or arbitration. If the other contractor makes a claim against the *Owner* on account of damage alleged to have been so sustained, the *Owner* shall notify the *Design-Builder* and may require the *Design-Builder* to defend the action at the *Design-Builder's* expense. The *Design-Builder* shall satisfy a final order or judgment against the *Owner* and pay the costs incurred by the *Owner* arising from such action. Paragraph 12.2.6.2 of GC 12.1 INDEMNIFICATION shall apply.”

## **PART 3 DESIGN-BUILDER’S RESPONSIBILITIES**

### **GC3.1 CONTROL OF THE WORK**

Add to the end of 3.1.1:

“The *Design-Builder* warrants and represents that it possesses and will provide and apply all the skill, expertise and experience normally provided in the performance of professional design and construction services and reasonably required to complete the *Work* and ensure that the *Work* is performed in a good, proper and workmanlike manner. If, in the opinion of the *Consultant* or the *Owner*, the *Design-Builder* makes use of methods or appliances which will not permit the proper execution of the *Work* or employs inefficient or insufficient labour which will not permit the proper execution of the *Work* within the *Contract Time*, the *Consultant* or the *Owner* may notify the *Design-Builder* to improve its construction methods whereupon the *Design-Builder* will comply without delay with such notification and will not be entitled to claim additional compensation or extension of the *Contract Time* as a result of such improvement in construction methods. If the *Design-Builder* refuses or neglects to comply with such notification within 5 *Working Days* of receipt of the notification, such refusal or neglect will be deemed to be a default by the *Design-Builder* with respect to its contractual obligations under the *Contract*. If the *Owner* acting reasonably approves or suggests any construction means, methods, techniques, sequences or procedures, it will be considered to mean only that no objection is taken thereto by the *Owner* and the adoption thereof, in whole or part, by the *Design Builder* shall be at the full risk and responsibility of the *Design Builder*.”

Add:

“3.1.15 The *Design-Builder* agrees to allocate only those key personnel proposed in writing, for the roles of Site Supervisor, Project Coordinator and Project Manager, or, any other key personnel specified, and accepted by the *Owner* with the acceptance of the tender or on entering into this *Contract*. Any changes to key personnel must be proposed in writing and approved by the *Owner*”

### **GC3.3 ROLE OF THE CONSULTANT**

3.3.3 Delete and replace with the following:

“If the employment of the *Consultant* is terminated, the *Design-Builder* will forthwith appoint a replacement for the *Consultant* following such termination or resignation, provided that the *Owner* and *BC Housing* first consent in writing to the replacement, which consent will not be unreasonably withheld or delayed.”

Add:

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

- .1 The coordination required to integrate all parts of the design of the *Work*;
- .2 The provision of assistance to the *Design-Builder* to obtain approvals, permits, and licenses for the construction of the *Work*;

- .3 The conducting of general review of the progress of the construction, to the extent necessary, in order to determine to the *Consultant's* satisfaction that the construction of the *Work* is performed in compliance with the requirements of:
    - (1) the *Contract Documents*; and
    - (2) the applicable statutes, regulations, codes, and bylaws of all authorities having jurisdiction over the *Work*;
  - .4 The assurances required to regulatory authorities respecting substantial conformance of the design with the applicable building regulations, excluding construction safety issues;
  - .5 The reviewing of any defects or deficiencies in the *Work* during the period described in GC 12.5 - WARRANTY and the issuance of appropriate instructions for the correcting of same; and
  - .6 Such other *work* that may be required from time to time that is agreed to by the *Design-Builder*, the *Consultant*, and the *Owner* in writing.
- 3.3.5 The *Consultant* will deliver a copy of any *Supplemental Instructions* to the *Owner* at the same time as they are delivered to the *Design-Builder* and such *Supplemental Instructions* will not be effective until confirmed by the *Owner* if they are:
- .1 Inconsistent with items in the *Contract Documents*; or
  - .2 Material or substantial.”

**GC3.4 OTHER CONSULTANTS, SUBCONTRACTORS AND SUPPLIERS**

3.4.1.4 Add:

“and shall take all reasonable steps to ensure that *Subcontractors* pay for their labour, *products*, tools, construction machinery and equipment, water, heat, light, power, transportation and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.”

3.4.2 Delete and replace with the following:

“Subject to paragraph 3.4.3, the *Design-Builder* agrees to employ only those *Subcontractors* proposed in writing, including the *Design-Builder's* own forces, if any, and accepted by the *Owner* with the acceptance of the tender or on entering into this *Contract*. The *Design-Builder* shall not change any *Subcontractor* without cause and without the written consent of the *Owner*, which consent will not be unreasonably withheld.”

### GC3.8 LABOUR AND PRODUCTS

3.8.1 Add:

“The *Design-Builder* agrees, with respect to the employment of all persons in the performance of the *Work*, including employment of *Subcontractors* and of persons employed by *Subcontractors*, to perform any and all obligations imposed upon employers under any employment insurance, pension, income tax and other similar and applicable Federal or Provincial laws now or hereafter in force, including the payment or deduction and remittance of any and all contributions, taxes, fees or charges under such laws and the *Design-Builder* agrees fully to comply with and to make all returns required by any and all such laws and agrees to indemnify the *Owner* against all cost, loss, liability, obligation and lien which the *Owner* may sustain or incur by reason of the failure of the *Design-Builder*, or any *Subcontractor*, to perform any of the aforesaid obligations. The *Design-Builder* agrees immediately to qualify, and will require all of its *Subcontractors* to qualify, and remain qualified throughout the term of this *Contract*, as an employer or employers under any and all such laws.”

3.8.3 Add: “The *Design-Builder* shall take all reasonable precautions to avoid labour disputes.”

Add:

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

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

3.8.6 The *Design-Builder* shall provide to the *Owner* at least 2 weeks prior to the *Design-Builder's* deadline for choices, or such earlier time as is agreed between the *Owner* and the *Design-Builder*, for approval by the *Owner* such manufacturer's standard samples as the *Consultant* may reasonably require. Samples shall be labelled as to origin and intended use in the *Work* and shall conform to the requirements of the *Contract Documents*.”

Add:

### **“GC3.12 USE OF THE WORK**

3.12.1 The *Owner* reserves the right to take possession of and use any completed or partially completed portion of the *Work*, regardless of the date of *Substantial Performance of the Work*, providing it does not interfere with the *Design-Builder's* work. Such taking of possession or use of the *Work* or part thereof shall not be construed as *Substantial Performance of the Work* or an acknowledgement of fulfilment of the *Contract*.

3.12.2 The *Design-Builder* shall not use any service, plant or equipment installed as part of the *Work* without first receiving the written approval of the *Consultant* and the *Owner*. On receipt of such approval, the *Design-Builder* shall be subject to any conditions set out as part of such approval and shall be responsible for all costs including damage and compensation for wear.”

## **PART 5 PAYMENT**

### **GC5.2 APPLICATIONS FOR PROGRESS PAYMENT**

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

At the end thereof, add:

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

5.2.5 Add:

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

Add:

“5.2.8 The *Design-Builder* shall submit one copy of all applications for payment and all applications for payment, except the first, shall be accompanied by a form of statutory declaration approved by the *Owner* completed and sworn before a Notary Public or a Commissioner for Oaths for the Province of British Columbia, which statutory declaration must include a statement that all accounts for labour, subcontracts, *Products*, construction

machinery and equipment and other indebtedness which may have been incurred by the *Design-Builder* in the performance of the *Work* covered by the immediately preceding progress claim, and for which the *Owner* might in any way be held responsible, have been paid in full, except holdback monies properly retained.

Add:

- “5.2.9 Before any payment is made by the *Owner* to the *Design-Builder*, the *Payment Certifier* or the *Owner* may, by written notice, require that the *Design-Builder* furnish such further detailed information as the *Payment Certifier* or the *Owner* may determine is necessary to establish compliance by the *Design-Builder* with the *Contract Documents*.
- 5.2.10 Notwithstanding any application for payment or claim by the *Design-Builder*, the *Owner* will not be obligated to pay the *Design-Builder* an amount greater than that approved by *BC Housing*.
- 5.2.11 Every application for payment shall identify the *Value Added Taxes* payable by the *Owner* to the *Design-Builder* as a separate entry.”

### **GC5.3 PROGRESS PAYMENT**

- 5.3.1 Delete and replace with the following:

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

Add:

- “5.3.2 “Subject to the *Owner* receiving the written approval of *BC Housing*, the *Owner* shall make payment of 90% of the amount as determined by the *Payment Certifier* to be due to the *Design-Builder* on account in accordance with the provisions of Article A-5 PAYMENT no later than 20 calendar days after the certificate for payment has been issued, provided that the *Owner*, at its sole and absolute discretion, may retain out of such payment the amount of any outstanding liens or claims or any other indebtedness which may have been incurred by the *Design-Builder* in performing the *Work* and for which the *Owner* may in any way be held responsible. “Other indebtedness” means only such debts incurred by the *Design-Builder* to persons in privity of contract with the *Design-Builder*, debts arising out of statutory requirements and, in the case of the *Design-Builder's* workers, any debts arising



out of collective bargaining agreements, legislation applying to workers compensation, employment insurance and minimum wage standards where applicable. Upon request by the *Owner*, the *Design-Builder* shall forthwith provide a full accounting as to the disbursement of all monies paid by the *Owner* to the *Design-Builder*, including a complete list of all persons to whom monies remain due and the amounts due.

5.3.3 The *Design-Builder* is advised to submit the Waste Management Reporting Form at the following stages in order for the *Owner* or *Payment Certifier* to issue the certificate for payment:

- .1 Completion of demolition (if applicable);
- .2 50% construction progress claims; and
- .3 Substantial completion.”

#### **GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK**

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

Add at the end of paragraph 5.4.1:

“The *Design-Builder* shall submit the following documents and items with its request for *Substantial Performance* review by the *Consultant*. These requirements do not limit the *Design-Builder’s Substantial Performance* obligations noted elsewhere in the *Contract*. A deficiency holdback will be retained for the estimated value of correcting or supplying the following items until they are all submitted, reviewed and accepted by the *Payment Certifier*, this will include, at minimum, a holdback of \$15,000.00 CAD for each subparagraph .4 and .5.

- .1 The list of all deficient and incomplete items of *work* including the estimated value of each item;
- .2 Complete reports including a balancing report for the mechanical system and certification by all testing, cleaning or inspection authorities or associations as specified in the *Contract Documents*;
- .3 A complete demonstration of all mechanical and electrical systems and electrically operated devices to the *Owner’s* operating and maintenance staff and any training required by the *specifications*, to the *Owner’s* satisfaction;
- .4 All maintenance manuals, operating instructions, maintenance and operating tools, replacement parts or materials and warranties as specified in the *Contract Documents*;
- .5 A complete set of marked up construction *drawings* and other data in the form specified in the *Contract Documents*, or as required by the *Consultant*, for the

production of as built *drawings* to show all significant *Changes to the Work* made during construction;

- .6 Current certification by the Workers Compensation Board that the *Design-Builder* and all *Subcontractors* are in good standing;
- .7 A statement that all claims and demands for extra *work* or otherwise, under or in connection with the *Contract*, have been presented to the *Payment Certifier* and that the *Design-Builder* expressly releases the *Owner* from all claims and demands except those made in writing prior to that date and still unsettled;
- .8 A statutory declaration in accordance with paragraph 5.2.8 of the Supplementary Conditions of the *Contract*;
- .9 A survey of the *Place of the Work* prepared by a British Columbia Land Surveyor confirming the exact area of the property, the location of all registered easements or statutory rights of way, and confirming that the position of the buildings, including foundations and overhangs, building heights and finish grades comply with all municipal requirements;
- .10 All keys required for the entire *Project*; and

5.4.3 Delete and replace with the following:

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

5.4.5 Delete and replace with the following:

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

Add:

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

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

- .1 Any holdback monies as required by the *Builders Lien Act* to be released in accordance with GC5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK;
- .2 The aggregate amount, if any, determined pursuant to paragraph 5.4.3 multiplied by two; and
- .3 The amount, if any, determined pursuant to GC5.8 DEFERRED WORK.

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

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

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

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

Add:

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

5.5.2 Delete and replace with the following:

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

5.5.3 Delete.

5.5.5 Delete.

## **GC5.6 PROGRESSIVE RELEASE OF HOLDBACK**

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

“provided that:

- .1 The *Payment Certifier* has issued a *Certificate of Completion* for such subcontract *work* or the *Products* supplied by such *Supplier*; and

- .2 The *Design-Builder* and the *Owner* jointly agree to release the holdback amount retained for such subcontract *work* or the *Products* supplied by such *Supplier*, and the *Owner* has received the written approval of *BC Housing* with respect to such release.”

## **GC5.7 FINAL PAYMENT**

### 5.7.1 Add:

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

- .1 Current certification by the Workers Compensation Board that the *Design-Builder* and all *Subcontractors* are in good standing;
- .2 Proof of release and discharge of any builders or other liens;
- .3 Special *Project* Possession and Warranty Certificates pursuant to the applicable warranty program;
- .4 If specifically requested by the *Owner*, satisfactory evidence that all taxes, employment insurance premiums, Canada Pension Plan contributions, duties, royalties, and all other monies required by law to be paid by the *Design-Builder* and all *Subcontractors* have been paid in full;
- .5 A statutory declaration in accordance with paragraph 5.2.8; and
- .6 Two (2) complete sets of white prints and CAD file of all as built *drawings* for the *Project* satisfactory to the *Owner*, showing all significant changes in the *Work* made during construction.”

### 5.7.2 Add:

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

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

Add at the end thereof:

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

## **PART 6 CHANGES IN THE WORK**

### **GC6.1 OWNER’S RIGHT TO MAKE CHANGES**

6.1.1 Add at the outset:

“Subject to the written approval of *BC Housing*”

Add:

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

### **GC6.2 CHANGE ORDER**

6.2.1 Add at the end:

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

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

6.2.2 In line 1 after the word “*Owner*”, insert “, upon the written approval of *BC Housing*,”

Add:

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

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

### **GC6.3 CHANGE DIRECTIVE**

6.3.6.3 Add:

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

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

### **GC6.4 CONCEALED OR UNKNOWN CONDITIONS**

6.4.2 and 6.4.3 Delete and replace with the following:

“6.4.2 The *Design-Builder* warrants that it is fully acquainted with the site comprising the *Place of the Work* having physically inspected such site and has obtained and reviewed such reports and tests as to the subsurface conditions as may be necessary for the proper performance of the *Work* and evaluating the cost thereof.

6.4.3 The *Design-Builder* accepts full responsibility for having satisfied itself as to the nature, location and condition of the site including without limitation the subsurface conditions and the existing adjoining buildings and agrees as follows:

- .1 The *Owner* and *BC Housing* make no representations or warranties as to any aspect thereof and any information or documentation relating to the same and supplied to the *Design-Builder* is furnished solely for the *Design-Builder's* convenience; and
- .2 The failure of the *Design-Builder* to acquaint itself with any applicable condition will not relieve it from the responsibility for determining the proper methods of construction and properly estimating the difficulties, costs and time for successfully performing the *Contract*.”

## **GC6.5 DELAYS**

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

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

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

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

Add:

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

## **PART 7 RIGHT TO SUSPEND OR TERMINATE**

### **GC7.2 OWNER'S RIGHT TO TERMINATE THE DESIGN-BUILDERS RIGHT TO CONTINUE WITH THE DESIGN SERVICES OR WORKOR TERMINATE THE CONTRACT**

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

In line 2, after the word “insolvency” where it appears for the second time, insert:

“or if the *Design-Builder* at any time is in a conflict of interest as described in *BC Housing's* Conflict of Interest Guidelines unless the *Design-Builder* rectifies such conflict of interest within such time as may be specified by *BC Housing* or *BC Housing* approves the continuation of the *Contract* notwithstanding such conflict of interest,”

Add:



“7.2.7 Except as provided in paragraphs 7.2.5.4 and 7.2.5.5, the *Design-Builder* shall have no claim or right of action against the *Owner* for any damages, costs, expenses, loss of profits or otherwise as a result of the termination by the *Owner* of the *Design-Builder's* right to continue with the *Work* in whole or in part or the termination by the *Owner of the Contract*.

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

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

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

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

### **GC7.3 DESIGN BUILDER'S RIGHT TO STOP THE DESIGN SERVICES OR WORK OR TERMINATE THE CONTRACT**

7.3.3 Delete. 7.3.3.1.

Delete 7.3.3.2.

Add the following as a new paragraph after paragraph 7.3.3.4:

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

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

“provided that if the default is of the nature set out in paragraph 7.3.3.4 and such default cannot be reasonably corrected within 20 *Working Days*, the *Owner* shall no longer be considered to be in default if the *Owner*:

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

7.3.6 Delete and replace with the following:

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

## **PART 8 DISPUTE RESOLUTION**

### **GC8.1 NEGOTIATION, MEDIATION AND ARBITRATION**

8.1.4 Delete the last sentence

Add:

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

## **PART 9 PROTECTION OF PERSONS AND PROPERTY**

### **GC9.1 PROTECTION OF WORK AND PROPERTY**

Add:

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

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

### **GC9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS**

Delete GC9.2.1 to GC9.2.9 and replace with the following the following:

- “9.2.1 The *Design-Builder* acknowledges that any environmental assessment report with respect to the *Place of the Work* provided by the *Owner* or *BC Housing* has been furnished solely for the *Design-Builder's* information and convenience and neither the *Owner* nor *BC Housing* has any obligations with respect to the presence of any toxic or hazardous substances at the *Place of the Work*.
- 9.2.2 The *Design-Builder* shall be deemed to have control and management of the *Place of the Work* with respect to any toxic or hazardous substances which are on or in the *Place of the Work* or may be brought on to the *Place of the Work* by the *Design-Builder* or the *Subcontractors*. Prior to the *Design-Builder* commencing the *Work*, the *Design-Builder* shall:
- .1 Take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work* as may be recommended in any environmental assessment report or as may be prudent; and
  - .2 Provide the *Consultant* and the *Owner* with a written list of any such substances.
- 9.2.3 The *Design-Builder* shall take all reasonable steps to ensure that no person suffers injury, sickness or death and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances at the *Place of the Work*.
- 9.2.4 The *Design-Builder* shall take all necessary steps in accordance with all applicable legislation to treat, store or otherwise dispose of toxic or hazardous substances present at the *Place of the Work*.
- 9.2.5 If the *Design-Builder*:
- .1 Encounters toxic or hazardous substances at the place of building; or
  - .2 Has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work* which were not identified pursuant to paragraph 9.2.2, or which were identified but have not been dealt with as required under paragraph 9.2.4, the *Design-Builder* shall:
  - .3 Take all reasonable steps, including stopping the *Work*, to ensure that no person suffers injury, sickness or death and that no property is damaged or destroyed as a result of exposure to or the presence of the substances; and
  - .4 Immediately report the circumstances to the *Consultant* and the *Owner* in writing and take all necessary steps in accordance with the instructions of the *Consultant* and all applicable legislation to treat, store or otherwise dispose of the substances or materials.
- 9.2.6 The *Design-Builder* shall indemnify and hold harmless each of the *Owner* and *BC Housing*, their respective assigns, agents, directors, officers, authorized representatives and

employees, from and against any claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances which are on or in the *Place of the Work* or brought on to the *Place of the Work* by the *Design-Builder* or its *Subcontractors*. This obligation will not be construed to negate, abridge, or reduce any other rights or obligations of indemnity set out in GC12.1 - INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.

- 9.2.7 In the event of conflict between the provisions of this GC9.2 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIAL and any other General Condition, the provisions of this GC9.2 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIAL will govern.”

#### **GC9.4 CONSTRUCTION SAFETY**

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

Add the following to GC 9.4”

- “9.4.2 The *Design-Builder* shall be responsible for and ensure the safety not only of the workers, *Subcontractors*, tradesmen and *suppliers* and their plant and equipment but also of all other persons who enter the *Place of the Work* whether during working hours or not and for that purpose shall erect such boardings and signs and shall employ such safety measures as may be necessary to ensure the safety of such persons.
- 9.4.3 The *Design-Builder* acknowledges and agrees that the *Design-Builder* shall be the “prime contractor” for the workplace for the purposes of section 118 of the Workers Compensation Act, as amended from time to time. Without limiting the foregoing, the *Design-Builder shall, as the “prime contractor”, comply with, and ensure compliance by Subcontractor and Suppliers with, the Workers Compensation Act of British Columbia and its regulations including the *Occupational Health & Safety Regulations*, *WHIMIS* regulation and the transportation of hazardous substances or dangerous goods requirements and obligations and shall pay assessments or compensation required to be paid under applicable legislation. If *Design-Builder* or any *Subcontractor* fails to pay any due assessment or compensation, the *Owner* may make such payment on behalf of *Design-Builder* or any *Subcontractor*, but will not be obliged to do so. *Design-Builder* shall reimburse *Owner* the amount of such payment on demand. The *Owner* may set off any amounts paid against money otherwise owed to the *Design-Builder*.*
- 9.4.4 The *Design-Builder* shall deliver the Notice of Project required by Section 20.2 of B.C. Regulation 296/97 to the Workers’ Compensation Board of British Columbia, in accordance with the requirements of Section 20.2 of B.C. Regulation 296/97.
- 9.4.5 The *Design-Builder* shall be the “prime contractor” with respect to any work performed by the *Owner’s* own forces or other firms retained by the *Owner* carried out in the area of the

*Place of the Work*. Without limiting the generality of the foregoing, the *Design-Builder* is responsible for ensuring that the work undertaken by the *Owner's* own forces or other contractors retained by the *Owner* are coordinated with the *Work* so as to avoid or minimize any hazardous situations.

9.4.6 The *Design-Builder* shall immediately inform the *Owner* if the *Owner's* own forces or other contractor firms retained by the *Owner* attend at the *Place of the Work* without prior notification to the *Design-Builder*.

9.4.7 The Workers' Compensation Board of British Columbia operates under the name *WorkSafeBC*. References in the *Contract* to the Workers' Compensation Board, WCB, compensation board, *WorkSafeBC*, and other similar terms shall be understood to refer to the Workers' Compensation Board of British Columbia and *WorkSafeBC* and its operating bodies.”

## **PART 10 GOVERNING REGULATIONS**

### **GC10.1 TAXES AND DUTIES**

Add:

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

### **GC10.2 LAWS, NOTICES, PERMITS AND FEES**

10.2.3 Add “development permit” after “building permits.”

10.2.5 Delete and replace with the following:

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

Add:

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

**GC10.3 PATENT FEES**

10.3.2 Delete

**GC10.4 WORKERS COMPENSATION**

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

Add:

“10.4.3 The *Design-Builder* shall abide by and comply with all provisions of the *Workers' Compensation Act* with respect to the performance of the *Work* and will make all payments, contributions and other remittances and all reports, returns and statements required of employers under the said Act. The *Design-Builder* shall ensure full compliance with the said Act by all *Subcontractors* and other persons employed by the *Design-Builder* or with whom the *Design-Builder* may make any contract for the performance of any part of the *Work*. The *Design-Builder* agrees to indemnify the *Owner* against all cost, loss, liability, obligation and lien which may arise as a consequence of any failure by the *Design-Builder* or any *Subcontractor* or other person fully to comply with the said Act. The *Design-Builder* agrees immediately to qualify, and shall require all *Subcontractors* to qualify, as an employer or employers under the said Act.”

**PART 11 INSURANCE AND CONTRACT SECURITY**

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

Amend GCs 11.1, 11.2, 12.2 and 12.3 in accordance with the following supplemental general conditions:

“If the *Contract Price* at the time the *Contract* is executed is:

- .1 less than one million dollars (\$1,000,000.00) CAD then “CCDC 14 (2013) – Design-Build Stipulated Price *Contract*, Design-Builder Insured – under \$1 million” supplemental general conditions produced by the Province of British Columbia’s Risk Management Branch, for Provincial Government Ministries, latest version at the effective date of this *Contract* shall apply. The detail of these requirements are posted on the Province of British Columbia’s website at the following hyperlink:  
<https://www2.gov.bc.ca/gov/content/governments/services-for-government/internal-corporate-services/risk-management/construction-insurance>.

- .2 one million dollars (\$1,000,000.00) CAD or greater, then “CCDC 14 (2013) – Design-Build Stipulated Price *Contract*, Owner Insured – \$1 million to \$75 million” supplemental general conditions produced by the Province of British Columbia’s Risk Management Branch, for Provincial Government Ministries, latest version at the effective date of this *Contract* shall apply. The detail of these requirements are posted on the Province of British Columbia’s website at the following hyperlink:  
[https://www2.gov.bc.ca/gov/content/governments/services-for-government/internal-corporate-services/risk-management/construction-insurance.](https://www2.gov.bc.ca/gov/content/governments/services-for-government/internal-corporate-services/risk-management/construction-insurance)”

#### **GC12.4 WAIVER OF CLAIMS**

- 12.4.1 Delete “Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable to the *Place of the Work*, the *Design-Builder* waives and releases the *Owner* from” and replace with the following:

“The *Design-Builder*’s request or application for the *Certificate of Completion* shall constitute a waiver and release by the *Design-Builder* of any and”.

- 12.4.1.1 Delete “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*” and replace with the following:  
“together with or prior to the *Design-Builder*’s request or application for the *Certificate of Completion*”.

- 12.4.3 Delete “Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable to the *Place of the Work*, the *Owner* waives and releases the *Design-Builder* from” and replace with the following:

“The issuance of the *Certificate of Completion* shall constitute a waiver and release by the *Owner* of any and”.

- 12.4.3.1 Delete “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*” and replace with the following:  
“together with or prior to the *Design-Builder*’s request or application for the *Certificate of Completion*”.

- 12.4.3.4 Add at the end:

“or for which the aggregate cost of repair or remedying the defects or deficiencies would be greater than 10% of the *Contract Price*”

- 12.4.4 Delete “should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation period does not permit such agreement, within such shorter time 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” and replace with the following:  
“or, as to any defect or deficiency or other claim of which the *Owner* is not aware at the end of the said period of six years, a period of one year after the *Owner* has become aware”.
- 12.4.8 Immediately before the words “further interim” and again immediately before the words “submit a final account”, insert the following: “, upon request”.
- 12.4.9 Delete.
- 12.4.10 Delete.
- Add:
- “12.4.11 For greater certainty, in paragraphs 12.4.1, 12.4.2, 12.4.3 and 12.4.5 of GC 12.4 WAIVER OF CLAIMS, “claims” includes claims based on changes and delay (e.g. under Part 6 CHANGES IN THE CONTRACT.”

## **GC 12.5 WARRANTY**

- 12.5.1 Add at the end:
- “provided that if, as a result of the failure of the *Design-Builder* to fulfil its obligations under this *Contract*, there are any defects in the *Work* due to professional errors or omissions or defects in the *Work* which affect the *Work* to such extend that a significant part of the *Work* is unfit for the purpose intended, such one year limitation shall not apply and the *Owner* shall be entitled to claim for any losses or damages suffered on or before the date which is 6 years from the date of *Substantial Performance of the Work*.”
- 12.5.4 Delete and replace with the following:
- “Except for the provisions of paragraphs 12.5.6 and 12.5.7, the *Design-Builder* shall correct promptly, at the *Design-Builder's* expense, to the satisfaction of the *Owner* and as approved by *BC Housing*, defects or deficiencies in the *Work*, including without limitation those due to faulty workmanship or *Products* or architectural, engineering or design errors or omissions by the *Design-Builder*, the *Consultant* or any *Subcontractor* or *Supplier* or by any of their respective *consultants* which appear prior to and during the warranty periods specified in the *Contract Documents*.”



12.5.3 Add at the end thereof:

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

Add:

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

Add the following General Conditions:

**“GC13.1 GAS AND ELECTRICITY**

13.1.1 The *Design-Builder* is responsible for having all required gas and electric meters installed and ready on the date of *Substantial Performance of the Work*. This includes installation of individual meters for units as specified.

13.1.2 The occupancy date will be the date of turnover of all gas and electricity billings to the *Owner*. The *Design-Builder* shall notify the gas and electricity *suppliers* and the *Owner* in writing as to the date of billing turnover at least 45 calendar days prior to such date.

13.1.3 The *Owner* shall be responsible for notifying the gas and electricity *suppliers* of start-up billing, failing which the *Owner* shall reimburse the *Design-Builder* for all charges accruing thereafter.

**GC14.1 PUBLIC STATEMENTS AND SIGNS**

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

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

**GC15.1 LIENS**

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

*Project*, regardless of whether the basis of such lien is a claim against the Design-Builder or any *Subcontractor*.

15.1.2 If the *Owner* is not in default in making payment to the *Design-Builder* as required under this *Contract* and if a claim of builders lien is filed against title to the *Project* by anyone claiming under or through the *Design-Builder*, the *Owner* may notify the *Design-Builder* in writing that the filing of such claim or claims of builders lien is a material default by the *Design-Builder* of its contractual obligations and instruct the *Design-Builder* to obtain and file a release of the said claim or claims in the Land Title Office within 7 *Working Days* immediately following receipt of such notice.

15.1.3 If such default is not corrected within the time specified or subsequently agreed upon in writing, the *Owner*, without prejudice to any other right or remedy it may have, may:

- .1 pay, settle or compromise, or pay into Court (together with a reasonable amount for costs) the amount of, any such claim or claims of builders lien and deduct the amount of any such payment from the next ensuing payment which may become due to the *Design-Builder*; or
- .2 pay into Court from the holdback account established by the *Owner* in accordance with the *Builders Lien Act* the total amount of the claim or claims filed and this provision shall constitute the agreement of the *Design-Builder* to make such payment as required under Section 5(2)(c) of the *Builders Lien Act*;

and the *Owner* may deduct from the next ensuing payment which may become due to the *Design-Builder* all costs and expenses thereby incurred by the *Owner*, including any account for legal fees and disbursements incurred by the *Owner*.

15.1.4 If the *Owner* is not in default in making payment to the *Design-Builder* as required under this *Contract*, the *Design-Builder* will indemnify and save the *Owner* harmless from and against the costs of any and all actions commenced by any lien claimant claiming under or through the *Design-Builder* against the *Owner* pursuant to the *Builders Lien Act*, including solicitor and client costs.

15.1.5 Notwithstanding any other provision of the *Contract*, no payments whatsoever shall be due or owing to the *Design-Builder* so long as any liens filed by anyone claiming under or through the *Design-Builder* remain registered against title to the *Project*.

## **GC16.1 INFORMATION TECHNOLOGY RELATED THREATS**

16.1.1 The *Design-Builder* shall notify the *Owner* and its mutual affiliates, as soon as reasonably possible, of any information technology related threat that may be transmitted electronically to the *Owner* or any of its affiliates which includes but is not limited to: viruses, rogue security software, trojan horses, spyware, computer worms, phishing, rootkits and any real or perceived electronic attack (the "IT Threat"). In the event the *Owner* becomes aware of an IT Threat, the *Owner* may, at its sole discretion, notify any

organization that it reasonably believes could be exposed to the same IT Threat and include in such notification any relevant details for the purpose of avoiding or minimizing any negative impact.

## **GC17.1 CRIMINAL RECORDS REVIEW ACT**

17.1.1 Due to the sensitive nature of BC Housing’s properties and in accordance with the BC Criminal Records Review Act, the *Design-Builder*, their current and new employees, and *subcontractors/trades* hired by the *Design-Builder* during the term of the *Contract* who will be providing any portion of the *Work* may be required by *BC Housing* to clear a Criminal Records Review Act (CRRA) check through the Ministry of Public Safety and Solicitor General Criminal Records Review Program (CRRP) and provide proof of such by submitting to *BC Housing* a completed and signed BC Housing Declaration of Criminal Records Review Program Clearance form. The BC Housing Declaration of Criminal Records Review Program Clearance form must be updated and resubmitted to *BC Housing* in the event any changes occur to employees or subcontractors/trades hired during the term of the *Contract*.

Where a person does not clear a CRRA check, the person will not be authorized to conduct work on BC Housing property.

BC Housing reserves the right to request copies of the Criminal Records Review Act letter(s) when required.

All costs to complete and maintain these Criminal Records Review Act checks are to be borne by the Supplier.

The BC Criminal Records Review Act states: “All individuals who work with children or vulnerable adults, or have unsupervised access to children or vulnerable adults in the ordinary course of their employment, or in the practice of an occupation, or during the course of an education program and who are employed by or licensed by, or receive regular ongoing operating funds from the provincial government are covered under the BC Criminal Records Review Act.”