



**REQUEST FOR STATEMENTS OF QUALIFICATIONS No. 23-034**

**FCPCC-Expansion-CollabDesign-Contractor Team Selection**

**Addendum 1**

**Issued: May 2, 2023**

**Closing Date & Time: on or before 3:00 PM Pacific Time on May 18, 2023**

**ADDITIONAL INFORMATION**

Attached is 'Appendix B – Sample Hanson Bridgett IPD Agreement' of the RFSQ complete with exhibits.

End of Addendum 1

**[Project]**

## **Integrated Project Delivery Agreement**

SAMPLE

## Business Terms Sheet

The key business terms of this Agreement are set forth below and included in the Agreement:

Senior Management Team (SMT)		Owner:					
		Lead Designer:					
		Contractor:					
Project Management Team (PMT)		Owner:					
		Lead Designer:					
		Contractor:					
Base Target Cost		\$_____ or (established by Amendment)					
Final Target Cost		By Amendment					
Notices required by this Agreement must be sent to:							
Party #1	Email:						
	Address:						
Party #2	Email:						
	Address:						
Party #3	Email:						
	Address:						
Overhead							
Overhead and ICL Change Order Percentages  [Exhibit D – Designers, Exhibit E – Builders]	Party	DPEM	OH Basis [Choose 1]			OH Rate	ICL Change Order %
			Fixed	Include in C3ssRates (% Labor)	% of Chargeable Costs		
	[Lead Designer's Name]				N/A		
	[Contractor's Name]						
	[Other Non-Owner Parties]						

Stipulated Profit	
Non-Owner Party#1	\$
Non-Owner Party#2	
Non-Owner Party#3	
Non-Owner Party#4	
Time	
Date for Substantial Performance of the Project	[ ] or (established by Amendment)
Date for Final Completion of the Project	[ ] or (established by Amendment)

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<b>Exhibit</b>		<b>At Contract Signing</b>
Exhibit A	Definitions	Included
Exhibit B	Validation Report	
B-1	Project Requirements	Included
B-2	Base Target Cost	By Amendment
B-3	Project Schedule	Included/By Amendment
B-4	KPIs	By Amendment
B-5	Achievement Events	Included
B-6	Final Target Cost	By Amendment
Exhibit C	Responsibility Matrix	By Amendment
Exhibit D	Designer's Chargeable Costs	Included
Exhibit E	Builder's Chargeable Costs	Included
Exhibit F	Added Value Incentive Items	Included
Exhibit G	Owner's Chargeable Costs	By Amendment
Exhibit H	Payment Protocol	Included
Exhibit I	Incentive Program	Included/By Amendment
I-1	ICL Distribution Spreadsheet	Included/By Amendment
Exhibit J	Project Manual	Included
Exhibit K	General Conditions	Included
Exhibit L	Insurance Requirements	Included
L-1	Owner Provided Insurance	Included
L-2	Builder Provided Insurance	Included
L-3	Designer Provided Insurance	Included
L-4	Not Used	Not Used
L-5	OCIP Manual	Included
L-6	Bonding Requirements/Not Used	By Amendment/Not Used
Exhibit M	Key Employees	Included

# INTEGRATED FORM OF AGREEMENT

## 1. General

### 1.1 Parties to the Agreement. This Agreement is between the following parties:

Party Name	Type	Description	Role
	Owner	Owner	Owner
[To be added]	Designer	Architect	AOR
[To be added]	Designer	Lead Designer	EOR
[To be added]	Designer	Mechanical Engineer	EOR
[To be added]	Builder	Contractor	Contractor
[To be added]	Builder	Fire Protection Contractor	D-B/EOR
	Builder	Curtainwall	D-B
	Designer	Acoustician	D-C

AOR = Architect of Record for the Project

EOR = Engineer of Record for an engineering discipline

D-A = Design-Assist Trade Contractor

D-B = Design-Build Trade Contractor

D-C = Design Consultant

**1.2 Effective Date.** The Effective Date of this Integrated Project Delivery Agreement (Agreement) is [ ] as to all Parties that initially executed this Agreement and all Parties later added to this Agreement by Joining Agreements.

**1.3 Defined Terms.** Defined terms are indicated in upper case and are defined in Exhibit A or are defined in this Agreement when first used. References to contractors, subcontractors, consultants, subconsultants, parties, and similar descriptors, if in lower case, refer to those categories of entities, generally, and not in their defined sense.

**1.4 Exhibits, Articles and Sections.** Reference to an Exhibit includes all the Exhibit. Reference to an Article includes all its Sections and Subsections of any level. Reference to a Section includes the Section and all its Subsections of any level. Reference to a Subsection of any level includes the Subsection and any lower-level Subsections.

**1.5 Parts of this Agreement.** This Agreement consists of five parts that in combination form the Agreement. The parts are:

1.5.1 Business Terms Sheet. The Business Terms Sheet (BTS) contains the financial and other information that may need to be readily referenced during the Project. The Business Terms Sheet will be amended as Parties are joined to the Agreement, or as the Project Requirements or other terms are amended.

1.5.2 Body. The body of the Agreement contains the principal legal terms and including the rights and obligations of the Parties.

1.5.3 Exhibits. The Exhibits incorporate additional information and requirements related to the subject of the Exhibit.

1.5.4 Joining Agreements. Joining Agreements add additional Non-Owner Parties to the Agreement as if they had been Parties on the Effective Date.

1.5.5 Incorporated Documents. The following documents are incorporated into this Agreement to provide additional information, requirements, and outline policies, processes, procedures, and forms. The incorporated documents may be updated and amended from time to time and the Parties are bound by the most recent version of the incorporated documents.

(a) Project Manual. The Project Manual will contain information specifying processes, procedures, controls, policies, and forms. It may be updated from time to time as the Project progresses and the Parties must comply with the requirements of the latest version of the Project Manual. The Project Manual will be readily available to all Parties on the Project Management Information System.

(b) Owner Controlled Insurance Program (OCIP) Manual. The OCIP Manual describes the coverage available under the OCIP and specifies procedures and information required from Project Participants to be insured and to file claims under the OCIP.

(c) Commissioning and Closeout Manual. The Commissioning and Closeout Manual describes the processes and standards for commissioning the Project, the tasks that must be completed during initial start-up, testing, user and operator training, turnover, and related tasks that must be accomplished before the Project is complete.

## **2. Project Description**

[Insert description of the project.]

## **3. Project Principles and General Obligations**

**3.1 Project Principles.** The Parties agree to perform their obligations in accordance with the following collaborative principles:

- Foster innovation and collaboration by creating a safe environment for active, open, and respectful communication that embraces diverse viewpoints and experience.
- Develop trust by developing competent, transparent, and reliable relationships.
- Maximize project value by zealously eliminating waste, continuously applying learning, and making decisions that optimize project outcomes, rather than individual, outcomes.



- Prioritize flow before utilization.
- Closely integrated people, processes, and systems.

**3.2 General Obligations.** The Parties will work together to achieve the Project Requirements by:

3.2.1 Individually performing the contract tasks designated as their respective responsibilities in the Responsibility Matrix (Exhibit C);

3.2.2 Jointly managing the Project through the Project Management Team (PMT) and Senior Management Team (SMT) pursuant to Article 5;

3.2.3 Cooperating with and assisting the SMT, PMT, and the Project Implementation Teams (PITs), subject to the limits of their respective professional expertise, licensing, and abilities;

3.2.4 Executing the Work according to Lean principles as described in the General Conditions (Exhibit K);

3.2.5 Collaborating with Owner's Separate Contractors and Owner's Separate Consultants; and

3.2.6 Complying with all other obligations, terms, and conditions of this Agreement and the Contract Documents.

## **4. Parties**

**4.1 Relationship of the Parties.** Although this Agreement establishes a relationship of mutual trust and good faith among the Parties, who recognize that their individual success is directly tied to the performance of other Project Participants, it does not create an agency relationship, fiduciary relationship, partnership, or joint venture among or between the Parties. Except as otherwise provided in this Agreement, the Parties are each independent contractors solely responsible for directing and managing their own forces and services within their respective area of responsibility as described in Sections 4.2 through 4.6.

### **4.2 Owner**

4.2.1 Owner will serve as a member of the PMT and SMT and has the rights granted to it by this Agreement and Applicable Law. Owner is responsible for providing Owner's requirements, goals, and limitations for the Project and for actively participating in developing and documenting the Project Requirements.

4.2.2 Owner will actively participate in the Target Value Design process in its role as Owner, but it is not a Designer or a Builder. Owner's participation does not reduce, in any way, the responsibility of the Designers and Builders to perform their respective obligations in accordance with the Agreement and Applicable Law.

4.2.3 Owner's Separate Contractors and Consultants. Owner may directly retain consultants and contractors to perform services or work related to the Project (Owner's Separate Contractors and Owner's Separate Consultants). Owner is responsible for the

timeliness and quality of the work and services of its Separate Contractors and Separate Consultants. The Parties will coordinate their Work with the work and services of Owner's Separate Contractors and Owner's Separate Consultants to allow for smooth and efficient workflow and integrated work product. Owner's Separate Contractors and Owner's Separate Consultants will be included in the Project roster and incorporated into the Responsibility Matrix.

4.2.4 Owner Provided Information. Owner will provide a legal description of the property, access to all existing documentation, and all geotechnical or environmental impact reports, surveys, and other reports as Owner reasonably determines, may be required for proper performance of the Work and that are in Owner's possession. Parties that participated in the Joint Site Investigation may rely upon the completeness and accuracy of the information provided by Owner to the extent that it is not contradicted by information the Parties obtain through the Joint Site Investigation, any additional documents and reports provided by Owner, or any other information known by the Parties.

4.2.5 Permits and Fees. Owner will pay for all entitlements, easements, assessments, and fees required for the development, use, or occupancy of the Project. Permits and fees related to the Construction Work that are paid by a Party other than Owner are included in the Final Target Cost and are a Chargeable Cost of that Party when paid.

4.2.6 Testing and Inspections. Owner may separately contract with and pay for all third-party testing, inspections, or commissioning. If Contractor or another Builder pays for any inspections or reports required by Applicable Law or by the Contract Documents, the cost of these inspections or reports is a Chargeable Cost of the paying Party.

4.2.7 Legal and Insurance Services. Owner will provide legal counseling and insurance services for the Project, but each Party is responsible for its own legal and insurance services it may believe necessary to protect its interests.

4.2.8 PMT Participation and Deliverables. Owner will actively participate with the PMT and PITs in further development of the Responsibility Matrix, a Building Information Model (BIM) execution plan, and other management protocols and tools, and will perform the contract tasks assigned to it in the Responsibility Matrix, as amended.

4.2.9 Other Obligations. In addition to the above, Owner will provide the PMT with timely decisions necessary to support the Project Requirements throughout the Project duration, make timely payments, and perform all other tasks designated to the Owner under this Agreement.

4.2.10 No Statutory Effect. Nothing contained or implied in this Agreement will affect the Owner's rights, powers, duties, or obligations in the exercise of its functions as a municipality pursuant to any enactment of the legislature of British Columbia. For certainty, neither the project principles nor obligations of the Owner set out in this Agreement are applicable to any decision made by the Owner pursuant to its statutory role as a municipality.

## **4.3 Builders**

4.3.1 General Duties and Obligations. Each Builder will perform its obligations under this Agreement and the Responsibility Matrix (Exhibit C), as amended, including, but not limited, to the following:

(a) Assist the Designers during all phases of design by providing Target Value Design assistance (Section 6.4.2(h)) (including Set Based Design, alternatives, constructability, and cost analyses) and by coordinating design information between Design-Build Trades and the PITs;

(b) Actively collaborate with the other Parties, PITs, and other Project Participants throughout the design process to develop a complete set of coordinated Implementation Documents that meet or exceed the Project Requirements;

(c) Co-locate with Parties as required by the Co-location Plan;

(d) Manage Project information by using a Building Information Model or Models related to Project cost and schedule databases and provide Model checking and validation, including clash detection and integration of subcontractor models and integration with Project schedules (4D);

(e) Collaborate with Designers to produce visualization aids such as renderings or computer-generated video;

(f) Actively collaborate with the other Parties, PITs, and other Project Participants throughout the Project;

(g) Provide a Record Model to Owner upon Final Completion of the Project that documents all changes to the Implementation Documents and all as-built conditions that deviate from the Implementation Documents;

(h) Manage, perform, oversee, and direct its respective Construction Work in accordance with the Implementation Documents and Project Requirements through Final Completion of the Project;

(i) Coordinate work with Owner's Separate Contractors and Separate Consultants, including integration of the Separate Contractors and Separate Consultants into project planning and coordination activities;

(j) Install, commission, and test all Owner furnished materials and equipment on the Project as required in the Responsibility Matrix;

(k) Prepare a submittal schedule that provides reasonable opportunity for review by the Owner and the Designers. Submittals must be prepared and submitted in accordance with the submittal schedule and in conformance with the Implementation Documents and the requirements set forth in the General Conditions (Exhibit K). Builders should work with Designers to integrate information directly into the Building Information Model to minimize the number of Submittals required;

(l) Provide the PMT with timely decisions necessary to support the Project Requirements, make timely payments, and perform all other tasks designated to the Builder under this Agreement;

(m) Propose a QA/QC plan for its portion of the Construction Work for approval by the PMT, and implement the approved QA/QC plan;

(n) Commission the Project with the assistance of the Project Participants and the independent commissioning agent, if any.

4.3.2 Each Builder is responsible for providing preconstruction services and performing its portion of the Construction Work in accordance with the Implementation Documents and for supervising, directing, managing, and performing its Construction Work in a manner that meets the Project Requirements. Without limiting each Builder's own responsibility for its Work, the Contractor has overall responsibility for supervising and coordinating the Work of the Builders and advising the Parties on construction matters. Each Builder will support the Contractor in its role as lead builder, take direction from the Contractor, and coordinate its portion of the Work with that of the other Builders. As further described in this Agreement, including the General Conditions, each Builder is responsible for all means, methods, sequences, and safety procedures related to its portion of the Construction Work. Each Builder is responsible for fulfilling all statutory obligations of an 'employer' as defined in the *Workers Compensation Act*, RSBC 2019, c 1, related to that Builder's portion of the Construction Work. In addition, all Work provided by Builders must be consistent with the Project Requirements and meet or exceed the standard of care in Section 4.3.3.

4.3.3 Standard of Care. Each Builder will perform its preconstruction services and all Construction Work using its best skill and attention and in a timely, workman-like manner consistent with the degree of care and skill customarily exercised by prudent licensed contractors performing preconstruction services and Construction Work on projects of similar size, scope, quality, and complexity in the jurisdiction where the Project Site is located. To the extent that the Builders engage Design-Build Trades, those trades must comply with the design standard of care in Section 4.5.3 for their respective Design Services except that Design-Build Trades are also responsible for the means and methods of their respective portion of the Construction Work. Nothing in this Agreement requires any of the Builders to perform any work or services outside its license or contrary to Applicable Law or to provide Design Services.

4.3.4 Subcontractors. Builders will retain all subcontractors required for performance of the Builder's portion of the Work in accordance with Article 7. Builders are responsible for, and will review, supervise, coordinate, and manage their respective subcontracted Work.

4.3.5 Design-Assist Trades. Design-Assist Trades will actively engage in Target Value Design services (including Set Based Design, alternatives, cost, and constructability analyses) and will construct their respective portions of the Project but are not required to provide Design Services as defined in this Agreement.

4.3.6 Design-Build Trades. Design-Build Trades will provide Design Services for their respective scopes of the Work through appropriately licensed design professionals who are responsible for the Design Services rendered by the Design-Build Trade. Design-Build Trades will actively engage in Target Value Design services (including Set Based Design, alternatives, cost, and constructability analyses) and coordinate their Design Services with those of the Lead Designer and the other Designers, their design consultants, and other Design-Build Trades. Design Services deliverables will be stamped and signed by a registered professional engineer or architect who is licensed in the jurisdiction where the Project Site is located in the appropriate discipline, to the extent required by Applicable Law, and must be

consistent with the design standard of care in Section 4.5.3. All design-build Construction Work must meet and be consistent with the construction standard of care in Section 4.3.3. The Design-Build Trades will furnish all reports, affidavits, certificates, and other documents required by any Governmental Authority that are required by Applicable Laws.

4.3.7 PMT Participation and Deliverables. The Builders will actively participate with the SMT, PMT and PITs in further development of the Responsibility Matrix (Exhibit C), a BIM Execution Plan, and other management protocols and tools.

#### **4.4 Contractor**

4.4.1 The Contractor is a Builder and has all the obligations of a Builder under this Agreement and the additional obligations of the Contractor as specified in this Section and elsewhere in this Agreement. Provisions that specifically reference the Contractor supersede provisions applicable to Builders, but only to the extent of any inconsistency.

4.4.2 Coordination and Construction Management. The Contractor has overall responsibility for the Implementation Phase of the Project and will provide overall coordination, scheduling, logistic, site safety, security, cost modeling, constructability, and information and document management. Contractor will manage Builder participation in the development of the design, the Target Value Design and other pre-construction efforts.

4.4.3 Standard of Care. Contractor will perform their services in a timely, workman-like manner consistent with the degree of care and skill customarily exercised by:

- prudent licensed contractors performing preconstruction services and construction work on projects of similar size, scope, quality, and complexity as the Project and in the geographic vicinity of the Project; and
- prudent construction management professionals providing construction management services on projects of similar size, scope, quality, and complexity as the Project and in the geographic vicinity of the Project,

Services performed in connection with this Agreement must also be in accord with all Applicable Laws. Nothing in this Agreement requires the Contractor to perform any services outside its license or contrary to Applicable Law. The Contractor is professionally responsible for the means, methods, sequences, and procedures, and safety precautions in connection with the Construction Work.

4.4.4 Safety. Contractor is responsible for creating and implementing a site wide safety plan required by Section 5.4.13.

#### **4.5 Designers**

4.5.1 General Duties and Obligations. Each Designer will perform all its obligations under the Responsibility Matrix (Exhibit C), as amended, and the Agreement including, but not limited to the following:

- (a) Perform all Design Services encompassed by the Designer's scope of work using processes and software required by the BIM Execution Plan.

(b) Consult with Builders, Owner and Owner's Separate Contractors and Separate Consultants to consider and incorporate into the Implementation Documents, as the Designer deems professionally appropriate, information provided by any of them related to systems, materials, equipment, constructability, and logistics.

(c) With respect to its individual discipline, manage and coordinate all design submissions, questions, and responses to all applicable Governmental Authorities and all other reviewing and permitting agencies, with the Lead Designer having overall responsibility to manage and coordinate these matters;

(d) Sign and affix its professional seal on all documents prepared by it and arrange for its professional consultants to do the same for all documents prepared by the consultant, to the extent required by Governmental Authorities and under Applicable Law;

(e) Perform all Design Services required by the Project Requirements in accordance with Applicable Law and furnish all reports, affidavits, certificates, and other documents required by Governmental Authorities relating to those portions of the Project designed by it, and its consultants;

(f) Propose a QA/QC plan for its Design Services for approval by the PMT, and implement the approved QA/QC plan;

(g) Co-locate with Parties as required by the Co-location Plan;

(h) Use Set Based Design, where appropriate;

(i) Utilize Target Value Design (Section 6.4.2(h));

(j) Actively collaborate with the other Parties, PITs, and other Project Participants throughout the design process to develop a complete set of coordinated Implementation Documents that meet or exceed the Project Requirements;

(k) Coordinate work with Owner's Separate Contractors and Separate Consultants;

(l) Actively collaborate with the other Parties, PITs, and other Project Participants throughout the Project;

(m) Engage in pull-based planning for design production using Lean project delivery methods to avoid advancing the design beyond what is called for in the Lean work plan or identified as workable back-log;

(n) Timely review and approve all Submittals in accordance with the requirements set forth in the General Conditions (Exhibit K) for conformance with the Implementation Documents;

(o) Provide the PMT with timely decisions necessary to support the Project Requirements, make timely payments, and perform all other tasks designated to the Designer under this Agreement;

(p) Work with Contractor and other Builders to deliver a Record Model to Owner upon Final Completion.

4.5.2 Each Designer is responsible for performing the Design Services to which it is assigned in the Responsibility Matrix (Exhibit C). Each Designer will support the Lead Designer in its coordination role, take direction from the Lead Designer that is consistent with PMT direction, and integrate its services and work product with that of the other Designers, Design-Assist Trades, Design-Build Trades, and Owner's Separate Consultants. All Design Services by Designers and their consultants must be consistent with the Project Requirements and meet or exceed the standard of care in Section 4.5.3.

4.5.3 Standard of Care. Each Designer and its design consultants will perform its Design Services using that skill and care used by other competent licensed architects and engineers or consultants (who will be licensed to the extent required by Applicable Law) skilled in designing projects in the jurisdiction where the Project Site is located that are similar in size, scope, quality, and complexity to this Project. Design Services performed in connection with this Agreement must also be in accord with all Applicable Laws. If any of the Applicable Laws conflict, the Designers will consult with the PMT on how the conflict should be resolved. Nothing in this Agreement requires the Designers or their design consultants to perform any services outside the scope of their license or contrary to Applicable Law. The Designers and their design consultants are not professionally responsible for the means, methods, sequences, or procedures in connection with the Construction Work, nor are they professionally responsible for training, initiating, maintaining, or supervising safety precautions and programs in connection with the Construction Work.

4.5.4 Consultants. The Designers may retain design consultants to perform portions of the Design Services in accordance with Article 7. All consultants retained by Designers must be appropriately licensed, will sign and seal all architectural or engineering documents prepared by them to the extent required by Governmental Authorities and under Applicable Law, will perform all services in accordance with the standard of care in Section 4.5.3, and in the case of engineering consultants, will be the Engineer of Record for their respective scopes of Work. All consultants will be identified in the Project roster and incorporated into the Responsibility Matrix.

4.5.5 Review and Integration of Design-Build Information. The PMT may elect to have Design Services performed by Design-Build Trades or under design-build subcontracts through a Builder. Design Services for design-build Work will be provided by appropriately licensed design professionals and all design-build documents will be stamped and signed by registered professional engineers or architects who are licensed in the jurisdiction where the Project Site is located. The applicable Designers and their consultants will provide all applicable performance specifications and design criteria for design-build Work and will review the design documents prepared by the Design-Build Trades for integration into the overall design and for conformance with the design intent and Project Requirements. The Contractor will coordinate design information between Design-Build Trades and the Designers.

4.5.6 PMT Participation and Deliverables. Each Designer will actively participate with the PMT in further development of the Responsibility Matrix, a BIM Execution Plan, and other management protocols and tools.

#### **4.6 Lead Designer**

4.6.1 The Lead Designer is a Designer and has the obligations of a Designer under this Agreement and the additional obligations of the Lead Designer as specified in this Section and elsewhere in this Agreement. Provisions that specifically reference the Lead Designer supersede provisions applicable to Designers, but only to the extent of any inconsistency. The Lead Designer is not responsible for the technical adequacy of design information prepared by other Designers but must manage the integration of this design information into a comprehensive and coordinated whole.

4.6.2 Architect and Engineers of Record. Each Designer, and each Design-Build Trade, must sign and seal the Implementation Documents created by it in accordance and as required by Applicable Law.

4.6.3 Design Coordination. The Lead Designer has primary responsibility for the overall design of the Project, coordinating the activities of the Designers with each other, with the Design-Build Trades, and with Owner's Separate Consultants, and advising the Parties on design matters. If the Lead Designer is also an Engineer of Record, it will perform the services required of a Designer for its engineering discipline. The purpose of design coordination is to eliminate conflicts, omissions, and inconsistencies from the Contract Documents.

4.6.4 Coordinate the QA/QC plans of all Designers, prepare a comprehensive QA/QC plan for all Design Services, and monitor and implement the approved QA/QC plan;

4.6.5 Regulatory Review. The Project will require review from Governmental Authorities that have review, approval, and licensing authority for the Project. Lead Designer, with appropriate support from Designers, Design-Build Trades, and Owner will manage the communications and submissions with Governmental Authorities on behalf of the Project. The Lead Designer must keep Owner closely advised of all interactions with Governmental Authorities.

4.6.6 Stakeholder Inclusion. The Lead Designer will schedule, manage, and facilitate meetings with key users and stakeholders to reflect, as appropriate, their needs, preferences, concerns, and ideas into the Project design. The stakeholders include, without limitation, Owner operations and maintenance staff, [REDACTED].

4.6.7 Presentations. In coordination with the Owner, the Lead Designer will prepare, as required, presentation materials and will, at Owner's request, present information regarding the project to Owner, Owner's staff, stakeholders, Governmental Authorities, and neighboring and general public, as required.

#### **4.7 Project Advisor ("PA")**

4.7.1 General. Owner may engage a consulting firm to assist Owner in performing some of its obligations under this Agreement. The PA may participate in PMT and



SMT meetings, although the PA is not a Party to this Agreement and the presence of the PA firm at a PMT or SMT meeting does not increase the number of votes allocated to Owner.

#### 4.7.2 Responsibilities. The PA will assist the Parties in:

- (a) Selecting additional Parties to be joined to this Agreement or subcontractors and consultants to be added as Project Participants;
- (b) Organizing and managing the co-location facility, including facilitating discussions within and between the PITs, PMT, and SMT;
- (c) Facilitating the Target Value Design process;
- (d) Managing the validation process, including preparation of the Validation Report;
- (e) Leading and documenting PMT and SMT discussions and decisions;
- (f) Developing and validating the Cost Model used to track and Project costs;
- (g) Managing and Monitoring the scheduling processes, including the Project Schedule, and the detailed pull schedules;
- (h) Developing and Monitoring the QA/QC programs;
- (i) Establishing and tracking Key Performance Indicators (KPIs) to proactively manage the Project;
- (j) Managing root cause analyses of deviations in QA/QC, Cost Model, Project Schedule and KPIs, and based on those analyses, initiating corrective action;
- (k) Reviewing Non-Owner Party payment applications for conformance with the requirements of this Agreement;
- (l) Providing advice and counsel to Owner regarding management of the Project; and
- (m) Managing the commissioning and turnover processes.

#### 4.7.3 Authority

- (a) PIT and PMT meetings. Owner may delegate its decision-making authority to the PA for PIT and PMT meetings. To delegate its decision-making authority, Owner must set forth in writing the specific authority it is delegating to the PA for each applicable meeting.
- (b) SMT meetings. The PA will participate in SMT meetings, but is not authorized to cast votes, legally bind Owner, or otherwise act on Owner's behalf.

**4.8 Joining Agreements.** Parties may be added to this Agreement upon unanimous written agreement of the existing Parties. Upon execution of a Joining Agreement the added Party will assume the responsibilities—within its scope of work—as if it had been a party to this Agreement from the Effective Date and the Business Terms Sheet will be updated to reflect the added Party and any changes to the Base Target Cost, Final Target Cost, ICL, or ICL Percentages.

**4.9 Key Employees.** The Parties acknowledge that in entering into this Agreement, Owner has relied upon each Non-Owner Party assigning to this Project the Key Employees listed in Exhibit M, each of whom must perform their respective work or services throughout the term of this Agreement. No Key Employee may be replaced, reassigned, or removed without Owner's written approval, which will not be unreasonably withheld. Owner may require replacement of any Key Employee. Replacement Key Employees cannot be replaced, reassigned, or removed except as allowed in this Section 4.9 and must have experience and capability that is equivalent or better than the replaced Key Employee.

## **5. Governance**

### **5.1 Project Management Team (PMT)**

**5.1.1 Membership.** The PMT will provide management-level guidance for collaborative planning, design, and construction of the Project to achieve the Project Requirements and will be chaired by a person designated by the Owner. The PMT is responsible for monitoring all Project progress and for developing benchmarks, metrics, and standards for progress evaluation.

#### **5.1.2 Meetings**

(a) **Regular Meetings.** The PMT will establish a regular meeting schedule, which, in general, should occur weekly. Regular meetings held in accordance with the agreed meeting schedule do not need to be noticed. Regular meetings will be held to review, discuss, and evaluate the status of the Project with respect to design issues, cost, and schedule, and to implement programs to improve overall Project performance. The regular meetings will be held separately from other meetings to assure proper management of the Project and encourage candor among the Parties. The regular meetings may include SMT members from each of the Parties, as well as any other necessary Project Participants that may be required to attend based on the meeting agenda.

(b) **Special Meetings.** Special meetings may be requested by any PMT member to allow the PMT to address a matter of urgency. The Party requesting the special meeting must provide at least 1 Business Day's electronic notice, unless all PMT members agree to a shorter timeframe. Notice of a special meeting will identify the issues to be addressed.

**5.1.3 Responsibility; Authority.** The PMT will manage and coordinate achievement of the Project Requirements and provide direction to the Parties and to the PITs. Subject to the requirement that its decisions be unanimous, the PMT is authorized to manage and direct the Project in a manner consistent with the Project Requirements. The PMT is not, however, authorized to direct or supervise the actions of any Party's employees and is not responsible for any failure of a Party to perform its obligations. PMT decisions are final and not

subject to review or modification except by the SMT, as described in this Agreement, or by Owner's use of an Owner's Directive.

5.1.4 **Reliable Participation.** Fundamental to the success of the PMT is the willingness and ability of each member of the PMT to participate reliably throughout the Project by providing dependable commitments, promises, and information in the best interest of the Project. The Parties commit to supporting the full engagement of their PMT representative and to providing the necessary resources to allow its PMT member to meet his or her commitments.

5.1.5 **PIT Management.** The PMT will create, organize, manage, and mentor the PITs and through a designated PMT member, and maintain a direct management/mentoring connection with each PIT.

5.1.6 **Interpretation of the Project Requirements and Implementation Documents.** The PMT has the authority to interpret the Project Requirements and Implementation Documents, subject to SMT approval. Work related to a RFI or clarification that affects the Base Target Cost, Final Target Cost, or Contract Time must be documented in a PMT Bulletin pursuant to Section 5.4.4, but will not result in a Change Order unless approved by the SMT. The PMT will resolve questions, discrepancies, ambiguities, and other clarifications regarding the requirements of the Project Requirements and Implementation Documents according to this Agreement, the Project Requirements, and in the best interests of the Project.

5.1.7 **Decisions.** All PMT decisions must be unanimous and recorded in the PMT meeting minutes, or in the case of a project wide directive, a PMT Bulletin. If the PMT cannot reach a unanimous decision, the unresolved issue is referred to the SMT for determination at the SMT's next regular or special meeting.

## **5.2 Senior Management Team (SMT)**

5.2.1 **Responsibility; Authority.** The SMT is responsible for the overall management and guidance of the Project to achieve the Project Requirements and will provide senior management-level guidance for collaborative planning, design, and construction of the Project to achieve the Project Requirements. The SMT is chaired by the Owner. The SMT has the authority to take the actions listed below and to take any action that the PMT is authorized to take.

(a) **PMT Membership.** The SMT will establish the Project Management Team, choosing its members and providing mentoring and direction to the PMT as required. The SMT may remove and replace a PMT member.

(b) **Resolve issues that the PMT could not resolve and are referred to the SMT under Section 5.1.7.**

(c) **Project Requirements.** The SMT will review the Validation Report and confirm the Project Requirements, which will then be amended into this Agreement as Exhibit B.

(d) **Change Orders.** Issue Change Orders permitted under Article 11. The SMT may by SMT Bulletin delegate authority to issue Change Orders valued less than a stated amount, and less than a stated increase in Contract Time, individually and in aggregate.

(e) Approval of Governance Plans. The SMT will review the Governance Plans prepared by or under the direction of the PMT and will either approve the plan or direct that the plan be modified and resubmitted. After approval, the SMT may require modifications to a plan to respond to additional information or changed circumstances.

5.2.2 Membership. Each Party will have a representative to the SMT and, if a Party chooses, an alternate representative, who are both identified in the Business Terms Sheet. Each Party will endeavor not to change its representative during the Project, but, if necessary, may replace its representative or alternate by notifying the SMT in writing of the new representative or alternate. By majority vote, the SMT may require a Non-Owner Party to replace its representative to the SMT.

#### 5.2.3 Meetings

(a) Regular Meetings. The SMT will establish a meeting schedule that is available to all Parties. Regular meetings held in accordance with the agreed meeting schedule do not need to be noticed. Regular meetings will be held to review, discuss, and evaluate the status of the Project with respect to design issues, cost, and schedule, and to implement programs to improve overall Project performance.

(b) Special Meetings. Special meetings may be requested by any Party to allow the SMT to address a matter of urgency. The Party requesting the special meeting must provide at least 1 Business Day's electronic notice, unless all SMT members agree to a shorter timeframe. Notice of a special meeting will identify the issues to be addressed.

#### 5.2.4 Decisions

(a) Voting. All SMT decisions will be recorded in SMT meeting minutes, or in the case of a project wide directive, an SMT Bulletin. Decisions of the SMT are by majority vote of the members present, but no decision can be made if Owner is absent. Each SMT member has one vote, except that Owner's SMT member will have additional votes, to provide Owner with at least 1/3 of the total number of votes. [Example: If the SMT has 7 members, Owner has 3 votes (1/3 of 9 total votes--7 member votes plus Owner's 2 additional votes).] All decisions of the SMT are final and binding on the Parties, with the exception that Owner can overrule a SMT decision by issuing an Owner's Directive.

(b) Owner Directive. If Owner objects to a SMT decision, it may issue a written Owner's Directive that supersedes the SMT decision. However, if the Owner's Directive changes the cost, scope, or schedule, any Non-Owner Party may use the dispute resolution procedures of Article 16 to contest the Owner's Directive and have a Change Order issued, if, and to the extent, a Change Order is allowed under Article 11.

**5.3 Personnel Management.** Neither the PMT nor the SMT will supervise or control any person whom a Party employs or directly contracts with in connection with the Project. The PMT or SMT may require any Non-Owner Party to remove from the Project any person employed in connection with the Project, or personnel of companies that any Non-Owner Party

directly contracted with, if it determines that the presence of that person is detrimental to achievement of the Project Requirements. The Designers and Builders will provide personnel according to staffing plans approved by the PMT. The Parties will not remove or reduce involvement of any Key Employees set forth in an approved staffing plan without the Owner's written consent, which will not be unreasonably withheld. Staffing plans may be prepared and approved in Phases, as directed by the PMT.

**5.4 Project Manual and Governance Plans.** The Project Manual (Exhibit J) will contain detailed information regarding processes, procedures, project controls and policies applicable to the Project and forms that must be used on the Project. The Project Manual will be maintained in the Project Management Information System (PMIS), be available to all Parties, and may be updated by the PMT from time to time. The PMT will provide each Party with written notice when the Project Manual is updated. The updated Project Manual is binding on all Parties unless, within 10 Business Days of being notified of an update, a Party objects to the update by notifying the PMT and Owner in writing. The Project Manual will include the following plans and tools ("Governance Plans"), which will be created by the PMT for SMT review and approval.

5.4.1 BIM Execution Plan. The BIM Execution Plan will be created by the PMT and all relevant Project Participants. It will address the uses specified in the General Conditions or identified in the Project Requirements.

5.4.2 Co-Location Plan. The Co-location plan will detail the physical arrangements, digital and other technical infrastructure, scheduling, facilitation, PIT organization and leadership, and operational procedures for the co-location facility.

5.4.3 Commissioning Plan. The Commissioning Plan will identify any commissioning agents and outline all systems subject to commissioning and all Parties required to participate.

5.4.4 Communication and Decision Plan. The Communication and Decision Plan will detail the systems and procedures to be used to enhance effective communication amongst the Project Participants and provide for efficient preservation and access to communications with appropriate levels of security and authorization. In addition, the plan will detail a system for effectively documenting, disseminating, and retrieving project information and decisions.

5.4.5 Cost Model. The Cost Model will be the primary document for displaying and analyzing project financial information. It should, in as close to real time as practicable, reflect the current state of incurred and projected project costs and identify areas that require attention from the PMT and SMT to avoid cost overruns at the line item, discipline, sector, and Project levels.

5.4.6 Information Integration Plan. The Information Integration Plan will establish standards and procedures for obtaining timely information from all Project Participants.

5.4.7 Joint Site Investigation Plan. The Joint Site Investigation Plan will specify the reasonable investigative tasks required to reduce the risk of encountering Unforeseen and Differing Site Conditions during construction of the Project. The Joint Site Investigation Plan should balance the risks to be reduced and the cost of investigation.

5.4.8 On-Boarding Plan. The On-Boarding Plan will detail the indoctrination, training, and integration that each Project Participant and their respective employees will receive as they commence working on the Project. The purpose of on-boarding is to explain the principal purpose and specific goals of the Project, how the Project differs from other projects that the person or organization has been involved with, how the person or organization fits into the Project, how they are expected to interact and collaborate with other Project Participants, and to provide administrative and safety information. On-boarding is a continuous process that will occur throughout the Project duration.

5.4.9 Pre-fabrication Plan. Pre-fabrication may provide significant opportunities to improve quality while reducing cost and duration. The Pre-fabrication Plan should explore these opportunities and detail the how pre-fabrication will be utilized on the Project. In addition, it should address how the Project will respond to challenges created by pre-fabrication, such as quality assurance and inspection, labor considerations, logistics, material and equipment protection, transport, storage, ownership, and insurance for pre-fabricated components.

5.4.10 Baseline Schedule. During the Validation Phase the Parties will develop a Baseline Schedule that identifies the final completion date, Substantial Performance date, and the key milestones for achieving those dates. The Baseline Schedule must be in Critical Path Method (CPM) format, using a computer program acceptable to Owner, and sufficiently detailed to understand the relationships between milestones, key dates, and critical long duration tasks and procurements. It is recognized, however, that detailed project scheduling will be accomplished through pull scheduling using the Last Planner System™ or equivalent and that the Baseline Schedule should provide general, rather than detailed information, and form the basis for the Project Schedule. Throughout the later phases of the Project, the PMT will maintain and update the Project Schedule.

5.4.11 QA/QC plans. There will be two Project-level QA/QC plans. The Design QA/QC plan defines the standards used for design, the processes for coordination and conflict checking design information, and the processes for review of the completeness, accuracy, clarity, and adequacy of design information. The Lead Designer is responsible for creating the Design QA/QC plan. The Construction QA/QC plan focuses on the completeness and quality of the Construction Work to maintain the quality required by the Implementation Documents and reduce to the greatest practical extent, re-work, and warranty call-backs. The Contractor is responsible for creating the Construction QA/QC plan.

5.4.12 Risk and Opportunity Register. The Risk and Opportunity Register will identify and quantify potential project risks and will be used to develop a reasonable Project contingency that will be included in the Base Target Cost.

5.4.13 Safety Plan. The Safety Plan should meet or exceed Owner's requirements for safety of workers, visitors, and others on or around the Project Site, including any off-site fabrication facilities.

5.4.14 Strategic Sourcing Plan. The Strategic Sourcing Plan will evaluate opportunities to procure material and equipment for the Project using a centralized facility procurement and logistics facility.

5.4.15 Target Value Design Plan. The Target Value Design Plan will evaluate, implement, monitor, and manage TVD processes, such as those discussed in Target Value Design: Introduction, Framework & Current Benchmark, and Target Value Delivery: Practitioner

Guidebook to Implementation – Current State 2016, both available from the Lean Construction Institute.

5.4.16 Turnover Plan. The Turnover Plan details the schedule, tasks, deliverables, training, and requirements for transitioning the Project from Non-Owner Party control to Owner control.

5.4.17 Validation Report. At its most basic, the Validation Report documents the Parties' evaluation of Owner's requirements and desired outcomes, the scope and schedule required to achieve them, and the expected cost for the Project. It must provide sufficient detail to be a reliable guide to project cost and schedule and is the primary source document when setting the Base Target Cost, which is a negotiated number that may be less than the expected cost. The Project will terminate pursuant to Section 6.2.4. If the Parties cannot agree on a Base Target Cost. The Validation Report, when completed and accepted by all Parties, becomes Exhibit B to this Agreement.

**5.5 Project Charter.** The PMT will, jointly with the Project Participants, develop a Project Charter that embodies the key goals and values that the Project Participants have committed to achieve. The Project Charter will be signed by representatives of each Project Participant and be prominently displayed in the co-location facility.

## **5.6 Project Implementation Teams (Cross-Functional Clusters)**

5.6.1 Creation. The PMT will create Project Implementation Teams (PITs) as necessary for the efficient design and implementation of the Project. Each PIT will appoint a PIT leader, subject to approval by the PMT. The PMT will monitor PIT effectiveness and, as necessary, the PMT will take action to increase PIT effectiveness, including facilitating PIT meetings and replacing PIT leaders. The PMT can create, dissolve, modify, or otherwise use PITs as the PMT finds appropriate. Each Party will provide personnel to staff the PITs, as required by the PMT, but PITs may also include persons employed by any Project Participant, or other persons whose participation is useful to the PITs' successful functioning.

5.6.2 Authority. The PITs are the primary working unit of the Project during the Validation Phase and the Design/Pre-construction Phase and may continue working through all Project Phases. As such, they will make many of the day-to-day decisions necessary to achieve the Project Requirements. They are not, however, authorized to change the Base Target Cost, Final Target Cost, ICL, ICL Percentages, the Parties' respective Stipulated Profit, or the Contract Time.

5.6.3 Leadership. The PMT will appoint a leader for each PIT who will facilitate PIT functioning and serve as a liaison to the PMT. The PMT can replace PIT leaders and will provide guidance and mentoring to the PIT leaders and the PITs.

## **6. Responsibilities by Phase**

**6.1 Phases and Stages.** The Project has 5 Phases of Work: Validation Phase, Design/Pre-construction Phase, Implementation Phase, Commissioning Phase, and Post-Commissioning Phase. The Project may also be divided into one or more Project Stages based on geographic or other relationships. At any point in time, Work in different Project Stages may be in different Project Phases. For example, Work may be in the Implementation Phase for one Project Stage while in the Design/Pre-construction Phase of a different Project Stage.

**6.2 Validation Phase.** The purpose of the Validation Phase is to align the Parties regarding the Project scope, schedule, cost, and quality and to document that alignment in the Validation Report. The Validation Phase is also a decision point to determine if the Project will continue or be terminated.

6.2.1 Compensation. For the Validation Phase the Non-Owner Parties are paid their respective incurred Chargeable Costs, which includes Stipulated Overhead, but they will not be paid, and are not due, any profit.

6.2.2 Tasks. During the Validation Phase, the Parties will:

(a) Develop the Project design sufficiently to identify and determine the key design decisions affecting floor plans, elevations, building exterior systems, mechanical systems, electrical, civil, and structural systems and to support development of the Estimated Final Cost.

(b) Develop the Estimated Final Cost, set the Base Target cost, and set standards for the integration of Project financial information from Project Participants. The Estimated Final Cost will include an appropriate Project contingency, Allowances, and the Escalation Allowance.

(i) Project contingency. The Parties' projections of their Chargeable Costs that are included in the Base Target Cost can not include any contingency amount. However, the Parties will jointly develop a Risk and Opportunity Register that identifies and quantifies potential project risks. The Risk and Opportunity Register will, among other things, be used to develop a reasonable Project contingency that will be included in the Base Target Cost;

(c) Develop a Baseline Schedule pursuant to Section 10.2.1;

(d) Develop the Incentive Program, Exhibit I;

(e) Develop the Project Manual Exhibit E; and

(f) Develop the Responsibility Matrix to allocate key tasks amongst the Project Participants.

(g) Plan and perform a Joint Site Investigation. The Parties will jointly determine the level of effort necessary to provide reasonable information regarding Project Site conditions. The level of effort should balance the risk to be avoided and the cost of the investigation. In addition, the Parties should determine when it is most appropriate for given investigative tasks to be performed. The Joint Site Investigation should be summarized in a report that will set the baseline for Unforeseen and Differing Site Conditions.

(h) Set the Base Target Cost, the ICL, each Non-Owner Party's Stipulated Profit, each Non-Owner Parties' Stipulated Overhead, and any other information necessary to complete the Business Terms Sheet.



when:

**6.2.3 Completion of the Validation Phase.** The Validation Phase is complete

- The Validation Report has been issued and accepted by all Parties;
- The Base Target Cost is agreed by all Parties and amended into the Agreement;
- The Parties' Stipulated Profit and Stipulated Overhead are agreed by all Parties and amended into the Agreement; and
- The Incentive Program is agreed by all Parties and amended into the Agreement as Exhibit I.

**6.2.4 Project Termination for Failure to Validate.** If the Parties are unable to agree on all the items in Section 6.2.3, Owner may issue a written notice of non-validation to all Parties. If, within 25 Business Days after issuance of the notice, the Parties do not reach agreement on all the items in Section 6.2.3, the Project is terminated on the following terms:

- (a) Owner will pay the Parties any unpaid Chargeable Costs, including overhead, for Work performed prior to termination, but no profit or any other compensation will be due the Non-Owner Parties.
- (b) Owner will own preliminary Design Materials (including copyright) and each Party must provide Owner, within 10 Business Days after receipt of a written request from Owner, any of the preliminary Design Materials it created. Owner releases the Parties from any liability to Owner that is caused by Owner's use of the preliminary Design Materials and will defend and indemnify each Non-Owner Party from any liability, claims or damages that are caused by Owner's use of the preliminary Design Materials.

### **6.3 Design/Pre-construction Phase**

**6.3.1 Notice to Proceed.** If the Validation Phase is completed, Owner will issue to the Parties a written Notice to Proceed with the Design/Pre-construction Phase.

**6.3.2 Tasks.** During the Design/Pre-construction Phase, the PMT will oversee development of the project design and creation of the Implementation Documents for the Project in accordance with the Project Requirements and will complete the following design and preconstruction activities.

- (a) **Procurement of Other Project Participants.** During the Design/Pre-construction Phase, any remaining subcontractors, vendors, suppliers, consultants, Owner's Separate Contractors, and Owner's Separate Consultants will be contracted by the applicable Parties pursuant to Article 7. The Project roster will be updated by the PMT to include all Project Participants.
- (b) **Update Responsibility Matrix.** The PMT will update the Responsibility Matrix (Exhibit C) as required to include the necessary subcontractors, vendors, suppliers, consultants, Owner's Separate Contractors, and Owner's Separate Consultants procured during the Validation Phase that will

be performing certain tasks. The Responsibility Matrix will be updated from time to time as the PMT deems necessary to reflect the status of the Project and assign necessary tasks to the most qualified Project Participant.

(c) Early Release and Prefabrication. The PMT may authorize early release of certain systems, phases, or prefabrication of materials or equipment.

(d) Project Implementation Teams. The PMT will develop, guide, and direct PITs.

(e) Cost Model. With the assistance of the PITs and Contractor, the PMT will maintain and update the Cost Model developed during the Validation Phase, which the PMT will review monthly or more frequently as necessary for effective project management. The Cost Model must track paid Chargeable Costs, incurred but unpaid Chargeable Costs, current estimate of future Chargeable Costs, the percentage of the Work completed, projected of each Non-Owner Party on a monthly and quarterly basis, any ICL distributions, the predicted variance of each line item, and the projected variance from the Target Cost.

(f) Project Scheduling. The PMT and PITs will update and maintain the Project Schedule using pull-based planning, such as Last Planner™ or equivalent to the standards required in the Project Manual.

(g) Building Information Modeling Execution Plan. Early in the Design/Pre-construction Phase, the PMT and other relevant consultants, vendors, suppliers, and subcontractors will participate in a BIM workshop to establish a BIM Execution Plan that addresses the uses specified in the General Conditions or identified in the Project Requirements. The BIM Execution Plan will be approved by the PMT.

(h) Target Value Design Process. The PMT and PITs will utilize the Target Value Design process to optimize and coordinate the design in accordance with the Project Requirements and endeavor to create additional value by identifying alternative systems, means, and methods to reduce capital expenditures and life-cycle costs, analyze and improve work-flow, improve constructability and functionality, provide more operational flexibility, and endeavor to reduce the actual Chargeable Costs while maintaining or increasing the quality and overall function of the Project. The agreed Base Target Cost is a design criterion.

(i) Continuous Costing. To the greatest extent practicable, the Builders and their subcontractors will provide continuous cost projections and rapid cost evaluation of proposed design alternatives to the PITs and PMT throughout the Target Value Design process to assist the Parties and the PMT, in making informed decisions about proposed design solutions.

6.3.3 Final Target Cost. The Final Target Cost will be established at or near the end of the Design/Pre-construction Phase and will include all Chargeable Costs to design and perform the Work described in the Implementation Documents. The Final Target Cost measures whether the Project meets the Owner's financial expectations and will be the

threshold against which the Final Actual Cost is compared upon Final Completion of the Work to determine the final ICL amount earned, if any.

(a) If during this phase, the PMT projects that the expected cost is less than the Base Target Cost, then it may declare that savings have occurred and 25% of the amount saved will be added to the ICL and the Base Target Cost reduced by 75% of the amount saved.

(b) The Owner may choose to include Added Value Incentive Items from Exhibit F, or other scope, that are funded in whole or in part, by the reduction in the Base Target Cost.

(c) The Final Target Cost is the Base Target Cost, minus 75% of the savings declared during the Design/Pre-Construction Phase, plus the agreed Change Orders, if any, for Added Value Incentive Items, or other agreed scope increases that are funded, in whole or in part, by the savings during the Design/Pre-Construction Phase.

**6.4 Governmental Laws and Regulations.** The PMT, in collaboration with the PITs, will identify and determine the meaning and effect of all applicable building code provisions and other building restrictions and requirements of Governmental Authorities. The Designers in conjunction with the Builders, will assist Owner with filing all required applications, drawings, specifications, calculations, and other documents required for permits.

**6.5 Implementation Phase.** Notice to Proceed. Owner will issue a written Notice to Proceed to the Non-Owner Parties to commence Implementation Phase Work. If the Project proceeds in Project Stages, Owner will issue a written Notice to Proceed with Implementation Phase Work for each separate Project Stage.

**6.5.1 Tasks.** During the Implementation Phase, the remainder of the consultants, subcontractors, suppliers, and Owner's Separate Contractors, if any, will be procured and the Construction Work will be performed in accordance with the approved and permitted Implementation Documents.

(a) **Cost Model.** The Cost Model will be continuously updated to reflect incurred and projected costs and reported to the PMT and SMT. It will be reviewed as required by Section 6.3.2(e).

(b) **Project Schedule.** The Project Schedule will be continuously updated to reflect Project progress and the projected dates for key milestones, Substantial Performance, commissioning and Final Completion.

(c) **Productivity.** The PMT will monitor productivity and proactively act to remove or mitigate impediments to efficient production. Processes will be monitored and continuously improved through application of Lean processes, principles, and continuous learning cycles.

(d) **QA/QC.** The PMT will monitor the quality of installed work and investigate the root causes of quality or rework issues to improve installed quality and reduce rework. As the Implementation Phase is completing, the PMT will prepare Deficiency List and manage Deficiency List completion.

(e) Safety. The PMT will monitor adherence to the Safety Plan and act to eliminate any material deviations from the Safety Plan and to communicate the importance of safety to all Project Participants.

(f) Pre-Commissioning and Turnover. The PMT will, with the assistance of the independent commissioning agent update the Commissioning Plan to include all deadlines, tasks, deliverables, training, and tests necessary and commence any activities required to timely support the Commissioning Phase. The PMT will also coordinate with Owner's operational staff to plan for the turnover of the Project.

(g) Conformed Design Documents. Under the Lead Designer's direction, the Designers will update the Contract Documents to include all additions and modifications to the design, including incorporation of approved submittals and working drawings/models. The Conformed Design Documents so created are intended to be the final and complete expression of the Project design. The Conformed Design Documents must be provided to Owner in their native digital format.

(h) As-Built Documents. Under the Contractor's direction, the Builders will update the Conformed Design Documents to identify all material instances where the Project, as constructed, deviates from the Conformed Design Documents.

## **6.6 Commissioning Phase**

6.6.1 Commencement. The Commissioning Phase will commence when required by the Commissioning Plan. It is anticipated that commissioning of different Project Stages may commence on different dates and have different durations.

### **6.6.2 Tasks**

(a) Commissioning. Execute the operation, adjustment, training, and documentation tasks detailed in the Commissioning Plan and provide the deliverables specified in the plan.

(b) Notice of Substantial Performance. When Substantial Performance is achieved, the PMT will issue a Notice of Substantial Performance. Before a Notice of Substantial Performance can be issued, all Work required by this Agreement must be satisfactorily completed, with only minor punch list work that can be completed without interfering with using the Project.

(c) Notice of Final Completion. The PMT will issue a Notice of Final Completion the Project when Final Completion is achieved. Within 45 days after Substantial Performance, the following must be completed.

- (i) Correction of all Final Deficiency List items;
- (ii) Provision of all required training

- (iii) Delivery to Owner of all documents, manuals, and warranties;
- (iv) Delivery to Owner of all spares and attic stock, surplus material, tools, and equipment that were paid for under this Agreement;
- (v) Delivery to Owner of the Conformed Design Documents and the Record Model; and
- (vi) Delivery to Owner of any inspection reports, certifications, or other documents and assurances required by the Agreement or the Commissioning Plan.

## **6.7 Post-Commissioning Phase**

### **6.7.1 Tasks**

- (a) **Warranty.** During the Warranty Period, or during a longer period specified by the Contract Documents for specific equipment, materials or systems, the Contractor will manage the investigation and correction of defective equipment, materials, or systems, and will involve the appropriate Non-Owner Parties, subcontractors, and vendors that provided warranties for the deficient equipment, materials, or systems.
- (b) **Re-Commissioning.** Sixty days prior to the expiration of the Warranty Period, the Non-Owner Parties and their respective consultants and subcontractors will inspect, repair, and adjust all systems to operate within the performance parameters used when initially commissioning the Project.

## **7. Subcontracts**

**7.1 Written Agreements.** The Work performed under this Agreement will be executed by various Project Participants, which will include subcontractors, suppliers, vendors, and consultants. Consultants, subcontractors, and vendors will be Standard Subcontractors or Standard Consultants, unless made a Party to this Agreement by execution of a Joining Agreement.

**7.2 Selection.** The PMT will prepare a protocol for selection and engagement of consultants, subcontractors, and vendors. In the absence of an agreed protocol, the following procedure will be used.

**7.2.1** Each Party will provide the PMT, in writing, with the names of persons or entities proposed to perform any portion of the Work as a subcontractor or consultant, together with their qualifications, educational history, work history, proposed compensation terms, and any other information relevant to their proposed role on the Project.

**7.2.2** Within 5 Business Days of receipt, the PMT will provide a written response if it objects to the proposed person or entity because of the proposed person's or entity's qualifications, educational history, work history, or another reasonable basis. The procuring party will then propose another person or entity for review by the PMT. This process

will continue until the PMT has no reasonable objection. Failure of the PMT to timely object waives the PMT's right to object.

7.2.3 Substitution of an approved subcontractor or consultant will not be made without PMT approval. Substitution must be made following the same process set out in Sections 7.2.1 and 7.2.2 for initial selection.

7.2.4 Key consultants, subcontractors, and vendors will be procured early during the Validation Phase. Those consultants, subcontractors, and vendors that were not procured during the Validation Phase will be procured sometime during the Design/Pre-construction Phase or, in some cases, early during the Implementation Phase.

**7.3 Transparency in Negotiating or Bidding.** Standard Subcontractors and Standard Consultants will be selected on an open bid or negotiated basis as determined by the PMT in consideration of procedural obligations under applicable trade agreements. Even if trade agreement obligations are found to not apply to such selection, the selection process will be open and transparent with subcontractors and consultants submitting detailed breakdowns of their bids or proposals. Standard Subcontractors and Standard Consultants will provide detailed information about their respective bids or proposals including costs associated with the Work and overhead and profit for Change Orders.

**7.4 Licensing Requirements.** All consultants, subcontractors, and vendors will be properly licensed for their respective portions of the Work, including any Design Services performed by Design-Build Trades.

**7.5 Required Pass-Through Provisions.** The Parties must have written agreements with and pass the following provisions through to their respective consultants, subcontractors, and vendors.

7.5.1 Contract Pass-Through. By appropriate written agreement, the Non-Owner Parties will require each of their consultants, subcontractors, and vendors to the extent of the portion of the Work each of them performs, to be bound to the Non-Owner Parties by terms of the Contract Documents, and to assume toward the Non-Owner Parties all the obligations and responsibilities that the contracting Non-Owner Parties assumes toward Owner through those documents. Each subcontract, purchase order, and consulting agreement will preserve and protect the rights of the Parties under this Agreement with respect to the Work to be performed by others so that subcontracting will not prejudice the Parties' rights. The Non-Owner Parties will require each consultant, subcontractor, and vendor that enters into agreements with lower-tier consultants, subcontractors, and vendors to pass-through these provisions into the lower-tier agreements. In addition to this general pass-through requirement, the Non-Owner Parties are specifically required to pass-through the requirements in Sections 7.5.2 through 26 and agree to defend and indemnify the Owner from any claims, damages, loss or liability that would have been avoided or reduced had the Non-Owner Party complied with this section. No subcontract, purchase order, or consulting agreement will limit or modify this Agreement.

7.5.2 Assignment. All subcontracts, purchase orders, and consulting agreements will include a provision requiring the subcontractor, consultant, or vendor to assign the subcontract, purchase order, or consulting agreement to Owner upon termination of this Agreement by Owner for default pursuant to Section 15.2.1(b) and Owner's election to accept the assignment of the subcontract. All subcontracts, consulting agreements and purchase

orders will also include a provision stating that if the subcontract, consulting agreement, or purchase order is assigned to Owner because of a termination for default, and the Work has been suspended for more than 30 days, the subcontractors', consultants', and vendors' compensation will be equitably adjusted for increases in cost resulting from the suspension;

7.5.3 Audit. The Non-Owner Parties will require their respective consultants, subcontractors, and vendors to be bound by and fully comply with the records and audit provisions of Article 9.

7.5.4 Insurance. The Non-Owner Parties must pass-through all of the requirements contained in their respective insurance exhibit (Exhibits L-2 through L-4) to their respective consultants, subcontractors, and vendors.

7.5.5 Indemnification. The Non-Owner Parties will each include indemnification provisions into their respective subcontracts, purchase orders, and consulting agreements that require each Standard Consultant and each Standard Subcontractor to defend and indemnify the Parties and their respective Representatives:

(a) From all claims, liability, damages, loss, costs, and expenses (including legal, expert witness, and consulting fees and costs), to the extent arising from the Standard Consultant's or Standard Subcontractor's negligence or breach of contract or of the negligence or breach of contract of anyone for whom they are responsible;

(b) From all liens or payment bond actions based on the Standard Consultant's or Standard Subcontractor's portion of the Work performed on the Project;

(c) From any claims, liability, damages, loss, cost, and expenses (including legal, expert witness, and consulting fees and costs) to the extent arising from the Standard Subcontractor's or Standard Consultant's negligent acts or omissions in requiring, causing, or permitting any Hazardous Materials to be specified, generated, released, disposed, discharged, brought to, or stored at the Project Site, or used in the Construction Work; and

(d) From any claims, liability, damages, loss, cost, and expenses (including legal, expert witness, and consulting fees and costs) arising from alleged infringement of any copyrights, patents, or trade secrets.

(e) The required indemnification provision will also include the following provision: Nothing contained within these indemnification obligations requires defense or indemnity that is not permitted under Applicable Law and if a conflict exists between Applicable Law and these indemnification obligations, then the indemnification obligations should be construed to require as much as, but no more than, permitted by Applicable Law.

(f) If it is in the best interest of the Project, the PMT may modify, on a case-by-case basis, the requirements of this Section 7.5.5 by issuing a PMT Bulletin.

7.5.6 Dispute Resolution Proceedings. Each Non-Owner Party will require their consultants, subcontractors, and vendors to be subject to the dispute resolution proceedings in Article 16.

7.5.7 [This Section number is not used.]

7.5.8 Third Party Beneficiaries. The Non-Owner Parties will include in their agreements with all consultants, subcontractors, and vendors that the consultants, subcontractors, and vendors are not third-party beneficiaries to this Agreement.

7.5.9 Standard of Care. Each Non-Owner Party will require that their consultants, subcontractors, and vendors conform to the hiring Non-Owner Party's standard of care set forth in this Agreement.

7.5.10 Confidentiality and Non-Disclosure. Each Builder will require all subcontractors, vendors, and suppliers, and each Designer will require all consultants, to be bound by the provisions of Section 17.2 before receiving any information regarding this Project.

## **8. Compensation**

**8.1 General.** The Parties' compensation for the Work is the sum of their respective Chargeable Costs incurred for the Project to the extent allowed in Exhibit D for Designers and Exhibit E for Builders and, subject to Project success, their respective percentage of the adjusted and available ICL.

**8.2 Incentive Compensation Layer (ICL); ICL Percentage.** The Incentive Compensation Layer is the sum of all Parties' Stipulated Profits and is subject to performance adjustment as detailed in Exhibit B-4 and Exhibit I. A Party's Incentive Compensation Layer Percentage is the ratio of its Stipulated Profit to the sum of all Parties' Stipulated Profit. Increases or decreases in a Party's Stipulated Profit by Change Order will also result in a change to the ICL Percentage of each Party.

**8.3 Stipulated Profit.** When the Base Target Cost is set, Owner and each Party will agree on an amount of profit the Party will receive if the Project meets the agreed goals in the Project Requirements. A Party's Stipulated Profit is earned pursuant to the requirements of Exhibit I. The Stipulated Profit may be adjusted by Change Order, to the extent permitted by Article 11.

### **8.4 Contingent Distribution of Stipulated Profit.**

8.4.1 The following procedure will be followed with respect to distribution of Stipulated Profit.

(a) When an Achievement Event occurs, Owner will distribute each Non-Owner Party the percentage of its contingent Stipulated Profit identified for that Achievement Event in Exhibit B-5. Prior to any distribution of Stipulated Profit, the PMT must determine that the pre-conditions for the Achievement Event have occurred and that the Project is projected to complete at or below Final Target Cost and within the Contract Time.



(b) If, when an Achievement Event occurs, the Project is not projected to complete at or below Final Target Cost and within the Contract Time, then the contingent distribution of Stipulated Profit associated with the Achievement Event will be deferred until the Project is projected to complete at or below Final Target Cost and within the Contract Time.

(c) If, subsequent to a distribution of Stipulated Profit, the PMT determines that the requirements for earning profit outlined were not met and that the sum of the prior distributions paid Stipulated Profit exceeds the amount of ICL that will be due on Project completion after the adjustments in Exhibit I, then at Owner's option:

(i) The Non-Owner Parties will each pay back to Owner the amount of Stipulated Profit that it received, less the amount of Stipulated Profit it is projected to be due at Project Final Completion; or

(ii) Owner may withhold from payments to a Non-Owner Party an amount equal to the amount calculated in (i) above.

8.4.2 Increases in ICL. If provided for the Incentive Program and earned, increases in the ICL, if any, will be made at Final Completion and are not included in contingent distribution of Stipulated Profit.

**8.5 Stipulated Overhead.** When the Base Target Cost is set, Owner and each Party will agree on an amount of overhead the Party will receive through completion of the Project. A Party's Stipulated Overhead is earned and will be paid [in equal monthly increments] [on a percentage of completion basis].

#### **8.6 Negotiated Trade Work.**

8.6.1 Owner, at its sole discretion, may choose to directly negotiate the performance of trade work with the Contractor on a fixed profit and fixed overhead of basis. If the trade work is awarded to the Contractor, the fixed trade contractor profit amount will be added to the Contractor's ICL and the fixed trade contractor overhead added to the Contractor's fixed overhead. The respective ICL Percentages of the Designers and Builders will then be proportionately adjusted. The Contractor cannot add any mark-ups on the self-performed trade contractor work.

**8.7 Affiliates.** No Party may contract to have work performed, or purchase material, equipment, tools, or furnishings from, or obtain insurance from an Affiliate of the Party unless Owner agrees in writing. Invoices issued by an Affiliate will separately list the amount of profit in that invoice and the profit will not be due the Affiliate, but will be added to the Party's Stipulated Profit and will be subject to the performance adjustments in Exhibit B-4 and Exhibit I.

**8.8 Payment.** Owner will pay each Party the amounts due under this Agreement in accordance with the payment procedures in Exhibit H, provided that Owner has timely received a complete and accurate application for payment from the Party using the forms contained in the Project Manual.

8.8.1 Withholding. Payment to Parties for their Chargeable Costs, including Stipulated Overhead, is subject to withholding pursuant to Article 2 of Exhibit H.

8.8.2 Builder's Lien Act Holdback. Notwithstanding any provision otherwise in Exhibit H or Exhibit K, the Owner will retain Holdback on any payment to a Non-Owner Party with respect to which a Holdback is required to be retained under the *Builders Lien Act*, SBC 1997 c 45, as amended from time to time.

## **9. Records and Audits**

**9.1 Records.** Each Non-Owner Party must keep full and detailed accounts and records related to the performance of Work under this Agreement for a period of at least 10 years after Final Completion of the Project or termination of this Agreement, whichever occurs first. The detailed accounts and records will be created and maintained in accordance with generally accepted accounting practices or other accurate and reliable accounting practices and control systems satisfactory to Owner. The records maintained must include, without limitation, books, records, contracts, subcontracts, purchase orders, vouchers, receipts, evidence of payment, job cost reports, general ledgers, time records, written and electronic communications, estimates, bids, change order logs, correspondence, email, meeting notes, software used on the Project, Change Order Request logs and files, and records related to any Chargeable Costs charged to the Project.

### **9.2 Audits.**

9.2.1 During the Validation Phase, the Owner will conduct an audit of the Non-Owner Parties' financial records for the past \_\_\_\_\_ years and the claimed profit, including, but not limited to, the Parties' receipts, billable rates, overhead, and profit percentage ("Rate Audit"). Owner may use the audit provided for in this Section 9.2.1 to establish the Non-Owner Parties' billable rates, Stipulated Profit, and Stipulated Overhead under the Agreement.

9.2.2 If Parties are added to the Agreement after the initial Rate Audit, Owner or a consultant retained by Owner may audit the rates of the added Party to determine its billable rates, Stipulated Profit, and overhead for the Project. Prior compensation paid to a newly added Party is subject to the adjustments set forth in Section 9.2.1.

9.2.3 Other Audits. At any time during the performance of the Work and through one year after Project Final Completion, Owner may, upon reasonable notice, during normal business hours, and at its expense, audit and copy the records of any Non-Owner Party, and their consultants and subcontractors of any tier, related to:

- Direct costs provided in establishing the Base or Final Target Cost;
- Any payment application or calculation of amounts Owner owes or is alleged to owe;
- Subcontractor or consultant costs submitted as Chargeable Costs; and
- Performance of obligations imposed by this Agreement.

9.2.4 Software. Owner's audit and inspection rights includes any software used on the Project and the audited party must coordinate and make such software available to for use in the audit and inspection by Owner.

9.2.5 Verification During the Project. Owner may also conduct independent verifications, including counting employees at the Project Site, witnessing the distribution of payroll, and verifying information and amounts through interviews and written confirmations with employees, consultants, subcontractors, and suppliers.

9.2.6 Cooperation. The person or organization being audited will reasonably cooperate and make its records available for inspection, copying, and audit at a reasonably convenient location and for a sufficient time to perform a thorough audit.

9.2.7 Auditor Qualifications; Compensation. The auditor must have at least 5 years of experience in performing construction audits. Auditor's compensation may not be contingent on the outcome of the audit and the auditor may not receive any bonus or other compensation based on the audit result or the amount of savings, if any, recovered by Owner due to the audit.

9.2.8 Reimbursement of Audit Costs; Damages.

(a) Owner's audit costs will be reimbursed if the audit reveals undisputed overcharges on an invoice that exceeds the lesser of \$50,000 or 10% of any invoice.

(b) If either condition exists, then the Party responsible for the overcharge will reimburse Owner for the overcharge and the costs Owner incurred in having the audit performed. If multiple Parties are responsible for the overcharge, each will reimburse Owner its proportion of the amount of the overcharge and audit cost.

(c) If the inspection or audit indicates that the audited Party's records were fraudulently or negligently prepared or maintained, Owner may seek damages and legal remedies from the audited party in accordance with Applicable Law.

**9.3 Survival of Record and Audit Provisions.** These audit provisions survive the termination of this Agreement.

## **10. Contract Time**

**10.1 Contract Time.** The Contract Time is the time allotted in the Business Terms Sheet to achieve Project Final Completion. The Contract Time may only be extended by unanimous agreement of the SMT for a Justified Delay and in accordance with the Change Order process in Article 11.

### **10.2 Project Scheduling.**

10.2.1 Baseline Schedule; Project Schedule. A Baseline Schedule that includes design, construction and commissioning will be prepared during the Validation Phase as required by Section 5.4.10, and will be updated at least monthly prior to construction commencing and weekly, thereafter. The purpose of the Project Schedule is to show the overall schedule, key milestones, and progress.

10.2.2 Pull Scheduling. Detailed planning and scheduling will be performed jointly by the Project Participants under the direction of the Contractor using the Last Planner System™, or an equivalent system. To be pull-based, the planning system must be based upon requests from a Project Participant to other Project Participants upon whom the requester's work is dependent, and receipt of reliable promises made by the upstream performer about when it will finish the Work agreed upon per the hand-off criteria, to enable the downstream performers to begin their respective portion of the Work. Results of pull scheduling will be used to update the Project Schedule.

**10.3 Schedule Slippage.** Each Non-Owner Party will notify the PMT promptly of any delay in the most current approved Project Schedule because of its Work and must submit a detailed recovery plan for the PMT to evaluate and approve.

**10.4 Notice of Justified Delay.** A Party will not be entitled to a change in the Contract Time for a Justified Delay (defined in Section 11.2) unless it:

- Notifies the PMT no later than 5 Business Days after the Party first observed or should have first observed the event causing the delay;
- Demonstrates that it could not have anticipated or avoided the delay, obstruction, hindrance, or interference; and
- Has used all available means to minimize the consequences of the delay.

**10.5 Acceleration.** The PMT may determine that it is in the best interest of the Project to direct certain Project Participants to accelerate performance through, among other means, additional shifts, longer work hours, etc., in an attempt to recapture any delays to the Project schedule. To the extent the PMT directs Project Participants to accelerate performance, the PMT will issue a PMT Bulletin, and any resulting overtime premium will be reimbursed as a Chargeable Cost, but neither the Contract Time nor the Final Target Cost will be increased due to a PMT acceleration order, except to the extent the need for acceleration is caused by a Justified Delay.

## **11. Changes**

**11.2 Entitlement to Changes to Base Target Cost, Final Target Cost, Stipulated Profit, Overhead, and ICL.** The Base Target Cost, Final Target Cost, the Stipulated Profits, the Stipulated Overheads, and the ICL, cannot be changed unless one of the following Change Events occurs:

11.2.1 Owner-Elected Changes;

11.2.2 Owner's Directive;

11.2.3 Unforeseen and Differing Site Conditions;

11.2.4 Post Permit Changes that could not have reasonably been anticipated or avoided;

11.2.5 Owner's suspension of the Work per Section 15.1;

11.2.6 Actual Net Recovery from Builder's Risk Insurance, or other insurance required by this Agreement that provides coverage for a project loss;

11.2.7 Reconciliation of allowance items to actual cost; and

11.2.8 Unusual Material Escalation.

### **11.3 Entitlement to Changes to Contract Time (Justified Delay)**

Provided that notice has been properly given under Section 10.4 and subject to PMT and approval, as appropriate, the Contract Time will be increased by the number of days the Project's critical path was lengthened by a Justified Delay. The following is an exclusive list of Justified Delays:

11.3.1 Owner-Elected Changes;

11.3.2 Owner's Directive;

11.3.3 Unforeseen and Differing Site Conditions;

11.3.4 Post Permit Changes that could not have reasonably been anticipated or avoided;

11.3.5 Owner's suspension of the Work per Section 15.1;

11.3.6 A Force Majeure event; and

11.3.7 Adverse Weather.

### **11.4 Process**

11.4.1 PMT Review. Provided that the required notifications have been given, a Party may request that the PMT review a Change Order Request (COR). The COR must provide detail regarding the contractual basis for a contract change, the entitlement to the change, the amount of the change (in cost and time) and any other detail the PMT reasonably requires. If the PMT determines that a Change Order is warranted, it will prepare and submit to the SMT, a Proposed Change Order (PCO). If the PMT determines that a Change Order is not warranted, no further action will be taken on the Change Order Request.

11.4.2 SMT Review. The SMT will review all PCOs sent by the PMT. The SMT may:

(a) Approve the PCO and issue a Change Order in accordance with the terms of the PCO;

(b) Deny the PCO in whole or in part. If denied in whole, no further action will be taken regarding the COR and PCO. If denied in part, then the SMT will issue a Change Order for that portion of the PCO that the SMT approves and in an amount (in cost and time) approved by the SMT; or

(c) Request additional information to assist it in its review, and after receipt of the information, take one of the actions in (a) and (b), above.

11.4.3 Calculation of Changes to Base Target Cost, Final Target Cost, Stipulated Profit, Stipulated Overhead, and ICL. If notice is properly given and the SMT, as appropriate, determines that a change to Base or Final Target Cost and ICL is justified under Section 11.1, then the Change Order will be calculated as follows:

(a) If the Change Order is issued after the Design Services or Construction Work related to the Change Event has been substantially completed, then the Target Cost is increased or decreased by the increase or reduction in each Non-Owner Parties' Chargeable Costs. The Non-Owner Party's ICL is increased or decreased by the product of the Non-Owner Party's Change Order Percentage and amount the Non-Owner Party's Chargeable Cost increased or decreased due to the Change Order. The ICL is increased or decreased by the sum of the changes in ICL for each Non-Owner Party. Each Non-Owner Party performing change order work will maintain separate records of the cost incurred due to the Change Order.

(b) If the Change Order is issued before the Design Services or Construction Work related to the Change Event has been substantially completed, the Parties must jointly agree to an estimate of the increase or decrease in Chargeable Costs for each Non-Owner Party whose Construction Work or Design Services is increased or decreased by the Change Order. The Base or Final Target Cost is increased or decreased by the sum of all the changes in Chargeable Costs and each Party's Stipulated Profit is increased or decreased by the product of its Change Order Percentage and the increase or decrease in its Chargeable Costs due to the Change Order. The ICL is increased or decreased by the sum of the changes in ICL for each Non-Owner Party.

11.4.4 Calculation of Changes to Contract Time. If notice is properly given and the SMT determines that a change to Contract Time is justified under Section 11.3, then the Contract Time will be increased or decreased by the increase or decrease in the critical path due to the Change Order, less the amount of time the Justified Delay is concurrent with delay caused by any fault, neglect, act, or omission of a Designer, Builder, or any of their respective employees, consultants, subcontractors, or suppliers.

**11.5 Changes in the Cost of Labor and Materials.** The Final Target Cost is inclusive of all escalation costs, except as specifically provided for below.

#### 11.5.1 Changes in the Cost of Labor

(a) Labor Costs Under Collective Bargaining Agreements. The billing rate of employees covered under a collective bargaining agreement may be updated on the effective date of any amendment or renegotiation of the collective bargaining agreement, but the increased billing rates will not affect the Target Cost, ICL, Stipulated Profit or Stipulated Overhead of any Party.

(b) Annual Increases in Labor Costs. A Party may adjust its billable rates once within a 12-month period to account for normal increases in employee salaries and benefits. The increases must reasonably reflect the annual adjustments being made by other similar companies and is subject to review and

approval by the PMT. The increased billable rates, if any, do not affect the Base or Final Target Cost, ICL, Stipulated Profit or Stipulated Overhead of any Party.

(c) Promotional Increases in Labor Costs. The Parties recognize that some employees working on the Project will be promoted during the term of this Agreement and that the salaries and benefits of the promoted employees may increase. If this occurs, the billable rate for the promoted employee may be increased for the working month following the promotion, however:

(i) If the promoted employee's responsibilities for the Project are not expanded due to the promotion, the PMT can require that the billable rate used for the Project not be increased; or that the promoted employee be replaced by an employee whose billable rate is commensurate with the employees' duties and responsibilities for the Project; and

(ii) The increased billable rates, if any, will not affect the Base or Final Target Cost, ICL, Stipulated Profit or Stipulated Overhead of any Party.

(d) Amendment of Exhibits D and E. The sub-exhibits to Exhibits D and E will be amended to reflect the updated billable rates for any changes permitted by this Section 11.5.1.

## **11.6 Changes in the Cost of Materials**

11.6.1 Escalation Allowance. The Parties will agree on an amount to include in the Base Target Cost an Escalation Allowance that is an estimate of escalation in the cost of materials and equipment that should reasonably be anticipated in setting the Base Target Cost.

11.6.2 Escalation Allowance Transfer. If a Non-Owner Party claims that its cost for materials or equipment exceeds the cost for those items included in the Validation Report, it will provide the PMT with the cost as shown in the Validation Report and the actual costs as demonstrated by receipts, purchase orders, or invoices. If the PMT finds that the cost increase is due to market escalation in the price of the materials or equipment, then it may offset the cost increase by reducing the Escalation Allowance by the cost increase and increasing the appropriate line items within the Cost Model to reflect the escalated cost. The transfer will not cause any increase in the ICL, Stipulated Profit, or the Stipulated Overhead of any Non-Owner Party.

11.6.3 Unusual Material Escalation. If, due to market escalation, the cost of specific materials or equipment exceeds the amount that was anticipated by more than 5%, the PMT may recommend to the SMT that the Final Target Cost be increased by the difference. An increase in the Final Target Cost due to escalation does not entitle the Parties to an increase in their respective Stipulated Overhead or Stipulated Profit.

## **12. Liability Allocation**

### **12.1 Waiver of Liability**

12.1.1 Waiver of Liability. The Parties waive and release all claims and liability between and among each other related to the performance of this Agreement except for the Allowed Claims listed in Section 12.1.2. However:

(a) The liability waivers of this Section are void as to any Party in Willful Default of this Agreement and the Willfully Defaulting Party will be responsible to the Owner, or any other Party to this Agreement for any resulting losses or damages it caused to the fullest extent permitted by this Agreement, at equity or under Applicable Law.

12.1.2 Allowed Claims. An Allowed Claim may be brought by any Party against any other Party or by Owner as an express third-party beneficiary of the obligations of any consultant, subcontractor or vendor under any subcontract, consulting agreement or purchase order related to the Project. Allowed Claims are limited to the following claims:

(a) Willful Default. Claims for damages against any Party in Willful Default of this Agreement;

(b) Warranty Claims. Claims against the Builders to enforce rights and remedies to the extent set forth in Article 16 of the Agreement and claims against the subcontractors or suppliers of the Builders to enforce either their correction of work obligations or for breach of warranty obligations under their respective subcontracts;

(c) Project Performance. Claims for loss or damage first occurring after Project Final Completion for:

(i) Bodily injury, death, or property damage:

(1) Caused by the failure of the Construction Work to be executed in conformance with the Implementation Documents; or

(2) Caused by negligent acts, errors, or omissions in the design of the Project or its component systems;

(ii) The repair, modification, or replacement of Construction Work that does not meet the functional and performance requirements of the Project Requirements or Implementation Documents.

(d) Contribution and Indemnification. Claims for contribution or indemnification from claims of third parties to the extent caused by or arising from any acts or omissions of one or more of the Parties, subcontractors, suppliers, and consultants resulting from their performance of the Work and for contractual indemnification under Section 12.3, or elsewhere in this Agreement;

(e) Non-Payment and Overpayment. Claims from Owner's failure to pay amounts due under this Agreement or amounts withheld by Owner pursuant to Section 8.8.1. Claims for amounts overpaid by Owner, as determined by audit under Section 9.2.3 or for return of excessive distribution of contingent ICL under Section 8.4.1.



(f) Termination or Suspension. Claims for amounts due following termination or suspension to the extent permitted by Article 15;

(g) Insurance. Claims that arise from the failure of the liable party to obtain insurance required by the Agreement;

(h) Intellectual Property. Claims to enforce intellectual property rights under this Agreement; and

(i) Damages to Owner's Property. Damages to Owner's property, other than the Work itself.

## **12.2 Consequential Damages**

12.2.1 Consequential Damage Waiver. The Parties mutually release each other from any claims for consequential damages that are caused by the negligent performance of obligations imposed on a Party by this Agreement or Applicable Law or are caused by a breach of an obligation imposed on a Party by this Agreement. This waiver is void as against any Party in Willful Default of this Agreement or to the extent the consequential damages arise from fraud or intentional or criminal misconduct.

## **12.3 Indemnification**

### **12.3.1 Non-Owner Party Indemnification.**

(a) Scope. The indemnification obligations of this Section 12.3.1 only arise to the extent caused by:

(i) Breach of a Non-Owner Party's representations, covenants, or warranties contained in this Agreement; or

(ii) The negligent acts or omissions of that Non-Owner Party, its consultants, subcontractors, and vendors (including all tiers); or

(iii) Anyone directly or indirectly employed by any of them for whose acts that Non-Owner Party may be liable.

(b) Indemnification. Subject to Section (a), each Non-Owner Party will defend and indemnify the Parties from and against any claims, losses, damages, liabilities, and expenses (including reasonable legal, expert witness, and consulting fees and costs) alleged by any third parties (including any of their respective employees), arising out of, or resulting from:

(i) bodily injury (including disease and death); or

(ii) damage to tangible property (other than the Work itself).

(c) Indemnification Flow-Through. Each Non-Owner Party must require in writing that its subcontractors, vendors, and subconsultants, of any tier, defend and indemnify Owner to the same extent as the indemnity obligation in Section 12.3.1

12.3.2 Patent and Copyright. Each Non-Owner Party represents and warrants that designs, processes, methods, and materials used by each for the Project do not and will not violate any patents, copyrights, or trademarks. Each Non-Owner Party, but only for its own breach of this Section, will defend and indemnify Owner from and against claims, damages, losses, royalties, and expenses, including, without limitation, reasonable legal, expert witness and consulting fees and costs attributable to the patent, copyright, or trademark violations.

12.3.3 Lien-Free Obligation.

(a) If Owner has paid the Non-Owner Party for the Design Services or Construction Work performed by the Non-Owner Party's subcontractor, supplier, or consultant and

(b) If the Non-Owner Party's subcontractor, supplier, or consultant records, files, or maintains any action regarding a claim of lien or *lis pendens* relating to the Work or the property where the Project is situated, then,

(c) the Non-Owner Party, as applicable, will immediately procure, furnish, and record appropriate release bonds or otherwise remove or cancel the lien or *lis pendens*.

12.3.4 If any Non-Owner Party fails to make timely payments to their respective consultants, subcontractors, and vendors as required, Owner may settle or bond over those claims, or take other actions necessary to prevent a default under any other agreement affecting Owner's property or the Project, and each Non-Owner Party, as applicable, will, upon written demand, reimburse Owner for any substantiated amounts that were necessary to satisfy the respective Non-Owner Party's obligations to satisfy, discharge, or defend against any claim of lien. Owner may, at its discretion, deduct the amount it paid to a Non-Owner Party's consultants, subcontractors, and vendors from any amount due, or to become due, to the Non-Owner Party.

12.3.5 Each Non-Owner Party will defend, indemnify, and hold Owner harmless from any claims filed by their respective consultants, subcontractors, and vendors for enforcement of, provided Owner has made payment to the respective Non-Owner Party for the Work that is subject to the claim. Nothing contained in this Section will be construed to require the Designers and Builders to provide release bonds for any valid lien, *lis pendens*, or other claim due to Owner's non-payment of amounts due under this Agreement.

12.3.6 Owner's Choice of Counsel. In all instances where there is an obligation to defend Owner or to pay the cost of Owner's defense, Owner may reasonably reject counsel appointed for its defense and select counsel of its own choosing, which will be paid by the party obligated to defend Owner as if selected by that party.

12.3.7 Relation to Insurance. The indemnification obligations set forth in this Section are not limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Builder or its subcontractors or suppliers (inclusive of tiers) under the workers' compensation acts, disability benefit acts, or other employee benefit acts.

12.3.8 Construction with Applicable Law. Nothing contained within the obligations of Section 12.3, or in any other indemnification provision in this Agreement, requires defense or indemnity that is not permitted under Applicable Law. If a conflict exists between

Applicable Law and any of the indemnification provisions in this Agreement, then the indemnification obligations should be construed to require defend and indemnification to the greatest extent permitted by Applicable Law.

### **13. Project Insurance**

#### **13.1 Provided Insurance**

13.1.1 Owner will provide the insurance specified in Exhibit L-1 and as more particularly described in the OCIP Manual. Compliance with the terms, conditions, and procedures in the OCIP Manual are a pre-condition to a Non-Owner Party or its subcontractors or subconsultants of any tier, receiving the benefits of the insurance specified in Exhibit L-1. If there are any inconsistencies between Exhibit L-1, the OCIP Manual (Exhibit L-5), and the insurance policies procured by Owner, they are resolved in the following order: insurance policies take precedence over the OCIP Manual, which takes precedence over Exhibit L-1.

#### **13.2 Required Insurance**

13.2.1 Builders must obtain and maintain, and cause each of their subcontractors to obtain and maintain, the insurance specified Exhibit L-2.

13.2.2 Designers must obtain and maintain, and cause each of their subcontractors to obtain and maintain, the insurance specified in Exhibit L-3.

### **14. General Warranties**

**14.1 Warranty and Correction of Work.** Each Builder warrants that the Construction Work performed by it and the Contractor will be of good quality, free from defects, and conforming to the Implementation Documents and Applicable Law. Under this warranty, each Builder will repair or replace, at its own expense, any deficient or defective Construction Work related to is portion of the Work, together with any other work that is damaged during repair or replacement. Establishment of the warranty period for correction of Construction Work relates only to that Builder's specific obligation to correct defective or non-conforming Construction Work and does not shorten or restrict the statute of limitations periods for legal claims arising from this Agreement.

**14.2 Warranty Commencement and Duration.** The warranty obligation in Section 14.1 commences for any given Project Stage when that Project Stage is Substantially Performed and continues until one year after Substantial Performance of the entire Project or the date of repair of the defective component, whichever is later ("Warranty Period"). If, for certain equipment manufacturers or suppliers, a longer warranty period is specified in the Implementation Documents, then the longer period applies.

**14.3 Warranty Exclusions.** Each Builder's warranty excludes damage or loss due to improper or insufficient maintenance, improper operation, normal wear and tear, and normal usage. Each Builder will procure all subcontractors and manufacturers' express warranties required under the Implementation Documents on Owner's behalf and will transmit the warranties to Owner before Project Final Completion and Project close-out.

**14.4 Warranty Costs.** Standard Subcontractors will include the cost of warranty work within their subcontract price and will not receive any additional payment for complying with their

warranty obligations. At or before setting of the Base Target Cost, the Parties will agree upon a warranty cost for each Builder that will be included in the Base Target Cost. After Substantial Performance, but prior to Final Completion, each Builder will invoice the Project for its agreed warranty costs, which will be paid by Owner in the Final Payment. Standard Subcontractors will include the cost of warranty work within their subcontract price and will not receive any additional payment for complying with their warranty obligations. Other than these agreed warranty cost payments, all costs of complying with a Builder's warranty obligations will be paid solely by the warranting Builder or Builders.

## **15. Default, Suspension and Termination**

**15.1 Project Suspension.** Owner may suspend the Project without cause for as long as Owner may determine, and the Contract Time will be extended per Section 11.3.5. During a period of suspension, unless otherwise agreed, Non-Owner Parties will not commit Key Employees to other projects, although all efforts should be made to find other work for them to perform while the project is suspended.

15.1.1 Payment. If Owner suspends the Project after the Validation Phase and the suspension results in an increase in the Chargeable Costs for the Work, the Final Target Cost will be increased by the increase in Chargeable Costs reasonably caused by the suspension, and each Party's ICL will be increased by the product of its Change Order percentage and the increase in its Chargeable Costs due to the suspension. No adjustment will be made to the extent that performance was suspended, delayed, or interrupted by acts or omissions of the Non-Owner Parties, or any entity or persons working directly for them for which they are responsible.

15.1.2 Excessive Suspension Termination. If the Project is suspended for more than 90 consecutive Business Days, and if a Non-Owner Party provides Owner with at least 30 Business Days written notice, it may treat the suspension as a termination for convenience by Owner and have the rights and obligations of a Non-Owner Party that is terminated for convenience.

## **15.2 Termination**

15.2.1 Basis. The Agreement or a Non-Owner Party may be terminated by Owner for convenience or for default. Owner's termination notice must state whether the termination is for default or for convenience.

(a) Owner may terminate the Agreement or a Non-Owner Party at Owner's discretion.

(b) Owner may terminate the Agreement or a Non-Owner Party for default, for any or all the following grounds:

(i) A Non-Owner Party fails to provide adequate labor and resources to achieve the Project Requirements;

(ii) A Non-Owner Party refuses to rectify Work that is not in accordance with this Agreement, the Project Requirements, or Implementation Documents;

- (iii) A Non-Owner Party fails to collaborate with the PMT for the benefit of the Project;
- (iv) A Non-Owner Party fails to properly pay their consultants, subcontractors, and vendors;
- (v) A Non-Owner Party has a material change in ownership, financial, managerial, or technical capability, including insolvency, reorganization, refinancing, restructuring, merger, acquisition, or loss of key personnel necessary to meeting the Non-Owner Party's obligations under this Agreement;
- (vi) A Non-Owner Party commits acts of Willful Default; and
- (vii) A Non-Owner Party fails to procure or maintain insurance required by this Agreement.

15.2.2 Termination for Convenience: Notice; Termination Date. Owner may terminate this Agreement or a Party to this Agreement, by providing 10 Business Days written notice to all Parties that the Agreement, or a Party, is being terminated. The Termination Date for a convenience termination is 10 Business Days after providing written notice.

15.2.3 Termination for Default: Notice; Termination Date. Owner may terminate a Party to this Agreement, upon 10 Business Days prior written notice, and an additional 10 Business Days to cure. The effective date of termination will be 20 Business Days from the date of the notice, unless the Party has commenced curing, in which case the Party will not be terminated unless it fails to diligently pursue the cure to completion.

15.2.4 Non-Owner Party Obligations on Termination. Upon receipt of a notice terminating a Party or the Agreement, the terminated Party, or in the case of termination of the Agreement, all Non-Owner Parties, will promptly:

- (a) Organize all project records, design documents, construction documents, whether digital or tangible, for orderly transfer to Owner;
- (b) Provide Owner with the organized project records, design documents, construction documents;
- (c) If requested by Owner assign any subcontracts, subconsulting agreements, vendor agreements or purchase orders for material and equipment;
- (d) Take any necessary actions to protect the Project Site, including equipment and material stored on or off the Project Site, and to preserve the Work;
- (e) Terminate all subcontracts, subconsulting, and vendor agreements and to the extent possible, all purchase orders for material or equipment that are not assigned to Owner;
- (f) Provide Owner with a final invoice including documentation for any termination costs incurred; and

(g) Assist Owner in resolving any stop notice claims from a Non-Owner Party's subcontractors, subconsultants, or vendors.

15.2.5 Owner's Remedies. In addition to any other remedies available under this Agreement, upon termination Owner may:

(a) Take possession of the site and of all materials and equipment procured for the Project;

(b) Accept assignment of any purchase orders, subcontracts, and consulting agreements, as well as rental agreements for construction equipment and machinery at the site;

(c) Finish the Work by whatever reasonable method Owner may deem expedient; and

(d) Pursue any claim against the defaulted Party if, and to the extent, allowed under Section 12.1.2.

15.2.6 Ownership and Use of Documents; Release and Indemnification.

(a) Ownership. Each Non-Owner Party grants, and must require its respective consultants, subcontractors, and vendors to grant, Owner ownership and all rights in all designs, details, specifications, calculations, reports, models or other documents (Project Information), whether tangible or digital, that were created for the Project, and to license all designs, details, specifications, calculations, reports, models, or other documents that were not created for this Project but which are necessary to use the Project Information.

(b) Release and Indemnification. If a Non-Owner Party, or the Agreement, is terminated for convenience, Owner will defend and indemnify the author of the Project Information from claims, liability, loss, or damage caused by Owner's use of the Project Information if:

(i) The terminated party is not engaged to complete the Project; and

(ii) The termination occurred before issuance of the permits from Governmental Authorities required to commence construction.

15.2.7 Payment

(a) Termination for Convenience. A Non-Owner Party, or all Non-Owner Parties if the Agreement is being terminated, will be paid:

(i) All Chargeable Costs incurred prior to the Termination Date, less any amounts previously paid by Owner;

(ii) Chargeable Costs after the Termination Date if the Chargeable Costs could not reasonably be avoided or mitigated;

(iii) Reasonable costs incurred in protecting the Work and securing the Project Site;

(iv) Reasonable costs in preparing project records, design documents, and construction documents for delivery to Owner;

(v) If the termination is for convenience, the Non-Owner Party's projected ICL, less any amounts of ICL previously paid to the Party. The projected ICL is the ICL amount, using the adjustments in Exhibit I, but estimating the Final Actual Cost based on information available on the Termination Date.

(vi) If the termination is for Willful Default, the defaulted Non - Owner Party or Non-Owner Parties are not due any payment for ICL, other than ICL payments that were made prior to the termination notice.

## **16. Dispute Resolution**

**16.1 Scope.** All disputes among the Parties and their respective consultants, subcontractors, and vendors arising from or in connection with this Agreement will be resolved as provided in this Article.

**16.2 Responsibility.** The responsibility to establish entitlement to and the amount of a claim is with the Party asserting the claim.

**16.3 Continued Performance.** At all times during the pendency of a dispute or a dispute resolution proceeding, the Parties will continue to meet their obligations under this Agreement and the Non-Owner Parties, and their respective consultants, subcontractors, and vendors must not cause any delay, cessation, or termination of Construction Work or Design Services.

**16.4 Permitted Disputes.** No Party may bring any action, suit, or other proceeding against any other Party to this Agreement relating to or arising from this Agreement, except for:

16.4.1 Allowed Claims (Section 12.1.2);

16.4.2 Proceedings to enforce the dispute resolution provisions of Article 16; and

16.4.3 Proceedings to enforce statutory lien or payment bond claims that cannot be waived and must be resolved in a court of competent jurisdiction.

### **16.5 Notice; Statement of Claim.**

16.5.1 A Party may initiate dispute resolution by providing notice to the other Party or Parties of a claim, sent by registered mail or certified mail, return receipt requested to the persons and addresses of the responding Parties specified in the Business Terms Sheet. Notice of a dispute must be given within 10 Business Days following the discovery of the occurrence of the event or condition or circumstance giving rise to the dispute, or the claim is waived. If a claim arises from a disputed Change Order, the Non-Owner Party must also provide notice to Owner's SMT member.

16.5.2 All claims must include a detailed factual narrative of events fully describing the nature and circumstances giving rise to the claim, including:

- Necessary dates, locations, and areas of the Project that are impacted or affected work or services;
- A detailed breakdown of the amount of damages or cost associated with the claim;
- And reasonable documentation to support entitlement to the claim.

16.5.3 If the claim is being made by a Non-Owner Party because of an Owner's Directive (Section 5.2.4(b)), the claim must be accompanied by:

- A detailed breakdown of the amount of money being claimed or the requested increase in the Contract Time;
- Justification under Section 11.2 for any requested increase to the Final Target Cost, ICL, Stipulated Profit and Contract Time;
- Certification that the claim is filed in good faith; and
- A statement demonstrating that the claim is being timely submitted with reference to the provisions of the Contract Documents being relied on to support the claim.

**16.6 Owner Claims Review; Payment of Undisputed Amounts.** After receiving a timely and complete claim, Owner, with the assistance of the SMT, will conduct a reasonable review and within 45 Calendar Days (which period may be extended by mutual agreement of the Parties), provide the claimant with a written statement identifying what portion of the claim is disputed and what portion, if any, is undisputed. The claim is rejected if not responded to within the 45-day period. If only a portion of the claim is approved within review period, the remainder is rejected. Owner will pay the claimant for any approved portion of the claim within 30 Calendar Days after issuing the written statement. Rejection due to an untimely response by Owner is not an adverse finding about the merits of the claim or the responsibility or qualifications of the claimant.

## **16.7 Mediation**

16.7.1 Submission; Waiver. If the claim is not fully resolved by Owner claim review, the disputed portion of the claim must be submitted to non-binding mediation unless the Parties to the dispute mutually agree in writing to waive the requirement to mediate and proceed directly to arbitration pursuant to Section 16.8.

16.7.2 Mediator Selection. Within 10 days after a mediation demand, the disputing Parties will jointly select a mediator who has at least ten (10) years of experience in resolving disputes for complex construction projects. If the parties cannot agree upon a mediator, each Party will select a mediator and those mediators will select a qualified neutral third party to mediate. Each Party will bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.



16.7.3 Mediation Process. Each Party to the dispute will give the mediator a written statement regarding the asserted claims. The mediator may inspect the Project Site, Contract Documents, and other information reasonably required to understand the factual and legal basis of the dispute. All Parties involved in the claim must arrive at the mediation fully briefed and must send a representative who has the authority to fully resolve the dispute. The Parties involved in the dispute will bear the cost of mediation equally. The mediation proceeding is confidential and inadmissible in an arbitration or court proceeding. The mediation process must be completed within forty-five (45) Calendar Days after the Party's selection of the mediator, unless all Parties involved in the dispute agree to extend the mediation period. If, because of the mediation, a negotiated settlement is reached, the signatories for the Parties to the dispute will enter into a written settlement agreement that will be enforceable in a court of competent jurisdiction.

**16.8 Arbitration.** All disputes that are not either resolved through the informal process under Section 16.6 or by the mediation process in Section 16.7 will be resolved by a single arbitrator (the "Arbitrator") pursuant to the *Arbitration Act*, RSBC 1996, c 5, as amended from time to time, under the:

- Shorter Rules of Procedure of the British Columbia International Commercial Arbitration Centre (now known as the Vancouver International Arbitration Centre) if the claim is estimated to be equal or less than \$100,000; or
- then-current Domestic Commercial Arbitration Rules of Procedure of the Vancouver International Arbitration Centre if the claim is estimated to be above \$100,000.

unless the Parties agree to a final resolution of the dispute by another means. The costs of the Arbitrator shall be borne equally by the Parties, unless the Arbitrator determines otherwise. The decision of the Arbitrator shall be final, subject only to recourse available under the *Arbitration Act*.

16.8.1 Enforceability. The Parties have reviewed the claims and dispute resolution procedures with legal counsel and agree to the terms and conditions set forth in this Article 16. If a court of competent jurisdiction finds any term or provision in this Article 16 is void or unenforceable, the unenforceable term or provision will be severed, and the remainder of the terms and provisions will remain in full force and effect.

16.8.2 No Oral Approval. The Non-Owner Parties agree and understand that no oral approval, either express or implied, of any claim is binding upon Owner unless and it is ratified by execution of a written Change Order.

16.8.3 Consolidation and Joinder. The Parties consent to consolidation of claims and the joinder of other necessary Project Participants in any dispute resolution procedure, if claims for or against a disputing Party arise from the same, substantially the same, or interrelated facts, issues, or incidents relating to the Project, or where separate dispute resolution processes create a risk of inconsistent awards or results.

**16.9 Statutes of Limitation Unaffected.** Nothing in this Agreement permits an action, suit, or other proceeding that is otherwise barred by a statute of limitation.

## **17. Miscellaneous Provisions**

**17.1 License.** Each Designer and Builder represents that it is properly licensed as required by the jurisdiction where the Project is located, to perform the Work required under this Agreement, and that each Party's business entity is in good standing and qualified to do business in the jurisdiction where the Project is located.

**17.2 Confidentiality.** The Parties will be disclosing information concerning their methods of accounting, pricing of products and services, and other Confidential Information. Each Party agrees that it will keep such information confidential and will only provide it to other persons or entities as reasonably necessary for the design or construction of the Project. If a Party makes a written demand for return of Confidential Information, the other Parties will make reasonable attempts to destroy any copies of the Confidential Information in their possession.

**17.3 Owner's Proprietary Information.** Information provided by Owner or made available to the Parties during performance of this Agreement will not be disclosed to persons or entities other than as necessary to perform the Work or Design Services required by this Agreement.

**17.4 Compliance with Anti-Corruption Laws.** The Non-Owner Parties (including their respective subsidiaries and affiliates and any directors, officers, and employees of each such entity) each represent and warrant that they have each complied, and will continue to comply, with all applicable anti-corruption laws in connection with their respective Work under this Agreement.

**17.5 Notices.** Any notice required to be given by this Agreement will be in writing and deemed effective upon:

17.5.1 The date of personal delivery or email delivery if received by the addressee before 5:00 p.m. local time on a Business Day (if received after 5:00 p.m. it will be deemed to have arrived on the next Business Day);

17.5.2 3 Business Days after being sent via registered or certified mail with a return receipt requested; or

17.5.3 1 Business Day after being sent by overnight commercial courier providing next-business-day delivery.

Delivery by email is not deemed effective if the sender receives an automated reply indicating that the email was not delivered to the intended recipient or that the intended recipient was out of the office. Notices must be sent to the person(s) specified in the Business Terms Sheet.

**17.6 Governing Law.** This Agreement will be governed and construed under the laws of the Province of British Columbia without giving effect to any choice of law or rule of conflict that would cause the application of the laws of any other jurisdiction. For any legal action or proceeding commenced under or in relation to this Agreement, the Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of British Columbia.

**17.7 Assignment.** This Agreement is binding on the Parties, and their respective successors, and assigns. The Non-Owner Parties may not assign this Agreement without the express written consent of Owner, and any unconsented assignment will be void. Owner may

assign this Agreement to any lending institution for the purpose of obtaining financing for the Project and the Non-Owner Parties will cooperate with Owner and execute all required assignment and subordination agreements that do not materially change their rights and responsibilities under this Agreement.

**17.8 Notice of Dissolution and Other Change of Business.** If at any time during the performance of the Work and for a period of 2 years following the completion of the Work:

17.8.1 Dissolution of any Party occurs;

17.8.2 Any Party experiences or anticipates a material change in business, including a reorganization, refinancing, restructuring, or buyout; or

17.8.3 Any Party has notice of any of the matters referred to in 17.8.1 or 17.8.2, Then that Party must furnish the other Parties with written notice of the same within 5 days and, in the case of Designers and Builders, take all necessary and proper safeguards to allow Owner the opportunity to retrieve its property, the Work, and anything relating to the Work from their then-current location.

Dissolution means, in respect of any Party, the making of an assignment for the benefit of creditors or admitting in writing its inability to pay its debts as they mature, bankruptcy, insolvency, liquidation, winding-up, administration, and dissolution and the appointment in respect of it or any of its assets of a receiver, administrator, manager, or similar officer and any proceeding or event which is equivalent or analogous to any of the same by whatever name known and in whatever jurisdiction and any step taken for or with a view to any of the foregoing.

**17.9 No Third-Party Beneficiaries.** Nothing contained in this Agreement creates a contractual relationship with, or a cause of action in favor of a third party against Owner or any of the Non-Owner Parties. The Parties acknowledge and agree that the obligations of the Non-Owner Parties are solely for the benefit of Owner and are not intended in any respect to benefit any third parties.

**17.10 Rights and Remedies.** The rights and remedies under this Agreement are the exclusive remedies available to the Parties.

**17.11 Survival.** The following provisions will survive the termination or expiration of this Agreement: Article 8; Article 9; Article 12; Article 13; Article 14; Article 16; and Article 17.

**17.12 Waiver.** No Party's action or failure to act will constitute a waiver of a right or duty afforded them under this Agreement and such action or failure to act will not constitute approval of or acquiescence in a breach of this Agreement, unless specifically agreed to in writing by the Parties.

**17.13 Execution.** By executing this Agreement, each of the individuals represents that he or she has authority to bind the Party on whose behalf his or her execution is made.

**17.14 Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original. When proving this Agreement, it will only be necessary to produce or account for the counterpart signed by the Party against whom enforcement is sought. Electronic copies or photocopies of this Agreement showing the true signatures of the Parties may be used for all purposes as originals.

**17.15 Exhibits.** The exhibits referred to in this Agreement and listed in the Table of Exhibits, whether attached at the time of execution or added by Amendment signed by the Parties, are incorporated into this Agreement by reference as though set forth in full.

**17.16 Interpretation and Enforceability.** Each Party to this Agreement has sought, or had the opportunity to seek, the advice of legal counsel concerning this Agreement and has been, or has had the opportunity to have been, fully advised of the meaning and effect of this Agreement. Each Party has executed this Agreement after independent investigation without fraud, duress, or undue influence and without reliance on any representation, warranty, promise, or inducement not specifically set forth in this Agreement. This Agreement will be construed as if all Parties jointly prepared it, without any uncertainty or ambiguity being construed against any one Party. To the extent a court of competent jurisdiction finds any term or provision in this Agreement to be void or unenforceable, the unenforceable term or provision will be severed, and the remainder of the terms and provisions will remain in full force and effect.

**17.17 Entire Agreement.** This Agreement constitutes the entire integrated agreement between the Parties and supersedes all prior oral and written negotiations, representations, or agreements by the Parties with respect to this subject matter.

## Signature Pages

SAMPLE

**Integrated Project Delivery Agreement (Poly-Party)**  
**Exhibit A – Definitions**

1. **"Achievement Event"** is an event described in Exhibit B-5;
2. **"Actual Net Recovery from Builder's Risk Insurance"** is the amount of actual funds received from the Builder's Risk insurance required by the Agreement, less any amount incurred to prosecute the Builder's Risk claim.
3. **"Adverse Weather"** is high wind or unusual precipitation that prevents or substantially impedes a Builder's ability to perform Construction Work resulting in a delay in the Contract Time beyond the number of lost days built into the Project schedule for adverse weather. Construction work is substantially impeded if the Builder loses more than half of a planned and otherwise available workday except to the extent the delay is also caused by any fault, neglect, act, or omission of the Designers, Builders, or their respective employees, consultants, subcontractors, or suppliers.
4. **"Affiliate"** means any firm, corporation, or other entity, however organized, that directly or indirectly, controls, is controlled by, or is under common control with another entity or shares common ownership that accounts for 20% or more of each entity.
5. **"Agreement"** is the Integrated Project Delivery Agreement executed by the Parties for this Project and all of the exhibits referenced in the Agreement.
6. **"Allowance"** is an estimated cost for a specific portion of the Work that is not at risk and does not contribute to shared savings. An Allowance is reconciled when it becomes an actual cost, or when the cost for the Allowance item can be reasonably estimated. If the reconciled amount is more or less than the estimated cost for the Allowance, then the Base Target Cost or Final Target Cost (depending on the phase) is increased or decreased by the difference between the reconciled amount and the estimated cost.
7. **"Allowed Claims"** are defined in Section 12.1.2 of the Agreement.
8. **"Amendment"** is a document executed by the Parties amending the terms and/or conditions of the Agreement.
9. **"Anti-Corruption Laws"** means Applicable Laws, rules, or regulations concerning or relating to public or commercial bribery or corruption.
10. **"Applicable Law"** includes all local, provincial, and federal laws, rules, regulations, ordinances, building code, or other codes, statutes, or regulations, or lawful orders of Governmental Authorities that are relevant to proper and safe performance of the Work. Applicable Laws include Anti-Corruption Laws.
11. **"Architect of Record" ("AOR")** is the Designer with primary responsibility for creating all architectural design documents and to sign and seal all architectural documents within its scope and in accordance with Applicable Law.
12. **"Base Target Cost"** is the amount agreed by the Parties at the conclusion of the Validation Phase per Section 5.4.17 of the Agreement.

13. **"Baseline Schedule"** is the schedule at the time the Target Cost is set and is described and defined in Section 5.4.10 of the Agreement.
14. **"BIM Execution Plan"** is described and defined in Section 5.4.1 of the Agreement.
15. **"Builders"** are those Parties to this Agreement who are responsible for performing the Construction Work, among other things. The Contractor is a Builder.
16. **"Builders Lien Act"** means *Builders Lien Act*, SBC 1997 c 45.
17. **"Building Information Model" ("BIM")** or **"Model"** is a parametric, computable representation of the Project design developed by the Designers, their consultants, and any Design-Build Trades, and will include construction details developed by the Parties and their respective consultants and subcontractors. As used in this Agreement, references to Building Information Model, BIM, or the Model, include the primary design model or models and all linked, related, affiliated, or subsidiary models developed for design, estimating, detailing, fabrication, or construction of the Project, or any portion or element of the Project. The portions of the BIM prepared by the Designers, their consultants, and the Design-Build Trades, and those portions prepared by the Builders under the responsible control of a licensed design professional, are Implementation Documents. The portions of the BIM prepared by the Builders or subcontractors (other than Design-Build Trades) to illustrate means and methods for constructing, fabricating, or installing portions of the Construction Work are Submittals, which are not Contract Documents or Implementation Documents.
18. **"Business Day"** is any Calendar Day other than Saturdays, Sundays, and legally recognized holidays in the jurisdiction where the Project is located.
19. **"Business Terms Sheet"** are the page(s) under that heading prior to Article 1 of the Agreement that sets forth the key business terms among the Parties.
20. **"Calendar Day"** or **"day"** is any day whether a Business Day or not.
21. **"Change Order"** is a mutually agreed written order between Parties adjusting the Base Target Cost, Final Target Cost, ICL, and/or Contract Time.
22. **"Change Order Request"** or **"COR"** is a written request for Change Order, which sets forth the nature of the change, the reason for the change, and the effect, if any, on the Base Target Cost or Final Target Cost, the Contract Time, or ICL.
23. **"Chargeable Costs"** are cost categories that include the Designers' and Builders' costs incurred in the performance of the Work (excluding profit) as more specifically defined in Exhibits D and E, and are chargeable against the Base Target Cost and Final Target Cost.
24. **"Co-location Plan"** is a plan developed by the PMT or by a PIT under PMT direction that organizes the logistics, information systems, physical layout, scheduling and work flows for Project Participants to effectively work in the same physical location. The Co-location Plan, where appropriate, may include strategies for combining virtual co-location through use of communication technologies.
25. **"Commissioning Phase"** is described and defined in Section 6.6 of the Agreement.

26. **"Commissioning Plan"** is described and defined in Section 5.4.3 of the Agreement.
27. **"Communication and Decision Plan"** is described and defined in Section 5.4 of the Agreement.
28. **"Confidential Information"** means, with respect to a Party, any and all information and materials disclosed in furtherance of this Agreement or any Amendment hereto by or on behalf of the Party, its Affiliates, or any of their respective representatives to another Party or any of its representatives to the extent that the information:
- a) is marked or otherwise identified as confidential or proprietary information, or
  - b) should, by its nature, or under the circumstances of its disclosure, reasonably be understood to be confidential or proprietary information of the Party.

Without limiting the foregoing, Confidential Information includes:

- c) the Personal Information of any employee, officer, or director of a Party;
  - d) Owner's business, technical, and financial data, including Owner's intellectual property;
  - e) the trade secrets of a Party including existing and future products or service offerings, designs, business plans, business opportunities, finances, research, development, know-how, and other business, operational or technical information if the information satisfies the conditions of clause a or clause b, above, and
  - f) the existence, pricing, and terms and conditions of this Agreement are not Confidential Information as between the Parties but are Confidential Information as to persons or organizations not a party to this Agreement.
  - g) This Agreement does not affect ownership of Confidential Property, which remains a Party's sole and exclusive property.
29. **"Construction Work"** includes all labour, materials, equipment, appurtenances, and services necessary for proper construction and commissioning of the Project in accordance with the Contract Documents performed by Builders or subcontractors.
30. **"Contract Documents"** include the Agreement (inclusive of all exhibits), the Building Information Model, the Implementation Documents, and all other documents issued by the Designers, their consultants, and Design-Build Trades for construction of this Project, any PMT Bulletins, SMT Bulletins, and/or Owner's Directives, and any subsequent Amendments or Change Orders. The Contract Documents include Submittals prepared by Design-Build Trades and those Submittals incorporated into the Model. The documents included in the Contract Documents are complementary and what is required by one is required by all. If there are conflicting requirements within or between the various Contract Documents, the PMT will determine which requirements will better achieve the Project Objective and issue PMT Bulletins to that effect.
31. **"Contract Time"** is the date of Final Completion or, if Contract Time is stated as a duration, it is the number of Calendar Days between Notice to Proceed and Final Completion.



32. **"Contractor"** is the party identified as the Contractor in the Business Terms Sheet. The Contractor is a Builder that leads the other Builders and has overall responsibility for supervising and coordinating the Work of the Builders; advising the Parties on construction matters; providing overall coordination, scheduling, logistics, site safety, cost modeling, constructability, and information and document management; and managing Builder participation in the Target Value Design and pre-construction efforts.
33. **"Cost Model"** is described and defined in Section 5.4.5 of the Agreement.
34. **"Deficiency List"** is a list of items that must be completed, repaired, or replaced prior to the Project or a Project Stage reaching Substantial Performance.
35. **"Design Consultants"** are specialty design or engineering that provide specialized Design Services, such as mechanical, electrical, structural, civil or other design or engineering specialties. Design Consultants may be Designers or subconsultants to a Party.
36. **"Design Materials"** are the latest issued construction drawings, including any changes made by RFI or Change Order, issued by the Architect, subsidiary drawings necessary for design and construction of the Project, and include the Model, Record Model, the subsidiary BIM models necessary for design and construction of the Project, all electronic design data for the Project, any related two dimensional drawings, calculations, schedules or specifications, and any other design materials, created for the Project.
37. **"Design/Pre-Construction Phase"** is described and defined in Section 6.4 of the Agreement.
38. **"Design Services"** are those professional architectural and engineering services rendered by the Designers, their consultants, and any Design-Build Trades necessary to develop and complete the Project design in accordance with the standard of care set forth in the Agreement and Applicable Law.
39. **"Design-Assist Trades"** are specialty contractors whose services include participation in the design effort but who are not Design-Build Trades. That participation includes provision of comments and recommendations on design elements and materials, preparation of cost opinions to inform design decisions, reviewing for constructability, trade coordination, and, where appropriate, execution of drafting efforts. Nothing in this Agreement requires the Design-Assist Trades to perform any Work outside their license or contrary to Applicable Laws. Design-Assist Trades may be Builders or subcontractors to a Party.
40. **"Design-Build Trades"** are specialty contractors that provide Design Services and Design Materials required for their respective portion of the Construction Work. Design-Build Trades have full architecture and engineering responsibility for their portion of the Work and will have their drawings and calculations signed and sealed by architects and/or registered professional engineers licensed in the jurisdiction where the Project is located in accordance with all Applicable Laws. Design-Build Trades may be Builders or subcontractors to a Party.
41. **"Designers"** are those Parties to this Agreement identified in the Business Terms Sheet who are responsible for performing the Design Services, among other things, but do not include Design-Build Trades. The Architect is a Designer. Designers are not responsible for providing Construction Work.

42. **"Effective Date"** is described and defined in Section 1.2 of the Agreement.
43. **"Engineer of Record" ("EOR")** is a Designer with primary responsibility for reviewing and coordinating Design Materials with respect to its discipline and will coordinate Submittals with the Lead Designer. It will also sign and seal all engineering documents within its scope and in accordance with Applicable Law.
44. **"Escalation Allowance"** is described and defined in Section 11.6 of the Agreement.
45. **"Estimated Final Cost"** is the sum of incurred Chargeable Costs that have been actually incurred at the time the estimate is made plus the estimated Chargeable Costs that will be required to complete the Project.
46. **"Final Actual Cost"** is the sum of all incurred Chargeable Costs upon Final Completion of the Work.
47. **"Final Completion", "Final Completion of the Project", or "Project Final Completion"** is the Final Completion of all Project Stages and the completion of all requirements of the Agreement and occurs on the date when all the following have occurred:
- a. the Builders have completed the Construction Work in full compliance with the Implementation Documents; all Final Deficiency List items have been completed and accepted by the PMT;
  - b. all final unconditional waivers and releases complying with Applicable Laws covering the Construction Work have been received by Owner except that with respect to any Construction Work for which Final Payment is being sought, Owner shall have received final conditional waivers and releases complying with Applicable Laws covering the Construction Work; if applicable,
  - c. if applicable, all final unconditional waivers and releases complying with Applicable Laws covering the Design Services have been received by Owner except that with respect to any Design Services for which Final Payment is being sought, Owner shall have received final conditional waivers and releases complying with Applicable Laws covering the Design Services; the Project has been commissioned;
  - d. all close-out documentation required under the Contract Documents has been transmitted to Owner;
  - e. a final certificate of occupancy has been issued by the Governmental Authority having jurisdiction over occupancy of the Project;
  - f. and the PMT has issued a certificate of Final Completion.

A Project Stage may have its own final completion date, but all Project Stages must be complete before Final Completion of the Project.

48. **"Final Deficiency List"** is the Deficiency List prepared after Substantial Performance and final inspections documenting all Construction Work that needs to be corrected or completed to achieve Final Completion.

49. **"Final Payment"** is Owner's payment of all amounts due and owing to the other Parties, including any ICL due after Final Completion of the Project.
50. **"Final Target Cost"** is described and defined in Section 6.3.3 or the Agreement.
51. **"Force Majeure"** means natural disasters; named storms; labour strikes that cannot be resolved through a dual gate or other measures; disruptions in utility service and/or connections not caused by the Builders or those for whom they are responsible; Governmental Authority actions other than permitting, design review or inspection of construction; and civil disobedience; an act of terror; unavoidable casualties or catastrophic events, provided the above events are beyond the control, and not due to any act or omission of, the Designers, Builders, or anyone for whom they are responsible.
52. **"General Conditions"** means the document provided in Exhibit K.
53. **"Governance Plans"** is described and defined in Section 5.4 of the Agreement.
54. **"Governmental Authority" or "Governmental Authorities"** means all crown, provincial, county, district or municipal boards, departments, courts, offices or agencies that have jurisdiction over the Project.
55. **"Hazardous Materials"** means any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances or contaminants and all other materials governed by Applicable Law for environmental protection, occupational health and safety, or any substance or material that has been determined, or during the time of performance of the Construction Work is determined, to be capable of posing a risk of injury to health, safety, property or the environment by any Governmental Authority.
56. **"Holdback"** means the amount described in Section 4(1) of the Builders Lien Act or, if the statute is amended or replaced, any equivalent amount thereby established.
57. **"ICL Percentages"** are the Designers' and Builders', percentage shares in the ICL and will be used for distribution of any ICL.
58. **"Implementation Documents"** consist of the Model; plans, sections, and elevations extracted from the Model; and any ancillary drawings, specifications, and construction details together with dimensions and layouts for civil, architectural, structural, mechanical, electrical, plumbing systems, and landscape design. The Implementation Documents will describe in detail the requirements for the Construction Work and provide information necessary and appropriate to obtain all necessary permits for construction of the Project.
59. **"Implementation Phase"** commences on the effective date of the Notice to Proceed with construction and ends at Final Completion.
60. **"Incentive Compensation Layer" ("ICL")** is an amount that is increased or decreased based on Project outcome during the Project and is distributed to the Non-Owner Parties in accordance with their ICL Percentages and the ICL Distribution Spreadsheet (Exhibit G). Payment of the ICL is contingent upon the Project phasing Milestone disbursement conditions set forth in the Agreement.
61. **"Joining Agreement"** is described and defined in Section 1.5.4 of the Agreement.

62. **"Joint Site Investigation"** is a site investigation attended by the Parties during the Validation Phase for the purpose of reviewing existing information and investigating the Project Site to identify deficiencies and discrepancies, and to determine the extent of any additional investigations or testing required for proper design and construction of the Project.
63. **"Justified Delay"** is a critical path delay meeting one of the categories described in Section 11.2 of the Agreement.
64. **"Key Employees"** are those employees of the Non-Owner Parties listed in Exhibit J that may not be removed from the Project without Owner approval. (See Section 4.9 of the Agreement.)
65. **"Key Performance Indicator"** or **"KPI"** is described in Exhibit B-4.
66. **"Lean"** means principals, tools, and processes that maximize project value by optimizing effort and resource use by eliminating activity and waste that does not add value to the project. (See, [www.leanconstruction.org](http://www.leanconstruction.org).)
67. **"Lean Phase Plan"** is a plan for defining and integrating the necessary work, services, processes, and hand-offs among multiple firms and teams that are necessary to accomplish project Milestones while employing Lean objectives and values. The Lean Phase Plan is developed jointly by those that are responsible for carrying out the work or services referenced in the Lean Phase Plan.
68. **"Milestone"** or **"Milestones"** are events noted in the Milestones exhibit (Exhibit B-4), which when they occur, permit the PMT to evaluate the Project and, if pre-conditions are met, authorize the distribution of a portion of ICL to Non-Owner Parties in accordance with Exhibit G and subject to the clawback provisions of Section 8.4(c).
69. **"Non-Owner Party"** is a Party to this Agreement that is not the Owner.
70. **"Non-Owner Parties"** are the Parties to this Agreement, except the Owner.
71. **"Notice to Proceed"** is a written document issued by the Owner or the PMT to set the date of commencement of the Construction Phase for the Project or for various Project Stages.
72. **"OCIP Manual"** means the document provided in Exhibit L-5;
73. **"Owner"** is the entity identified as the Owner on the signature page at the end of the Agreement.
74. **"Owner Data"** means data or information, including without limitation any Owner information and Personal Information of a confidential, proprietary or private nature, provided to a Designer, CM/GC, a Builder, or any of their representatives by or on behalf of Owner or its Representatives or otherwise obtained in connection with this Agreement.
75. **"Owner-Elected Change"** is a material change directed by the Owner to the scope of the Work described in the Base Program or Implementation Documents that (i) impacts either the Base Target Cost or Final Target Cost; (ii) requires Work that is not reasonably inferred from the Project Objective; and (iii) requires Work that is not due to (a) the failure of the Construction Work to be executed in conformance with the Implementation Documents, (b) the negligent acts, errors, or omissions in the design of the Project or its component systems; or (c) the

repair, modification, or replacement of Construction Work that does not meet the functional and performance requirements of the Project Objective or Implementation Documents.

76. **"Owner's Directive"** is a written directive from the Owner that overrides a decision by PMT or the SMT. An Owner's Directive may be construed as an Owner-Elected Change if it affects the Base Target Cost or Final Target Cost and/or Contract Time.

77. **"Owner's Separate Consultant"** or **"Separate Consultant"** is a design, technical, scientific, or other professional engaged directly by Owner to perform services that are related to the Project although not within the scope of the Agreement.

78. **"Owner's Separate Contractor"** or **"Separate Contractor"** is a contractor engaged directly by Owner to perform work that is related to the Project although not within the scope of the Agreement.

79. **"Party"** is the Owner, or any of the Designers and Builders, and **"Parties"** refers to all of them.

80. **"Personal Information"** means any information from which an individual may be identified, by direct or indirect means, that is provided to a Party by the Owner, or processed by a Party for or on behalf of the Owner, including without limitation an individual's name, address, telephone number, social security number, driver's license number, passwords, personal identification numbers (PIN), account numbers, account balances, account histories, and "personal information", "nonpublic personal information", "protected health information" (and other similar information, however described) as defined in any Applicable Laws protecting the Personal Information of a person.

81. **"Phase"** is a functional segregation of Project Work into Validation, Design/Preconstruction, and Construction. Each Project Stage may have its own Phases.

82. **"PMT Bulletin"** is a written directive from the Project Management Team derived from a unanimous vote that affects design, cost, schedule, or allocation of the Work. A PMT Bulletin may affect the Project Objective.

83. **"Post Commissioning Phase"** is described and defined in Section 6.8 of the Agreement.

84. **"Post Permit Change"** is a substantive change to a permit by a Governmental Authority or made necessary as a result of changes to Applicable Laws that impacts the Construction Work subsequent to the issuance of the affected permit provided that the changes are not due to (i) the failure of the Construction Work to be executed in conformance with the Implementation Documents, (ii) the negligent acts, errors or omissions in the design of the Project or its component systems; and (iii) the repair, modification, or replacement of Construction Work that does not meet the functional and performance requirements of the Project Objective or Implementation Documents and provided that the changes were not reasonably known or anticipated when the Target Cost was set.

85. **"Pre-Existing Work"** means any proprietary intellectual property, including inventions, processes, know-how, trade secrets, computer technical expertise and software and other intellectual property, standard drawing details and standard system, subsystem, or component designs that were independently developed by a Party other than Owner before execution of the Agreement and without reference to Owner's specific business practices, designs or processes,

or any Confidential Information and for which reasonable documentary evidence of such pre-existence and independent development exists

86. **"Product Data"** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Builders, or a subcontractor, tier-subcontractor, manufacturer, vendors, supplier, or distributor to illustrate materials or equipment for some portion of the Construction Work.

87. **"Project"** is the Project described in Article 2 of the Agreement, and includes the Validation Phases, Design/Pre-construction Phases, Implementation Phases, Commissioning Phases, and Post Commissioning Phases for all Project Stages.

88. **"Project Implementation Teams" ("PIT" or "PITs")** are interdisciplinary groups of Project Participants organized by the PMT. PITs are part of the collaborative process to develop the Implementation Documents and other deliverables and may be formed temporarily or for the duration of the Project.

89. **"Project Management Information System" ("PMIS")** is a digital system or interrelated systems for communicating amongst Project Participants and managing, distributing, and storing digital documents, files, logs, and communications. The PMIS contains detail of the Project Objective, including cost, time, scope, and quality; identifies the Project Participants, the people organizations, and their roles; manages agreements, including contracts, permits, approvals, and commitments; manages project control documents; is used to create reports and dashboards for the Project; and guides collaboration and communicates best practices with policies, workflow diagrams, and document management.

90. **"Project Management Team" ("PMT")** must include a representative of the Owner, a Designer, and a Builder, and may include additional members as jointly agreed by the Parties, who will act in a collaborative manner to provide management level leadership during the design and construction process in a concerted effort to achieve the Project Objective.

91. **"Project Manual"** means the document attached in Exhibit J to the Agreement.

92. **"Project Objective"** includes all Owner requirements, goals, and limitations documented in Exhibit B.

93. **"Project Participant"** is any person or entity that is providing material, equipment, work, or services for the Project.

94. **"Project Requirements"** means the requirements set out in Exhibit B to the Agreement, particularly Exhibit B-1.

95. **"Project Schedule"** is the schedule for Project Completion as calculated at a specific date. The Project Schedule is initially based on the Baseline Schedule, but reflects modifications required due to occurrence of events, opportunities, and rescheduling.

96. **"Project Site"** is the physical location where the Project is being constructed and any adjacent laydown or storage areas dedicated to staging or storing material or equipment to be incorporated into the Project. In addition, the Project Site may include non-adjacent physical locations that are identified in writing if these locations are dedicated to providing or preparing for Project Construction Work.

97. **"Project Stage"** is a portion of the Project that is geographically or otherwise distinct and may have separate Milestones and dates for Substantial and Final Performance.
98. **"Quality Assurance" ("QA")** means a system of actions required to provide confidence that Work (or portion thereof) was performed in accordance with the Agreement.
99. **"Quality Control" ("QC")** means the actions required to check, monitor, or inspect the Work (or portion thereof) to determine if it was performed in accordance with the Agreement.
100. **"Record Model"** is the version of the BIM that will be updated throughout construction to reflect the as-built condition of the Project and is turned over to the Owner upon Final Completion.
101. **"Representatives"** means a Party's Affiliates and such Party's and its Affiliates' respective officers, board members, directors, partners, members, employees, agents and any other persons or entities (excluding the other Party or its Affiliates) who contribute to the performance of such Party's obligations under this Agreement. For purposes of this Agreement, Designers', CM/GC's, and Builders' Representatives will include any and all consultants and subcontractors and such consultants' and subcontractors' directors, officers, employees, and agents. Owner's Representatives will include its or its Affiliates' collaborators and licensees.
102. **"Responsibility Matrix"** means the document provided in Exhibit C.
103. **"Risk and Opportunity Register"** is described and defined in Section 5.4 of the Agreement.
104. **"Safety Plan"** is described and defined in Section 5.4 of the Agreement.
105. **"Samples"** are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Construction Work will be judged.
106. **"Senior Management Team" ("SMT")** includes a senior executive member from each Party, who will act in a collaborative manner to resolve any matters referred to it by the PMT either through consensus or, if a consensus is not reached, by a majority vote, subject to an Owner's Directive.
107. **"Set Based Design"** is a design strategy that advances in parallel alternative design solutions that meet Project criteria and constraints until a decision is made to select one solution over the alternatives.
108. **"Shop Drawings"** are drawings, diagrams, schedules, and other data specially prepared for the Construction Work by a Builder, including the CM/GC if it performs any of the Construction Work, or a subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
109. **"SMT Bulletin"** is a written directive from the SMT derived from a majority vote of the SMT and is binding on all Project Participants unless vetoed or modified by an Owner's Directive.
110. **"Staging Schedule"** is used if the Project will be performed in stages. At a minimum, the Staging Schedule defines the dates for commencement of construction, Substantial Performance, and Final Completion of each Project Stage.

111. **"Standard Consultant"** is a consultant engaged by a Designer or a Design-Build Trade that has not placed profit at risk and therefore is not eligible to share in the Agreement's financial incentives, ICL, and mutual liability waivers. Standard Consultants are Project Participants but are not Parties to this Agreement.

112. **"Standard Subcontractor"** is a subcontractor, supplier, or vendor engaged by CM/GC or a Builder that has not placed profit at risk and therefore is not eligible to share in the ICL and mutual liability waivers. Standard Consultants are Project Participants, but are not Parties to this Agreement.

113. **"Stipulated Overhead"** is described and defined in Section 8.5 of the Agreement.

114. **"Stipulated Profit"** is the fixed amount agreed by a Non-Owner Party as its profit subject to increase or decrease as described and defined in Section 8.3 of the Agreement.

115. **"Submittals"** include Shop Drawings, Product Data, and Samples, but are not Contract Documents unless they are produced and stamped by a Design-Build Trade. To the extent required by the Contract Documents, all Submittals that are not produced by a Design-Build Trade only demonstrate how the Builders, including the CM/GC if it performs any of the Construction Work, and subcontractors propose to execute the Construction Work shown by the Contract Documents.

116. **"Substantial Performance" or "Substantial Completion"** occurs on the date when the Project is substantially performed as defined in the *Builders Lien Act*, SBC 1997, c 45. A Project Stage may have its own Substantial Performance or Substantial Completion date.

117. **"Target Value Design" ("TVD")** is a design discipline that requires project values, cost, schedule, and constructability to be basic components of the design criteria, and uses cost targets to drive innovation in designing a project to provide optimum value to an owner. Target Value Design uses constructability and cost information from the Designers and Builders before design decisions are made to allow the design to progress within the Base Target Cost, Final Target Cost, and Contract Time.

118. **"Termination Date"** is described and defined in Section 15.2.2 and 15.2.3 of the Agreement.

119. **"Unforeseen and Differing Site Conditions"** is the discovery of an unknown, subsurface or otherwise concealed physical condition at the Project Site that differs materially from those indicated in the Implementation Documents or the information obtained from the Joint Site Investigation; an unknown physical condition of an unusual nature at the Project Site that differs materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character and nature provided for in the Implementation Documents; or an unknown, pre-existing hazardous substance or condition at the Project Site that requires removal or remediation.

120. **"Unusual Material Escalation"** is an increase in the cost of materials that exceeds 5% per annum that could not reasonably have been anticipated when the Base Target Cost or Final Target Cost was set and which is caused by extreme and unusual fluctuation in the market cost of the material or materials.

121. **"Validation Phase"** is described and defined in Section 6.2 of the Agreement.



122. **"Validation Report"** is defined and described in Section 5.4 of the Agreement.

123. **"Warranty Period"** commences for any given Project Stage when that Project Stage is Substantially Performed and continues until one year after Substantial Performance of the entire Project or the date of repair of the defective component, whichever is later. (See, Section 14.2)

124. **"Willful Default"** is any one of the following events:

- a. actual or constructive abandonment of the Project;
- b. persistent and repeated failure, after written notification, to correct Construction Work that significantly and materially deviates from the Implementation Documents or Applicable Law;
- c. fraud, reckless disregard, or willful injury to the persons or property of another, or violation of the law, whether willful or negligent; or
- d. willful and wanton misconduct.

Actual abandonment occurs if the Party, without justification, ceases performing Work for a period of 21 consecutive days or notifies one of the Parties that it is ceasing to perform Work on the Project.

Constructive abandonment occurs if the Party, without justification, expends so little effort on the Project that there is no meaningful progress on its scope of work for 21 consecutive days. The good faith exercise of any contractual suspension rights granted the Designers, CM/GC, and Builders under this Agreement or under an applicable subcontract or consulting agreement is not an intentional or constructive abandonment.

125. **"Work"** includes all labour, materials, equipment, appurtenances, and services required to design, construct, and commission the Project in accordance with the Contract Documents. It includes Design Services and Construction Work.

126. **"Workers Compensation Act"** means Workers Compensation Act, RSBC 2019, c 1.

**[END OF EXHIBIT]**

**Project**  
Roles and Responsibility Matrix  
Date Created: xx/xx/xxxx  
Date Revised: xx/xx/xxxx (revisions in bold)

ITEMS TO BE REVIEWED AND REVISED

R = Responsible (Party who owns the deliverable)  
A = Accountable (Party who must sign off on the deliverable)  
C = Consulted (Party who reviews the deliverable and provides input/support on the deliverable)  
I = Informed (Party that is notified when the deliverable is complete/provided the deliverable)  
Blank = Not applicable to the deliverable

Item	Deliverable	Owner	Lead Designer	Builder	IPD Partners				Vendor *Item	Owner Vendors	
					(Future) Contractor *Discipline	(Future) Contractor *Discipline	(Future) Contractor *Discipline	(Future) Contractor *Discipline		Vendor *Item	Vendor *Item
	<b>Validation Phase</b>										
	Combining and Formatting Validation Report	A	C	R							
	Executive Summary										
	Table of Contents										
	Project History and Background										
	IPD Overview										
	Project Organization Chart										
	Owners Requirements										
	Regulatory Requirements										
	Effluent Quality										
	Timelines										
	Project Values										
	Allowable Cost										
	Communication Approach Overview										
	Internal IPD Team										
	External Stakeholders										
	Design Narrative - Process										
	Design Narrative - Electrical										
	Design Narrative - Civil										
	Design Narrative - WWPT										
	Design Narrative - Buildings										
	Design Narrative - Building Mechanical										
	Design Narrative - Instrumentation and Control										
	Risk Analysis Overview										
	Assumptions Overview										
	Operational Cost Methodology										
	Procurement Strategy										
	Construction Schedule and Execution Plan										
	Milestone Schedule										
	Cost Estimate Summary										
	Cash Flow Forecast										
	Drawings Appendix										
	Equipment List										
	Commissioning Plan										
	<b>Project Management and Administration</b>										
	Project Management (Mtg Notes, Action List, Comm Mgmt, Etc.)										
	Program Master Schedule										
	Cost Forecast and Reporting										
	Process Equipment Cost Forecast and Reporting										
	Executive Stakeholder Management (Part of PM)(part of IPD)										
	Project Risk Management										
	Design Risk Management										
	Construction Risk Management										
	Scope Change Management										
	Contract Change Management										
	Overall Budget Tracking										
	<b>Design / Permitting / Procurement Phase</b>										
	Master Floorplan ownership - Equipment G/A Layout										
	Design - Process										
	Design - Electrical										
	Design - Civil / Site										
	Design - Buildings										
	Design - Building Mechanical										
	Design - Instrumentation and Controls (Building Utilities)										
	Design - Instrumentation and Controls (Process/Packaging)										
	Design Criteria - Security, fire alarm, phone, data										
	Design - Bulk Chemical Storage Racking										
	Design - Speedline Storage Racking										
	Design - Building Utility Controls										

EXAMPLE

### Roles and Responsibility Matrix

Date Created: xx/xx/xxxx

## ITEMS TO BE REVIEWED AND REVISED

A = Accountable (Party who must sign off on the deliverable)

C = Consulted (Party who reviews the deliverable and provides input/support on the deliverable)

I = Informed (Party that is notified when the deliverable is complete/provided the deliverable)

Blank = Not applicable to the deliverable

[illegible]

### Roles and Responsibility Matrix

Date Revised: xx/xx/xxxx (revisions in bold)

ITEMS TO BE REVIEWED AND REVISED

Owner

A = Accountable (Party who must sign off on the deliverable)

I = Informed (Party that is notified when the deliverable is complete/provided the deliverable)

Blank = Not applicable to the deliverable

		IPD Partners						Owner Vendors			
		Owner	Lead Designer	Builder	(Future) Contractor *Discipline	(Future) Contractor *Discipline	(Future) Contractor *Discipline	(Future) Contractor *Discipline	Vendor *Item	Vendor *Item	Vendor *Item
Item	Deliverable										
	Process Commissioning										
	3rd Party Commissioning (Potential Vitalus Team Lead)										
	Building - Equipment										
	Building - Materials										
	Building - Systems										
	Process - Equipment										
	Process - Systems										
	Commissioning and Operator Training										

## **Integrated Project Delivery Agreement Exhibit D – Designer Chargeable Costs**

### **1. DEFINITIONS**

The following terms in this Exhibit D are defined as follows:

**1.1 Billable Rates.** Billable rates are the hourly rates that a Designer may charge for its Hourly Employees and Salaried Employees, as applicable, consistent with this Exhibit D and listed in the Designer's individual Exhibit D-1.

**1.2 Stipulated Overhead Rate.** A rate agreed to between Designer and Owner that compensates Designer for all of its Indirect Costs and is, depending on the option specified in the Business Terms Sheet, either included in Designer's Billable Rates or fixed fee.

**1.3 Direct Salary Expense ("DSE").** DSE is the amount actually paid by the Designer to an employee, exclusive of bonuses and profit sharing, and before any income tax, FICA (Federal Insurance Contribution Act) withholdings or equivalent State withholdings.

**1.4 Base Hourly Wage Rate ("BHW").**

1.4.1 For Hourly Employees. The Base Hourly Wage Rate for Hourly Employees is the amount of DSE paid to the employee per working hour for non-overtime work.

1.4.2 For Salaried Employees. The Base Hourly Wage Rate for Salaried Employees is the amount of the employee's annual DSE divided by 2,080 hours.

**1.5 Direct Personnel Expense ("DPE").** DPE is the employer's contribution to the mandatory benefits provided to its Hourly Employees and Salaried Employees.

1.5.1 DPE only includes employment taxes, statutory employee benefits including workers' compensation insurance (net of premium discounts, dividends or rebates), and group insurance (including health, dental, term life and accidental death and dismemberment insurance, all net of employee contributions), sick pay, holidays, vacation actually earned and accrued, employer contributions to employee savings plans, and pension and profit sharing plans that are nondiscretionary, requiring equal distribution of benefits.

1.5.2 DPE does not include any charge for severance pay, tuition reimbursement, employee training, employee morale programs, employee bonuses, executive bonuses, provision of, or reimbursement for automobiles, computers, software, cellular phones and internet or telephone charges, liability insurance of any kind, or any non-mandatory employer contribution to employee compensation.

**1.6 Direct Personnel Expense Multiplier ("DPEM").** DPEM is a multiplier, that when multiplied by an employee's BHW, calculates the amount of DPE allocated to an hour of the employee's work.

Example				
BHWR	*	DPEM	=	DPE
\$60	*	0.25	=	\$15

**1.7 Direct Costs.** As defined in Section 2.1, below.

**1.8 Indirect Costs.** As defined in Section 2.2, below.

**1.9 Chargeable Costs.** As calculated in Section 2, below.

**1.10 Hourly Employees.** A Designer's employees that are directly engaged in the performance of Work on the Project that are non-salaried and whose compensation is paid on an hourly basis.

**1.11 Salaried Employees.** A Designer's employees that are directly engaged in the performance of Work on the Project that are paid a salary and whose compensation is not paid on an hourly basis.

**2. CHARGEABLE COSTS.** Chargeable Costs only include Designer's Direct Costs and Indirect Costs directly related to performing Design Services for the Project, but do not include profit. All Chargeable Costs are actual costs, without markup and are net of any credits, discounts or rebates.

**2.1 Direct Costs.** Designer's Direct Costs are the following:

**2.1.1 Design Services.**

(a) **Labor Cost.** The cost of Designer's employees directly performing Design Services on the Project calculated for each employee as follows:

Example				
BHWR	+	(BHWR * DPEM)	=	Labor Cost
\$60	+	(\$60 * 0.25)	=	\$75

(b) **Limitation on Cost of Salaried Personnel.** Charges for Design Services performed by Designer's salaried personnel in excess of the 40 hour work week are not allowable, unless agreed to by the PMT in writing prior to being incurred and only in an amount agreed to by the PMT as appropriate.

(c) **Standard Consultants.** Payments made by a Designer to its consultants will be in accordance with the requirements of their written consulting agreements.

**2.1.2 Miscellaneous Expenses.**

(a) **Services.** Actual costs for teleconferencing, video-conferencing, and express delivery or messenger services.

(b) Travel Expenses. All reasonably and actually incurred direct, non-salary, travel-related reimbursable expenses will be billed to Owner at actual cost without markup. Unless otherwise stated in Owner's travel guidelines, all air travel, regardless of domestic or international destination, will be at unrestricted coach class fare or other class, whichever is lowest. Mileage will be reimbursed at the IRS standard mileage rates for travel by Designer in its own vehicles.

(c) Models and Mock-ups. Actual cost of physical models and mock-ups requested by the PMT.

(d) Fees. License fees paid for the use of a particular design or process required by the Agreement and approved by the PMT. Filing or other fees paid for securing approval of Governmental Authorities for the design of the Project.

(e) Insurance. Insurance expenses for coverage specifically required of Designer by the Agreement and allocable to this Project that are incurred prior to Project Final Completion. Deductibles are a Chargeable Cost only to the extent specifically provided in Exhibit L-3 and Article 15 of the Agreement.

(f) Reproduction. The cost of oversize reproduction and printing (greater than 11x17) at actual cost.

(g) Cost of Repair/Correction. Cost of repairing or correcting deficient design work executed by a Designer, provided that (1) the costs are incurred prior to Final Completion and (2) the damaged or non-conforming work was not intentional or caused by Willful Default. Correction or repair of deficient or non-conforming work that was performed or installed by a Standard Consultant or Standard Subcontractor will be remedied at the Standard Consultant's or Standard Subcontractor's own expense and is not a Chargeable Cost.

(h) Other Incurred costs. Other costs incurred by Designer that are necessary for the Project, if approved by the PMT in writing prior to being incurred.

## **2.2 Indirect Costs or Overhead.** Designer's Indirect Costs are the following:

2.2.1 Defined. Designer's Indirect Costs are costs, of any kind, other than Direct Costs and Excluded Costs. Designer's Indirect Costs customarily include the cost of personnel not working directly in connection with Designer's performance of its services, executive salaries, association dues and fees, depreciation on all property, equipment or other assets, payroll processing costs, corporate taxes or fees, business development costs, employee training, all home office infrastructure costs, general administrative personnel costs, risk management costs, interest expense, perquisites such as car allowances, home office expenses (including without limitation rent, utilities, telephones, faxes, and postal charges), software and computer hardware costs, accounting personnel, legal personnel, recruiting costs, cellular telephones and pagers, severance pay, and employee morale programs.

2.2.2 Overhead Rate. If Indirect Costs are paid under option 2.2.3(b), below, the Overhead Rate is a factor included in the Hourly Employees' or Salaried Employees' Billable Rate (as applicable).

2.2.3 Payment. Indirect Costs are paid as Chargeable Costs using one of the following methods selected when the Agreement is executed and indicated on the Business Terms Sheet:

(a) A fixed amount paid in equal monthly installments for a specified number of months, as indicated in the Business Term Sheet; or

(b) Included with the Designer's Hourly Employees' or Salaried Employees' Billable Rates calculated as  $(BHWR + (BHWR * DPEM)) * \text{Overhead Rate}$ ;

### **3. EXCLUDED COSTS**

**3.1 Direct Costs.** The following costs are excluded from Designer's Direct Costs.

3.1.1 Offsite Personnel. Salaries and other compensation of personnel stationed at any office or offices other than the Project Site office or the Designer's principal office identified in the Notices provision of the Business Terms Sheet, unless otherwise agreed in writing by the PMT.

3.1.2 Offsite Expenses. Expenses related to a firm's principal office and offices other than the Project Site office.

3.1.3 Business Licenses, Permits, and Taxes. All costs of business and/or operating permits, licenses, fees, and taxes required by any local, state, or federal Governmental Authorities to enable Designers or their consultants of any tier to be qualified to do business and/or perform services and/or any Design Services.

3.1.4 Costs Not Included in Direct Costs. Any cost not explicitly included as a Direct Cost in Section 2.1, above.

**3.2 Chargeable Costs.** The following costs are excluded from Chargeable Costs, and will not be paid by Owner.

3.2.1 Financing or Cost of Use of Money. Financing costs, cost of use of money, or other capital expenses, including interest on capital employed for the Design Services.

3.2.2 Bonuses and Incentive Programs. Employee bonuses or incentive program payments regardless of whether personnel are specifically assigned to this Project.

3.2.3 Fraud and Willful Default. Any cost resulting from fraud, Willful Default, or willful misconduct.

3.2.4 Stale Invoices. Work performed 75 days or more before the submittal date of the invoice to Owner, unless prior written approval is obtained from the PMT.



3.2.5 Costs incurred after Project Final Completion. Costs incurred for the Work after Project Final Completion.

**[END OF EXHIBIT]**

## **Integrated Form of Agreement**

### **Exhibit E – Builder Chargeable Costs**

#### **1. DEFINITIONS**

**1.1 Billable Rates.** Billable rates are the hourly rates that a Builder may charge for its Hourly Employees and Salaried Employees, as applicable, consistent with this Exhibit E and listed in the Builder's individual Exhibit E-1.

**1.2 Stipulated Overhead Rate.** A rate agreed to between Builder and Owner that compensates Builder for all of its Indirect Costs (except for Indirect Costs related to its shop or fabrication facilities, if any) and that is, depending on the option specified in the Business Terms Sheet, either included in Builder's Billable Rates, or applied to the Builder's Chargeable Costs.

**1.3 Shop Overhead Rate.** A rate agreed between Builder and Owner that compensates Builder for all of its Indirect Costs related to its shop or fabrication facilities and, if used, is included in the Billable Rates for Builder's shop personnel.

**1.4 Direct Salary Expense ("DSE").** DSE is the amount actually paid by the Builder to an employee, exclusive of bonuses and profit sharing, and before any federal income tax, employment insurance, Canada Pension Plan withholdings or equivalent provincial taxes or withholdings.

**1.5 Base Hourly Wage Rate ("BHW").**

1.5.1 For Hourly Employees. The Base Hourly Wage Rate for Hourly Employees is the amount of DSE paid to the employee per working hour for non-overtime work.

1.5.2 For Salaried Employees. The Base Hourly Wage Rate for Salaried Employees is the amount of the employee's annual DSE divided by 2,080 hours.

**1.6 Direct Personnel Expense ("DPE").** DPE is the Builder's contribution to the mandatory benefits provided to its Hourly Employees and Salaried Employees.

1.6.1 For employees who are subject to a collective bargaining agreement, DPE shall only include those benefits the Builder is required to pay on behalf of the employees pursuant to the collective bargaining agreement.

1.6.2 For employees who are not subject to a collective bargaining agreement, DPE shall only include employment taxes, statutory employee benefits including workers' compensation insurance (net of premium discounts, dividends or rebates), and group insurance, (including health, dental, term life and accidental death and dismemberment insurance, all net of employee contributions), sick pay, holidays, vacation actually earned and accrued, employer contributions to employee savings plans, and pension and profit sharing plans that are nondiscretionary, requiring equal distribution of benefits.

1.6.3 DPE does not include any charge for severance pay, tuition reimbursement, employee training, employee morale programs, employee bonuses, executive bonuses, provision of, or reimbursement for automobiles, computers,

software, cellular phones and internet or telephone charges, liability insurance of any kind, or any non-mandatory employer contribution to employee compensation.

**1.7 Direct Personnel Expense Multiplier (“DPEM”).** DPEM is a multiplier, that when multiplied by an employee's BHWR, calculates the amount of DPE allocated to an hour of the employee's work.

Example				
BHWR	*	DPEM	=	DPE
\$60	*	0.25	=	\$15

**1.8 Direct Costs.** As defined in Section 2.1, below.

**1.9 Indirect Costs.** As defined in Section 2.2, below.

**1.10 Chargeable Costs.** As calculated in Article 2, below.

**1.11 Hourly Employees.** A Builder's employees that are directly engaged in the performance of Work on the Project that are non-salaried and whose compensation is paid on an hourly basis.

**1.12 Salaried Employees.** A Builder's employees that are directly engaged in the performance of Work on the Project that are paid a salary and whose compensation is not paid on an hourly basis.

**2. CHARGEABLE COSTS.** Builders' Chargeable Costs only include Builder's Direct Costs and Indirect Costs directly related to performing Work for the Project, but do not include profit. All Builder Chargeable Costs are actual costs, without markup and are net of any credits, including input tax discounts or rebates.

**2.1 Direct Costs.** Builder's Direct Costs are the following:

**2.1.1 Labor Cost.** The cost of Builder's employees directly performing work on the Project calculated for each employee as follows:

Example				
BHWR	+	(BHWR * DPEM)	=	Labor Cost
\$60	+	(\$60 * 0.25)	=	\$75

#### 2.1.2 Materials and Equipment Incorporated into the Project.

(a) Materials and Equipment. Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated into the Project that are either delivered to the Project Site or suitably stored off-site at a mutually acceptable location, if pre-approved by the PMT and fully insured against loss or damage. Purchases or costs from any Builder affiliated entities, divisions, groups, etc. for materials, equipment, and other costs will be billed at the actual and auditable cost incurred by those affiliated entities, divisions, groups, etc., except as pre-approved by the PMT.

(b) Waste and Spoilage. Costs of materials described in Section 2.1.2(a) of this exhibit in excess of those actually incorporated into the Project to allow for reasonable waste and spoilage. Unused excess materials, if any, will become Owner's property at Final Completion or, at Owner's option, will be sold by the Builder and credited against the final cost of the Project.

2.1.3 Subcontracted Work and Services. The actual cost, net of any credits, discounts or rebates, paid by Builder to a subcontractor, subconsultant, supplier, vendor, inspector or permitting agency, that is not owned by or affiliated with Builder, for performance of Work necessary for the Project.

#### 2.1.4 General Requirements.

(a) On-Site Temporary Facilities & Services. Costs for Builder's on-site office or big room and temporary facilities (including trailers, power, water, sanitary, utilities, telephone, internet), on-site security, on-site temporary protection and barricades (including fences, signage and traffic control), on-site temporary office furniture and equipment (including cost of computers and software purchased specifically for this Project with the concurrence of the PMT and inclusive of all variable software, applications, systems, and support costs directly related to this Project); postage and parcel delivery charges; and on-site devices, servers, printers, copiers, plotters, facsimile transmissions and long-distance telephone calls, including costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Any equipment or materials purchased and charged to the Project will remain the property of Owner at the end of its usage.

(b) Temporary Materials and Equipment. Costs, including transportation and storage, installation, maintenance, dismantling and removal of construction materials, supplies, machinery, equipment, and small tools over \$500 not customarily owned by the construction workers, that are provided by the Builder at the site (but not incorporated into the Project) and fully consumed in the performance of the construction work. If items are not fully consumed, the cost less salvage value, whether sold to others or retained by the Builder, will be included. Salvage value will be the fair market value or actual value received. The cost of small tools under \$500 will not be reimbursable as part of Builder's Direct Cost, but should be included in the Builder's Indirect Costs.

(c) Third Party Rental Expenses. Rental charges for non-affiliated third-party equipment will be considered reimbursable and will be reimbursed at

actual costs, as long as rental rates are consistent with those prevailing in the locality. Such equipment will be exclusive of small tools, and limited to the direct costs of transportation, delivery, installation, dismantling, removal, and maintenance. Rental charges will be equitably prorated if the foregoing equipment is not exclusively devoted to the Project.

(d) **Builder Owned Rental Expenses.** For rental charges for items described in Section 2.1.4(c) of this exhibit that are rented from the Builder or an affiliate of the Builder, the aggregate rental amounts (exclusive of all installation, maintenance, dismantling, removal, transportation, and delivery costs) for any one piece of equipment cannot exceed 80% of the purchase price (at the time it is placed in service) during the rental period of the equipment used for this Project. Agreed rates for equipment that is owned by the Builder or an affiliate and rented to the Project are subject to these same terms and must be scheduled in Exhibit F-2. Upon Owner's request, the Builder will present an analysis of an opportunity to purchase rather than rent the item. All purchased items will be a Chargeable Cost and title to the property will vest to Owner upon Final Completion.

#### 2.1.5 Miscellaneous Costs

(a) **Taxes.** The Goods and Services Tax, imposed under Part IX of the *Excise Tax Act* (Canada) ("GST") imposed by a Governmental Authority, on the Owner, provided that the Builder provides the Owner with the information prescribed by the *Excise Tax Act* (Canada) to allow Owner to claim an input tax credit but for greater certainty, excluding all GST, provincial sales tax, franchise or income based tax or any similar taxes imposed by a Governmental Authority on the Builder.

(b) **Insurance.** Insurance expenses specifically required of Builder by the Agreement and allocable to this Project. Deductibles are a Chargeable Cost only to the extent specifically provided in Exhibit L-2 and Article 13 of the Agreement.

(c) **Permits, Fees, and Assessments.** Fees and assessments for the building permit for the Project and for other permits, licenses and inspections that Builder is required to pay under the Agreement. Major permits may be paid by Owner directly.

(d) **Testing.** Fees of laboratories for tests required by the Agreement.

(e) **Fees.** License fees paid for the use of a particular design or process required by the Agreement and approved by the PMT.

(f) **Recycle & Waste.** Costs of removal and disposal of debris from the site and recycle costs not offset by recycle fees or rebates.

(g) **Document Reproduction.** Costs for blueprinting and other document reproduction necessary for constructing and administering the Project.

(h) Travel Expenses. All reasonably and actually incurred direct, non-salary, travel-related reimbursable expenses will be billed to Owner at actual cost without markup. Unless otherwise stated in Owner's travel guidelines, all air travel, regardless of domestic or international destination, will be at unrestricted coach class fare or other class, whichever is lowest. Mileage will be reimbursed at the Canada Revenue Agency's published automobile allowance rates for travel by Designer in its own vehicles.

(i) Emergencies & Repairs. Subject to the Agreement, costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency that threatens the safety of persons.

2.1.6 Trade Discounts and Surplus. Trade discounts and refunds for Builder purchased material and equipment will be credited against the incurred Chargeable Cost. Sales of surplus materials and equipment will likewise be credited against the Chargeable Costs.

2.1.7 Cost of Repair/Correction. Cost of repairing or correcting Construction Work that is deficiently designed, or damaged or non-conforming Construction Work executed by a Builder, provided that (1) the costs are incurred prior to Final Completion and (2) the damaged or non-conforming work was not intentional or caused by Willful Default. Correction or repair of deficient or non-conforming work that was performed or installed by a Standard Consultant or Standard Subcontractor will be remedied at the a Standard Consultant's or Standard Subcontractor's own expense and is not a Chargeable Cost.

2.1.8 Other Incurred Costs. Other costs incurred by Builder that are necessary for the Project, if approved by the PMT in writing prior to being incurred.

**2.2 Indirect Costs or Overhead.** Builder's Indirect Costs are the following:

2.2.1 Defined. Builder's Indirect Costs are costs, of any kind, other than Direct Costs and Excluded Costs. Builder's Indirect Costs customarily include the cost of personnel not working directly in connection with the Work; executive salaries; association dues and fees; depreciation on all property, equipment or other assets; payroll processing costs; corporate taxes or fees; business development costs; employee training; all home office infrastructure costs; general administrative personnel costs; risk management costs; interest expense; perquisites such as car allowances, home office expenses (including without limitation rent, utilities, telephones, faxes, postal charges, and reprographics); software and computer hardware costs; accounting personnel; legal personnel; recruiting costs; field office; cellular telephones and pagers; severance pay, and employee morale programs.

2.2.2 Overhead Rate. If Indirect Costs are paid under option 2.2.3(b) below, the Overhead Rate is a factor only included in the Hourly Employees' or Salaried Employees' Billable Rate (as applicable). If Indirect Costs are paid under option 2.2.3(c) below, the Overhead Rate is a factor applied to the sum of Builder's Chargeable Costs, and not included in the employee's Billable Rate.

2.2.3 Payment. Indirect Costs are paid as Chargeable Costs using one of the following methods selected when the Agreement is executed and indicated on the Business Terms Sheet:

(a) A fixed amount paid in equal monthly installments from execution of the Agreement until Final Completion;

(b) Included with the Builder's Hourly Employees' and Salaried Employees' Billable Rates calculated as  $(BHWR + (BHWR * DPEM)) * \text{Overhead Rate}$ ; or

(c) Applied as an Overhead Rate multiplied by the Builder's Direct Costs incurred during a payment period.

2.2.4 Shop Indirect Costs. Builders that use pre-fabrication or shop facilities to perform portions of the Work may, with the written approval of Owner, have a separate Shop Overhead Rate that applies only to the hourly rate of Builder's employees that directly perform Work in the shop or pre-fabrication facility ("Shop Personnel") such that the Billable Rate of Shop Personnel is calculated as  $(BHWR + (BHWR * DPEM)) * \text{Shop Overhead Rate}$ .

### **3. EXCLUDED COSTS**

**3.1 Direct Costs.** The following costs are excluded from Builder's Direct Costs.

3.1.1 Offsite Personnel. Salaries and other compensation of personnel stationed at any office or offices other than the Project Site office or the Contractor's principal office identified in the Notices provision of the Business Terms Sheet, unless otherwise agreed in writing by the PMT.

3.1.2 Offsite Expenses. Expenses related to a firm's principal office and offices other than the Project Site office.

3.1.3 Business Licenses, Permits, and Taxes. All costs of business and/or operating permits, licenses, fees, and taxes required by any local, provincial, or federal Governmental Authorities to enable Builders or their subcontractors of any tier to be qualified to do business and/or perform their respective portions of the Work.

3.1.4 Costs Not Included In Direct Costs. Any cost not explicitly included as a Direct Cost in Section 2.1 of this exhibit.

**3.2 Chargeable Costs.** The following costs are excluded from Chargeable Costs, and will not be paid by Owner.

3.2.1 Financing or Cost of Use of Money. Financing costs, cost of use of money, or other capital expenses, including interest on capital employed for the Construction Work.

3.2.2 Bonuses and Incentive Programs. Employee bonuses or incentive program payments regardless of whether personnel are specifically assigned to this Project because these costs are carried in Contractor's Indirect Costs.

3.2.3 Fraud and Willful Default. Any cost resulting from fraud, Willful Default, or willful misconduct.

3.2.4 Stale Invoices. Work performed 75 days or more before the submittal date of the invoice to Owner, unless prior written approval is obtained from the PMT.

3.2.5 Costs incurred after Project Final Completion. Costs incurred for the Work after Project Final Completion.

**[END OF EXHIBIT]**



## **Integrated Form of Agreement Exhibit H – Payment Protocol**

### **1. APPLICATIONS FOR PAYMENT OF CHARGEABLE COSTS**

#### **1.1 General Requirements**

1.1.1 On or before the 30th day of each calendar month during the term of this Agreement (the "Payment Application Date"), each Non-Owner Party will individually submit for Owner's review and approval an application for payment of their respective Chargeable Costs on a form reasonably acceptable to Owner (each an "Application for Payment"). Each Application for Payment must comply with the requirements of Article 10 of the Agreement, and the provisions of this Exhibit H.

#### **1.2 Builder's Applications for Payment**

1.2.1 A Builder's payment application will include documentation of its Chargeable Costs and those of its consultants, subcontractors, and vendors for the billing period and other amounts covered by the payment application including the following, as applicable:

- (a) A duly executed statement from the Builder detailing all incurred Chargeable Costs for which payment is sought in the payment application, with separate tracking of the following: overhead to which the Builder is entitled, Chargeable Costs for Owner's Directives and approved Change Order Work, self-performed work by the Contractor being compensated on a lump sum basis, and amounts to be retained or withheld;
- (b) Payrolls for labor, transactional registers for materials, invoicing for all stored materials, and/or a schedule of values with percentage of completion for Work on a lump sum basis;
- (c) New adjustments to previous payment applications;
- (d) The amount of past payments received, a schedule of values for Work completed to date, and the Builder's anticipated amount of other future Chargeable Costs to complete the Project; and
- (e) A certification by Builder that Builder is unaware of any recorded or filed Statement of Account, or complaint to enforce a lien with respect to the Work performed by others and that all of its subcontractors, consultants, and suppliers have been paid to date or will be paid with the proceeds for Work covered under the payment application.

1.2.2 A Builder's Application for Payment must separately identify the Stipulated Overhead to which the it is entitled pursuant to Section 8.5 of the Agreement.

1.2.3 With respect to work self-performed by a Builder and approved by Owner pursuant to Section 8.6 of the Agreement and compensated on a lump sum basis, the portion of the Builder's Application for Payment for such Builder self-performed lump sum work will be on a percentage of completion basis pursuant to a schedule of values

for such work. The schedule of values is subject to prior review and approval by Owner, and must exclude the Builder's overhead pursuant to Section 8.6 of the Agreement.

1.2.4 With respect to work performed by Standard Subcontractors compensated by the Builder on a lump sum basis, the Builder's Application for Payment must include and separately identify each such lump sum Standard Subcontractor's work on a percentage of completion basis pursuant to a schedule of values for such work.

1.2.5 With respect to work performed by Standard Subcontractors on a basis other than lump sum (such as time & materials, unit price, cost plus, etc.), a Builder's Application for Payment must include and separately identify each such Standard Subcontractor's work and the basis for such compensation, together with any and all supporting documents as the PMT may require pursuant to the Agreement. The Builder will, in its Application for Payment, summarize such amounts and by submitting the invoice the Builder is certifying that it has conducted a thorough and complete review of such supporting documents and determined such Standard Subcontractor's compensation included in the Application for Payment to be in accordance with the Agreement and the terms of the respective subcontract. Nothing in this paragraph will prejudice Owner's rights pursuant to Section 9.2 of the Agreement.

### **1.3 Designers' Applications for Payment**

1.3.1 A Designer's payment application will include documentation of its Chargeable Costs and those of its consultants for the period and amounts covered by the payment application including the following, as applicable:

- (a) Copies of payrolls for labor;
- (b) Copies of monthly labor detail reports, showing the identity and trade/discipline of each person performing labor each day with reasonable detail;
- (c) All bills, invoices and the like pertaining to all of the Designer's other Chargeable Costs and payment;
- (d) Separately tracked Chargeable Costs for Owner's Directives and approved Change Order Work;
- (e) A summary of Chargeable Costs incurred by its consultants;
- (f) New adjustments to previous payment applications;
- (g) The amount of past payments received;
- (h) The Designer's anticipated amount of other future Chargeable Costs to complete the Project; and
- (i) A certification by Designer that Designer is unaware of any recorded or filed Statement of Account, or complaint to enforce a lien with respect to the Work performed by others and that all of its subcontractors,

consultants, and suppliers have been paid to date or will be paid with the proceeds for Work covered under the payment application.

1.3.2 With respect to services performed by Standard Consultants compensated by a Designer on a fixed price basis, the Designer's Application for Payment will include and separately identify each such fixed price Standard Consultant's services on a Achievement Event payment basis pursuant to a schedule of Achievement Events. The schedule of Achievement Events and other relevant terms are subject to prior review and approval by the PMT pursuant to the Agreement.

1.3.3 With respect to work performed by Standard Consultants on a basis other than lump sum (such as time & materials, not to exceed, etc.), a Designer's Application for Payment must include and separately identify each such Standard Consultant's services and the basis for such compensation, together with any and all supporting documents as the PMT may require pursuant the Agreement. The Designer will, in its Application for Payment, summarize such amounts and by submitting the invoice the Designer is certifying that it has conducted a thorough and complete review of such supporting documents and determined such Standard Consultant's compensation included in the Application for Payment to be in accordance with the Agreement and the terms of the respective subconsultant agreement. Nothing in this paragraph will prejudice Owner's rights pursuant to Section 9.2 of the Agreement.

## **2. PAYMENT WITHHOLDING**

**2.1 Right to Withhold.** Owner may refuse to approve a payment application or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of a prior payment application to the extent the PMT determines, or the SMT determines by majority vote, is necessary to protect Owner from loss arising out of or resulting from:

2.1.1 The Willful Default of the Party submitting the invoice;

2.1.2 Failure of a Builder, or its subcontractors, to make timely payments to their respective consultants, subcontractors, and vendors for labor, materials, or equipment, provided Owner has made payment required by this Agreement;

2.1.3 Failure of a Designer or its consultants to make timely payments to their respective consultants for Design Services rendered in connection with the Project, provided Owner has made payment required by this Agreement;

2.1.4 Failure of the Strategic Sourcing Manager or its consultants and vendors to make timely payments to their respective consultants for its services rendered in connection with the Project, provided Owner has made payment required by this Agreement; or

2.1.5 Insufficient documentation, erroneous estimates of value of the Work performed, or other incorrect statements in a payment application.

**2.2 Cure.** If the reason for withholding payment is cured, Owner will pay the withheld amount within 7 days of receiving reasonable documentation evidencing that the reason for the

withholding has been cured. The right to withhold does not apply to undisputed portions of any payment application.

### **3. PAYMENT HOLDBACK**

**3.1** The Owner will retain Holdback on any payment to a Non-Owner Party with respect to which a Holdback is required to be retained under the *Builders Lien Act*, SBC 1997 c 45, as amended from time to time.

### **4. APPLICATIONS FOR PAYMENT OF ICL**

**4.1** Pursuant to Section 8.4 of the Agreement, if the preconditions for ICL distribution have been met, then each applicable Non-Owner Party will submit a separate Application for Payment for the portion of the ICL to which they are entitled pursuant to the Agreement. For the avoidance of doubt, Applications for Payment for ICL distribution are to be separate from Applications for Payment of Chargeable Costs as set forth in Article 1 of this Exhibit H, and will be in accordance with the most current Incentive Program requirements.

**4.2** Pursuant to the Incentive Program, any increases to ICL which may result from Project performance will be determined at Final Completion of the Project and be the subject of separate Applications for Payment from the Non-Owner Parties.

### **5. PAYMENT BY OWNER**

**5.1** Periodic payments will be made to the Non-Owner Parties as provided below and elsewhere in the Agreement.

**5.2** After receiving Applications for Payment approved by the PMT, Owner will have 15 Business Days to finish its review and approve/disapprove payments. Owner will pay each application for payment (or uncontested portion thereof) to the respective Non-Owner Party within 15 days of Owner's approval of the reviewed payment application. If Owner disapproves a payment application or determines to withhold a portion of the requested amount for payment pursuant to this Article 2, Owner will notify the applicable Party(ies) within 15 Working Days of receipt of the Applications for Payment.

**5.3** Builders will pay their respective consultants, subcontractors, and vendors, and consultants within 10 days of the Builder's receipt of payment from Owner.

**5.4** Designers and the Strategic Sourcing Manager will pay their respective consultants and vendors within 10 days of their receipt of payment from Owner.

### **6. FINAL PAYMENT BY OWNER**

**6.1** Subject to the Agreement, Owner will make Final Payment to the Non-Owner Parties within 60 calendar days after all of the following are complete:

**6.1.1** The Work has been fully performed by the Non-Owner Parties, except for their responsibility to satisfy other requirements, if any, which necessarily survive Final Payment;

6.1.2 A payment application for final payment has been submitted by the Non-Owner Parties;

6.1.3 A final accounting of Chargeable Costs has been submitted by the Non-Owner Parties and reviewed by Owner, which review must be completed no more than 30 days after submission. Owner's approval will not be unreasonably withheld; and

6.1.4 The other conditions to Final Payment in the Contract Documents have been satisfied.

6.1.5 In addition to all other requirements above and in the Contract Documents, as a condition to Final Payment, the Non-Owner Parties must, as applicable:

(a) Deliver any special guarantees or warranties required by the Contract Documents and assignments of all guarantees or warranties from subcontractors, vendors, suppliers, or manufacturers (with the addresses and telephone numbers of those Builders, subcontractors or other persons providing guarantees and warranties);

(b) Deliver to Owner the documents required by Section 6.6.2 of the Agreement.

**[END OF EXHIBIT]**

## **Integrated Form of Agreement**

### **Exhibit I – Incentive Program**

*Note: The Incentive Program will be developed by all Parties during the Validation Phase and will outline the factors determining the distribution of ICL on the Project. These may include Key Performance Indicators or other considerations. As an example, the following is a simple 100% profit at risk, 50% shared savings that includes a cap on the increase on team profit.*

#### **1. ADJUSTMENT OF ICL**

**1.1 Final Actual Cost Exceeds Target Cost.** If, at the time of Final Completion, the Final Actual Cost exceeds the Target Cost (as adjusted for all approved Change Orders), then the ICL is reduced by the amount of the difference, but not below \$0.

1.1.1 If the ICL, as adjusted in Section 1.1 is less than the amount of ICL distributed to the Non-Owner Parties under Section 10.4 of the Agreement, then each Non-Owner Party will pay to Owner, within 20 Business Days of a written demand, its proportionate share of the difference between the distributed ICL and the adjusted ICL, using each Non-Owner Party's ICL percentage.

**1.2 Final Actual Cost Equals the Target Cost.** If, at the time of Final Completion, the Final Actual Cost equals the Target Cost, then Owner will pay each Non-Owner Party its proportionate share of the ICL, using each Non-Owner Party's ICL percentage, less any amount of ICL previously paid to that Party.

**1.3 Final Actual Cost Is Less Than the Final Target Cost.** If, at the time of Final Completion, the Final Actual Cost is less than the Target Cost, then then the ICL will be increased by the lesser of:

1.3.1 \_\_\_% of the ICL; or

1.3.2 \_\_\_% of the difference between the Target Cost and the Final Actual Cost.

**2. PAYMENT OF ADJUSTED ICL.** If the ICL is adjusted under Sections 1.2 or 1.3, Owner will pay each Non-Owner Party its proportionate share of the Adjusted ICL, using each Non-Owner Party's ICL percentage, less any amount of ICL previously paid to that Party.

**[END OF EXHIBIT]**

**Integrated Form of Agreement**  
**Exhibit K – General Conditions to the Agreement**

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# **GENERAL CONDITIONS TO THE INTEGRATED FORM OF AGREEMENT**

## **1. TERMS**

**1.1 Defined Terms.** Capitalized terms used in these General Conditions are either defined in the Agreement, these General Conditions, or Exhibit A to the Agreement.

## **2. PROJECT ADMINISTRATION**

**2.1 Risk and Opportunity Register.** The PMT will facilitate a workshop to identify risks that could jeopardize the Project success. These risks will be documented in a risk registry that identifies the risks in priority order and documents the strategies to avoid, mitigate, and monitor these risks. The risk registry will be regularly reviewed and updated by the PMT, and reviewed monthly by the SMT. The SMT will also review the effectiveness of the risk management strategies and will modify or implement new strategies to reduce or eliminate Project risks.

**2.2 Progress Monitoring.** The PMT is responsible for developing goals, strategies, protocols, and tools for monitoring Project progress against schedule, budget, and key performance indicators. These management tools will be used to track the status of the Project against achievement of the Project Requirements. If it appears that the Project Requirements is not likely to be achieved, the PMT will develop a recovery plan to enable the Project to achieve the Project Requirements.

**2.2.1 Project Log.** The PMT, through the Contractor, will maintain a daily log that summarizes the conditions and activities on the Project including, without limitation, a record of weather conditions, the number and types of workers on-site, the subcontractors working, the areas where Construction Work is progressing and the Construction Work accomplished, problems encountered on the Project, significant visitors to the site, including inspectors and testing agencies, and other similar relevant information as Owner may reasonably require.

### **2.3 Requests for Information and Bulletins**

**2.3.1 Informal Resolution of Issues.** Questions, conflicts, and issues regarding coordination and constructability should be resolved during design and before the Implementation Documents are issued. Requests for Information ("RFI") should not be used as a substitution for collaboration. If issues arise during construction, the issues or questions should be resolved collaboratively and informally among the affected Project Participants. RFIs are intended to be used to document the result of the informal process and to document decisions that reflect differences from the Implementation Documents.

**2.3.2 RFI Scheduling.** In collaborating to resolve an issue for which an RFI will be used to document the solution, the party needing the information will indicate when the issue needs to be resolved to avoid delaying the Work. If the requesting and responding parties are able to resolve the issue in their initial conversation, the responding party will produce the RFI documenting the solution before the date at which a delay will occur. If the requesting and responding party cannot agree on a plan for resolving the issue before a delay will occur, the responding party must notify the PMT,

who will promptly address the issue with the parties. All RFIs will be in writing to the Contractor with a copy to the PMT and, to the extent possible, will be documented in the BIM. If the RFI affects the Target Cost, or the Achievement Events, the Contractor will immediately commence the Change Order process under Article 11 of the Agreement. If the RFI does not affect the Target Cost, or Achievement Events, the Contractor will immediately post the RFI and its resolution on the PMIS and notify all necessary parties for implementation in the field. The PMT will develop goals for latency and RFI resolution and will measure actual durations against the RFI goals.

2.3.3 Bulletins. The PMT will issue PMT Bulletins as required by the Contract Documents or as necessary to efficiently manage the Project. SMT Bulletins are issued by the SMT as required by the Agreement or as necessary to efficiently manage the Project. PMT Bulletins and SMT Bulletins are binding on the Project Participants unless revoked or modified by a Owner Directive. PMT Bulletins giving rise to potential Change Orders will be governed by Article 11 of the Agreement.

2.3.4 Electronic Submission and Archiving. The PMT will establish a PMIS to track RFIs, PMT Bulletins, and SMT Bulletins and make them available to all Project Participants.

## **2.4 Submittals and Shop Drawings.**

2.4.1 Reduction of Submittals. Whenever reasonably possible, Builders should coordinate their submittal information with the Designers and incorporate agreed information into the Model or other Implementation Documents. Where direct integration into the design is not practical, Builders will provide submittals in accordance with this Section 2.4.

2.4.2 Content. All submittals must be complete and contain the information necessary for review by the Designers, and Owner, as appropriate. The PMT will designate a format for submittal numbering. Each submittal must have a unique identification number and resubmittals must use the unique number plus a version number. Builders will not submit submittals that only have the information already in the Contract Documents. Any Submittals that are not required by the Contract Documents may be returned by the Lead Designer without action.

2.4.3 Electronic Submission and Archiving. The PMT will establish a PMIS to track and archive Submittals and Submittal reviews. To the greatest extent possible, Submittals will be delivered in an electronic format capable of being read and integrated into the BIM. By transmitting a Submittal, the submitter represents that it has reviewed the submission for accuracy and compliance with all Contract Documents, coordinated the information contained within the Submittal with the existing field conditions and requirements of the Construction Work and other contiguous work, and that all original engineering, if required, has been performed by a qualified professional engineer or architect appropriately licensed in accordance with Applicable Law.

2.4.4 Scheduling and Priority. The Builders and Designers will jointly create a submittal schedule that prioritizes submittal submission and review by when the information is needed and the importance of the submittal. The submittal schedule will provide a reasonable time for Designer and Owner review, where required.

2.4.5 Tracking. The PMT will maintain a submittal log that, at a minimum, tracks:

- (a) Submittal by reference number, name and description;
- (b) When the submittal was due pursuant to the Submittal Schedule;
- (c) When the submittal was received;
- (d) The issuing party responsible for the submittal;
- (e) The reviewing party, or parties responsible for reviewing the submittal;
- (f) The date the submittal was returned to the issuing party;
- (g) The status of the submittal;
- (h) The criticality of the submittal, i.e., critical, urgent, routine;
- (i) Where submittals are returned for resubmittal, the revised and resubmitted submittal must designate that it is a resubmittal.

2.4.6 Resubmission of Submittals. Upon return of any Submittal, the Contractor will require the appropriate party to make any correction required in accordance with the Contract Documents and, within 1 week or less, to furnish corrected resubmissions to the Lead Designer for approval. The Builders will not perform any of the Work for which the Contract Documents require a Submittal until the respective Submittal has been approved by the Lead Designer. Upon receipt of approval from the Lead Designer on a Submittal, the Contractor will post a final corrected copy into PMIS per Section 2.4.3 of this exhibit.

2.4.7 Lead Designer's Review. The Lead Designer will review the Submittals for conformance with the Implementation Documents and approve or take other appropriate action. Approval of a Submittal does not relieve the Contractor or submitter from any of its contractual obligations. The Lead Designer's approval of a specific item does not constitute approval of an assembly of which the item is a component.

2.4.8 Design-Build Trades. If the PMT requires a Builder to subcontract for design-build services for certain trades, the design-build Submittals must be prepared by, or under the responsible charge of, a registered professional engineer or architect licensed in accordance with Applicable Law who will sign and seal all design-build Submittals indicating that the design professional is the engineer or architect of record. Any Builder subcontracting for Design-Build Trades must enter into a written subcontract that expressly states that Owner and other Parties are intended beneficiaries of the subcontract and entitled to enforce all obligations and obtain all benefits under the subcontract, including any Owner rights. Submittals will be in accordance with the provisions set forth in Sections 2.4.3 through 2.4.7 of this exhibit. The Design-Build Trades will remain liable and responsible for all design-build Submittals. The Lead Designer will review design-build Submittals to confirm that the Submittals are in general conformance with the design intent indicated in the Implementation Documents and to

coordinate the design-build Submittals with the Design Materials prepared by the Designers and their consultants.

**2.5 Inspection and Certificate of Substantial Completion.** When the Contractor believes that the Project or a Project Stage has achieved Substantial Completion, it will notify the PMT who will review the entire Project or the Work performed in the Project Stage, as applicable. If the applicable Governmental Authority approves occupancy of the Project, or partial occupancy for the Project Stage per Section 2.5.1 of this exhibit, and the PMT finds that Substantial Completion has been achieved, the PMT will issue a certificate of Substantial Completion. If the Project or Project Stage (as applicable) has not achieved Substantial Completion, the PMT will provide the Contractor with a Punch List before Substantial Completion and the Contractor, after the Builders have completed those items, will notify the PMT that the Project or the Project Stage is ready for re-inspection. Unless otherwise agreed, the certificate of Substantial Completion, or certificate of beneficial occupancy per Section 2.5.1 of this exhibit establishes the date when responsibility for security, maintenance, heat, utilities, damage to the Construction Work, and insurance transfers from the Builders to Owner.

2.5.1 Partial Use and Occupancy. Upon 3 Business Days' written notice to the PMT, and provided that the Governmental Authorities having jurisdiction over the Project have deemed the Project Stage fit for legal use and occupancy, Owner may occupy or otherwise make use of all or any part of the Project Stage or equipment before Substantial Completion of the entire Project. The PMT will issue a certificate of beneficial occupancy describing those portions of the Project deemed fit for legal occupancy by the Governmental Authorities and establishing the date for when the risk of damage to the Construction Work in that Project Stage is transferred to Owner.

## **2.6 Final Inspection and Acceptance**

2.6.1 Final Inspection and Beneficial Occupancy of a Project Stage. Before Owner uses and occupies a Project Stage, the PMT will review all Work contained within the Project Stage and prepare a list of items that need to be completed, repaired, or replaced ("Stage Punch List"). Correction of all Stage Punch List items to the PMT's satisfaction is a condition precedent to Final Completion of the Project Stage.

2.6.2 Final Completion and Owner Occupancy. After the Contractor notifies the PMT that it believes the Project has achieved Final Completion, the PMT will review the entire Project and prepare a list of any items that require completion, repair, or replacement ("Final Punch List"). Any Final Punch List items for previously completed and occupied Project Stages will be corrected under the warranty provisions of the Agreement. Correction of all Final Punch List items to the PMT's satisfaction is a condition precedent to Final Completion of the Project and Final Payment. When the PMT has determined that Final Completion of the Project has occurred, it will issue a certificate of Final Completion.

## **3. JOINT SITE INVESTIGATION**

**3.1 Access to Existing Documents.** At its expense, Owner will exercise commercially reasonable efforts to provide the PMT with access to all documents Owner knowingly possesses related to the condition of the Project Site that are requested in writing and reasonably required by the PMT. This information includes:

3.1.1 Documents describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data, or drawings depicting existing conditions and subsurface conditions (geotechnical engineering survey and report), and environmental studies, reports, and investigations;

3.1.2 Tests, inspections, and other reports dealing with environmental matters, Hazardous Materials and other existing conditions, including structural, mechanical, and chemical tests, required by the PMT or by law; and

3.1.3 Any other information or services reasonably relevant to the planning, design, and construction of the Project.

**3.2 Joint Site Investigation.** Prior to establishing the Project Requirements, the PMT and PIT members will conduct a Joint Site Investigation. Owner will make the Project Site available for the Joint Site Investigation and will provide information in its possession that is required by this Section or otherwise requested by the PMT or PITs. During the Joint Site Investigation, the PMT will:

3.2.1 Document all site-related information that is needed to design and construct the Project;

3.2.2 Verify existing conditions within the Project Site, including all points of connection, and verify the accuracy of existing as-built documents provided by Owner through field investigations with proper due diligence to eliminate major Unforeseen and Differing Site Conditions that would result in a Change Order. If as-built documents are insufficient, inaccurate, or incomplete, the PMT will decide whether a surveying program to provide required information is justified;

3.2.3 Notify Owner of the need to view inaccessible spaces (e.g., spaces containing Hazardous Materials, hard lid ceilings, buried utilities, occupied spaces, etc.) to allow for field verification;

3.2.4 Review any existing information and identify, in writing, any apparent deficiencies or discrepancies in the information provided by Owner during the Project;

3.2.5 Describe additional site investigations or information reasonably required to develop the Project Requirements and prepare the Implementation Documents, including surveys, subsoil investigations, analyses, tests, and reports relative to the Project Site;

3.2.6 Evaluate the need for air balance reports, electrical load tests, and gas and utility reports to verify the condition and capacity of existing systems;

3.2.7 Determine whether to extend the Joint Site Investigation for additional surveying or necessary testing to allow effective design and construction of the Project; and

3.2.8 Upon completion of the Joint Site Investigation, reasonably recommend whether or not Owner should proceed with the Project.

**3.3 Reliance on Information.** If a party has participated in the Joint Site Investigation, it may rely upon the completeness and accuracy of the information provided by Owner, to the extent that it is not contradicted by the Joint Site Investigation, any additional documents and reports produced under Article 5, or any information otherwise known by the party.

## **4. BUILDING INFORMATION MODEL**

**4.1 Building Information Modeling Workshop.** The PMT will meet and develop detailed protocols for the use of Building Information Modeling on this Project, which will be documented in a BIM execution plan that is incorporated into the Project Manual. Among other things, the protocols developed will:

4.1.1 Specify where and how the Model will be maintained including the parties with substantive responsibility for controlling the information within specific models or model elements;

4.1.2 Provide minimum hardware and software requirements, including the software (including software revision or build date if applicable) that will be used to develop the Model or Models;

4.1.3 Specify protocols for naming conventions, data structure, version control, roll-back, gate keeping, and archiving;

4.1.4 Establish a common coordinate system and conventions as to units;

4.1.5 Specify the level of detail that will be modeled and incorporate appropriate allowances for differing construction tolerances. Designers are required to design to accurate dimensions in the Model;

4.1.6 Specify when and how information regarding constructability and cost will be derived from the Models and provided to the designers to inform design;

4.1.7 Specify when and how existing site information is incorporated into the Model;

4.1.8 Specify how RFIs, clarifications, Shop Drawing, and Submittal information will be reviewed and incorporated into the Model;

4.1.9 Specify when and how clash detection/conflict resolution sessions will occur;

4.1.10 Determine what information is more efficiently developed and conveyed using traditional 2D design tools and develop protocols for assuring consistency between the BIM and ancillary 2D information;

4.1.11 Specify how the BIM will be updated and function as a Record Model; and

4.1.12 Specify what design information, if any, will be developed or maintained outside of the BIM.

4.1.13 The BIM workshop will be scheduled by the Model Administrator early in the Validation Phase. Any disagreement regarding protocols will be decided by the PMT. The Model Administrator will document the decisions reached in the draft BIM execution plan.

**4.2 Model Administrator.** Each Party is responsible for maintaining any individual design or analysis models and providing their modeling information, at appropriate intervals, to Model Administrator. During the Validation Phase, the PMT will select a Model Administrator who is responsible for receiving modeling information from the Project Participants and incorporating the information into a master BIM. Unless otherwise agreed, the Model Administrator will host and manage the modeling information.

4.2.1 The Parties will utilize all aspects of BIM in their day-to-day operations on the Project, including cost, scheduling, quality, safety, and minimization of interference issues during the Construction Phase.

4.2.2 The PMT will develop a procedure to define and specify software, timing, reviews, accuracy requirements, and management of the Building Information Model for this Project.

**4.3 Modeling Goals.** Use of a Model will provide the Project Participants the best opportunity to incorporate collaboration, communication, understanding, and visualization into their normal project behavior. Generally, to the greatest extent practical, all Project information will be developed and maintained through the use of BIM. The design will be developed in the Model, constructability and cost information will be incorporated through the Model, conflict resolution will occur through the Model, Shop Drawings will be submitted and reviewed through the Model, and the Model will be kept current to reflect as-constructed-conditions. In addition, model elements will contain information relevant to facility operation and maintenance that can be exported to Owner's computerized maintenance management system.

#### **4.4 Ownership of the Building Information Model**

4.4.1 Ownership and Use. All of the Project Documents will remain the sole and exclusive property of Owner. All original Project Documents will be delivered to Owner upon completion of the Work, unless, in the sole opinion of Owner, it is necessary for the Designers, design consultants, Builders, or Design-Build Trades to retain possession for a longer period of time. Owner will have the unrestricted right to use the Project Documents in connection with design and construction of the Project, to later maintain or alter the facilities, to construct the same Project at another site, or any other use whatsoever. Designers, design consultants, Builders, or Design-Build Contractors may retain copies of the Project Documents for their respective records, provided that the Project Documents are not used without Owner's prior written consent. Designers, design consultants, Builders, or Design-Build Trades are not to recreate any designs, or any other tangible work product included in the Project Documents, which if constructed or otherwise materialized, would be reasonably identifiable as a part of this Project or the design expressed in the Project Documents.

4.4.2 Copyrights and Patents to Materials and Designs. Owner retains all rights to all materials or designs developed for this Project. To the extent Work performed under this Agreement produces or includes any copyrightable or patentable materials or design, such materials or designs are work made for hire for Owner as the author, creator, or inventor

upon creation, and Owner will maintain all Intellectual Property rights, title and interest, without limitations, to reproduce any and all parts of such materials or designs. Designers, design consultants, Builders, or Design-Build Trades expressly acknowledge that Owner is the motivating factor for the design and materials used for this Project and therefore has the right to direct and supervise the preparation of any copyrightable or patentable materials or designs developed for this Project.

4.4.3 Indemnification. Owner agrees that if a Project Document created by Designers, design consultants, Builders, or Design-Build Trades is modified by Owner without the architect or engineer of records' consent in connection with this Project or used for another project, and the architect or engineer of record is not retained to provide the Design Services in connection with the modification or the use for another project, Owner will indemnify, defend, and hold the architect and/or engineer of record (as applicable) harmless from and against any and all losses, liabilities, damages, actions, causes of action, costs and expenses, including, without limitation, reasonable attorneys' fees and costs incurred by architect and/or engineer of record arising out of (but only to the extent of) the modification. However, this indemnification obligation will not release the architect of record and/or engineer of record (as the case may be) from liability with regard to this Project for that portion of Project Documents completed by the architect and/or engineer of record, or their respective employees and consultants that were not modified.

4.4.4 Licensing. The Parties grant a non-exclusive, irrevocable, perpetual license to each other to use any BIM information solely for the purpose of designing, analyzing, and constructing this Project and for its future maintenance and remodeling. Provided the Party has not been terminated for convenience or cause, Owner grants each Party a non-exclusive, irrevocable, perpetual license solely for use or display of the Project BIM information for educational or promotional purposes.

4.4.5 Pre-Existing Work. Nothing in this Agreement will vest in Owner any proprietary interest in, or ownership of, any Pre-Existing Work of Designers, Builders, or any of their respective Representatives; provided, however, that if such Pre-Existing Work is incorporated into the Project Documents or the Work, or is otherwise provided to Owner in connection with this Agreement and such Pre-Existing Work is owned by Designers, Contractor, or Builders, then Designers, Contractor, or Builders will grant, and hereby do grant, to Owner and its successors and assigns a non-exclusive, irrevocable, perpetual, transferable (but only (i) to an affiliate, subsidiary, parent or licensee of Owner, (ii) in connection with a merger, consolidation or sale of substantially all of the Project or business to which the Project or this Agreement relates, or (iii) in connection with a sale, lease, renting or other transfer of some or all of the Project), royalty-free, fully paid-up license worldwide to (and to permit others to) fully use such Pre-Existing Work solely in connection with the Project and its future operation, maintenance and renovation, provided that attribution is given to the author in such use any manner and for any purpose as Owner so chooses. Except as expressly set forth herein, Owner may not assign, delegate, sublicense, or otherwise transfer this license to another party (other than an affiliate, subsidiary, or parent of Owner) without the prior written consent of the applicable Party, such consent not to be unreasonably withheld. This limited license is granted only in connection with Pre-Existing Work provided in connection with Work for which the applicable Party has received full payment, unless payment has been withheld pursuant to rights under this Agreement. The authoring company retains all common law, statutory, and other reserved rights, including all



copyrights, in its Pre-Existing Work. To the extent Pre-Existing Work is owned by a consultant or subcontractor, Designers, Contractor, or Builder (as applicable) will obtain all necessary consents, releases and licenses from such consultant or subcontractor to enable the applicable Party to grant the license in this paragraph to Owner and its Representatives in accordance with this Section 4.4.5 to fully use the Pre-Existing Work in any manner and for any purpose as Owner so chooses and, at the request of Owner, Designers, Contractor, or Builders will use its best efforts to cause its consultant or subcontractor to grant directly to Owner and its Representatives in accordance with this Section 4.4.5 a license consistent with that set forth above.

**4.5 Status of the Building Information Model.** The Builders will construct the Project in accordance with the BIM and other Contract Documents deemed necessary by the PMT at the conclusion of the Design/Preconstruction Phase subject to any subsequent modifications. Elements necessary for a fully functional Project, but not modeled due to their size or level of detail, will be provided by the Builders as part of the Construction Work without any change to the Target Cost and with a level of quality consistent with the Project Requirements and the Implementation Documents. It is anticipated that some design information, such as construction details, will not be incorporated into the BIM, but will be provided to the Builders as conventional 2D drawings or CAD files. Subject to the agreed level of modeling, the Model provides controlling dimensional information except where 2D drawings are specifically intended to be prepared at a greater level of accuracy than in the Model. Some design information will only be contained in the written specifications. The BIM, the 2D drawings, and the written specifications are all Contract Documents.

**4.6 Submission of Signed and Stamped Drawings.** 2D drawings, calculations, and specifications must be generated, reviewed, sealed, and submitted to reviewing agencies and applicable Governmental Authorities. The Designers and the Design-Build Trades will each be responsible for, and will sign and stamp, the drawings, specifications, and calculations prepared by them. To the greatest extent possible, the 2D drawings will be generated from the Model.

#### **4.7 Miscellaneous BIM Issues**

4.7.1 Participation by the consultants, vendors, Builders or any subcontractor or supplier, other than Design-Build Trades, in contributing data or advice for use in the BIM will not be deemed a provision of Design Services.

4.7.2 A person may only rely on the substantive information contained within any data in the BIM to the extent appropriate to the level of detail required of the BIM at the time.

4.7.3 Any costs incurred by Owner to rebuild, repair or restore the BIM as a result of the failure of Designers, Builders, or those for whom they are responsible to comply with the provisions of Article 4 and the BIM execution plan will be at the Parties expense and not reimbursable as a Chargeable Cost.

4.7.4 A Project Participant will not be individually responsible for modifications to any BIM data generated by it if the modifications were made by another team member without the creating member's knowledge and approval.

## **5. PROJECT SCHEDULING**

**5.1 Project Scheduling.** All planning and scheduling performed on the Project will use "pull scheduling" techniques pursuant to the Last Planner System™, or an equivalent system. In order to be pull-based, the planning system must be based upon requests from a Project Participant to other Project Participants upon whom the requester's work is dependent, and receipt of reliable promises made by the upstream performer about when it will finish the Work agreed upon per the hand-off criteria, in order to enable the downstream performers to begin their respective portion of the Work. At a minimum, the system must include the Achievement Events included in Exhibit B-5, collaboratively created Lean Phase Plans per Section 5.2 of this exhibit, make-ready work plans per Section 5.3 of this exhibit, and a method for measuring, recording, and improving planning reliability.

**5.2 Lean Phase Planning.** Lean Phase Plans must be based on collaborative planning through direct communications by all Project Participants performing Work in a particular Phase, who, working backwards from the most current approved Achievement Events, create collaborative Lean Phase schedules indicating when their portion of the Work will be completed. Direct communications among Project Participants allows the various parties to make reliable promises to each other, and specifically discuss and negotiate the hand-off criteria or other conditions of satisfaction that are mutually understood and agreed upon, which the Project Participants will memorialize in the Lean Phase Plans.

**5.3 Work Plans.** As part of developing Lean Phase Plans, the PMT, in collaboration with the PITs, will establish a work plan to review upcoming design and construction performance requirements and establish the frequency of look ahead meetings and work plan schedules. The work plan schedules will document all Work performed during the prior week's period and project Work to be performed during the upcoming week(s). The work plans are to be used as a working tool to reflect commitments made in look ahead meetings, evaluate any upcoming constraints or schedule slippages, identify workable backlog and collaborate on methods for labor efficiency. Work flow will be scheduled to optimize the flow of Work through the Project and reduce bottlenecks and activities that will not advance the Contract Time or other Achievement Events.

## **6. OWNER'S SEPARATE CONSULTANTS AND CONTRACTORS**

**6.1 Owner's Separate Contractors and Separate Consultants.** Owner may Separate Contractors or Separate Consultants to perform work and services that are related to Work being performed under the Agreement. Owner is responsible for the timeliness and quality of the work and services of Owner's Separate Consultants and Owner's Separate Contractors. The Parties will coordinate their Work with the work and services of Owner's Separate Consultants and Owner's Separate Contractors and will accommodate the storage of materials and equipment, work and services of Owner's Separate Consultants and Owner's Separate Contractors to effect smooth and efficient workflow and integrated work product. The Contractor will include Owner's Separate Consultants and Contractors in scheduling, conflict resolution, and site safety programs. Owner's Separate Contractors and Separate Consultants will remain responsible and liable for all safety violations arising from their respective work.

**6.2 Execution.** If the execution or result of any part of the Construction Work depends upon any work of Owner's Separate Contractor, each Builder will, prior to execution of its Construction Work, inspect and promptly report to the Contractor and Owner, in writing, any apparent discrepancies or defects in the Separate Contractor's work that render it unsuitable for

the proper execution of the Construction Work. Failure of any Builder to inspect and report deficiencies or defects in a Separate Contractor's work constitutes an acceptance of Owner's Separate Contractor's work as fit and proper to receive the subsequent Construction Work, except for defects that may develop in Owner's Separate Contractor's work after completion of the Construction Work which the Builder could not have reasonably discovered by inspection. The Builders will cooperate with Owner in resolution of any disputes or claims that may arise between a Builder and an Owner's Separate Contractor. All Project related disputes among any of the Parties, and Standard Consultants or Standard Subcontractors will be resolved in accordance with Article 16 of the Agreement. To the extent that the Builder is unable to recover from Owner's Separate Contractor, Owner will be responsible.

## **7. TESTING AND INSPECTIONS**

**7.1 Notice and Preparation for Inspections.** Tests, inspections, and approvals of portions of the Construction Work required by the Contract Documents, or by Applicable Law will be coordinated by the Contractor. When portions of the Project are ready for third party inspection, the Contractor will make arrangements for tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the PMT or with the appropriate Governmental Authority having jurisdiction over the Project. The Contractor will provide the PMT and Governmental Authority not less than 48 hours' notice of when and where tests and inspections are to be made so that the appropriate parties may be present for the procedures. The Builders will provide any labor necessary to make their Construction Work ready for inspection, including labor necessary to uncover and re-cover their Construction Work. The Builders, if applicable, will provide any labor necessary to make their material or equipment ready for inspection.

**7.2 Cost of Inspections.** The cost of inspections is a Chargeable Cost for the Builders, including costs associated with required re-inspection of that Work. However, Standard Subcontractors will bear all costs associated with re-inspection if the re-inspection is caused by the negligence of the Standard Subcontractor or because the Construction Work was not ready for inspection.

**7.3 Covered Work Prior to Inspection.** If a portion of the Construction Work is covered prior to inspection by the proper Governmental Authorities specifically expressed in the Contract Documents, it will be uncovered for inspection and examination by the required Governmental Authorities with jurisdiction over the Project, and be replaced without change in the Target Cost or Contract Time.

## **8. NON-CONFORMING WORK**

**8.1 Rejection of Work.** Owner will reject Construction Work that is not in conformance with the Contract Documents.

**8.2 Cost of Correction.** Non-conforming Construction Work must be promptly corrected, repaired, or replaced. Correction of non-conforming Construction Work that was performed or installed by a Standard Subcontractor will be remedied at the Standard Subcontractor's own expense. If not promptly corrected, repaired, or replaced, Owner or applicable Builder may correct the non-conforming Construction Work and back-charge the Standard Subcontractor. Correction of non-conforming Construction Work prior to Final Completion that was performed or installed by a Builder is a Chargeable Cost.

**8.3 No Waiver.** Neither Owner's failure to note non-conforming Construction Work prior to Project Final Completion, nor its Final Payment under this Agreement will waive any claim by Owner for correction of non-conforming Construction Work.

## **9. SAFETY PRECAUTIONS AND PROGRAMS**

**9.1 Responsibility.** The Contractor and Builders have the responsibilities described, as applicable, in Article 4 of the Agreement. Their safety obligations apply continuously and are not limited to normal working hours. Each Builder must take reasonable precautions for safety of, and will provide reasonable protection to prevent damage, injury, or loss to:

9.1.1 Personnel performing Construction Work and other persons who may be affected by the Construction Work;

9.1.2 Materials and equipment to be incorporated into the Project, whether stored on-site or off-site and whether or not under the care, custody, or control of the Builder, its subcontractors, or lower-tier-subcontractors; and

9.1.3 Other property at or adjacent to the site, such as structures and utilities, not designated for removal, relocation, or replacement in the course of construction.

**9.2 Safety Program and Safety Manager.** The Contractor will develop a written safety program applicable to this Project Site and will designate a director of safety. The director of safety will be responsible for conducting regular site safety meetings for all Project Participants and for monitoring compliance with the safety program.

**9.3 Safety Notices.** The Builders will give notices and comply with Applicable Laws, ordinances, rules, regulations, and lawful orders of Governmental Authorities bearing on safety of persons or property or their protection from damage, injury, or loss.

**9.4 Safety Meetings.** During the Construction Phase, Contractor will hold safety meetings with the Builders and subcontractors to review compliance with the health and safety program.

**9.5 Safety Inspections.** Builders will conduct jobsite inspections to verify that the Construction Work is being performed in a safe and workmanlike manner and in accordance with the health and safety program. Builders will provide written notice to their subcontractors demanding immediate correction of any known safety violation. Builders will also notify Owner of any known safety violations of its Separate Contractors.

**9.6 Emergencies.** In an emergency affecting safety of persons or property, the Builders may act, at their discretion, to prevent or mitigate threatened damage, injury, or loss. Any additional compensation or extension of Contract Time claimed by the Builders on account of an emergency will be determined by the PMT.

**9.7 Accidents.** The Contractor must promptly report, in writing, and as required in the UCIP manual, all accidents arising out of, or in connection with, the Construction Work that result in death, personal injury or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are

caused, the accident must be reported immediately by telephone or messenger to the PMT and to all applicable Governmental Authorities.

**9.8 Fines and Penalties.** Each Builder is responsible for the payment of all fines levied against it or against Owner arising from or related to violation of safety rules, regulations, or statutes except for safety violations arising from Owner's Separate Contractors' work. These fines and penalties are not Chargeable Costs under the Agreement, unless approved by the PMT.

**9.9 Statutory Requirements.** Nothing in this exhibit is intended to substitute any Party's obligation under the *Workers Compensation Act*, RSBC 2019 c 1, or regulations thereunder.

## **10. PROTECTION OF SITE AND ADJACENT PROPERTIES**

**10.1 Site Utilities.** The Contractor will contact a site utility location service and comply with all Applicable Laws, including, without limitation, any and all notifications, searches, and permits required by any Governmental Authorities, before any excavating at the Project Site and the Builders will not undertake any site activities that could damage utilities until they have been located and marked.

**10.2 Adjacent Properties.** The Contractor will give 48 hours' written notice to the PMT before breaking ground, as well as to any other persons having interests on or near the site, including utility companies, adjacent property owners, relevant landlords, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads, or otherwise who may be affected by construction operations, so they may remove any obstruction that they are responsible for and have a representative on-site to see that their property is properly protected.

**10.3 Barriers and Warnings.** The Builders will erect and maintain, as required by existing conditions and performance of the Construction Work, all necessary barricades and signage for safety and protection and will notify owners and users of adjacent sites and utilities.

**10.4 Water Precautions.** If applicable to the Construction Work, the Builder(s) that will perform grading portions of the Work will grade the Project Site as required by the civil design included in the Construction Documents. During construction, the Builders will maintain all of their trenches and excavated areas free from water accumulation and will provide the necessary barriers to protect the Project Site from ponding, running water, and soil erosion. The Builder(s) that will perform grading portions of the Work will provide for increased drainage of storm water and any water that may be applied or discharged on the Project Site during performance of the Construction Work. All drainage facilities will be adequate to prevent damage to the Construction Work, Project Site, and adjacent property. The Builder(s) that will perform grading portions of the Work will construct dikes, if necessary, to divert any increased runoff from entering adjacent property (except in natural channels), to protect Owner's facilities and the Construction Work, and to direct water to drainage channels or conduits. The Builder(s) that will perform grading portions of the Work will provide ponding as necessary to prevent downstream flooding.

**10.5 Pollution Control.** If applicable to the scope of Work, the Contractor and appropriate Builder(s) will work together to prepare a pollution control plan that complies with

Applicable Law to prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris, and other substances and/or soil erosion during construction operations.

10.5.1 No sanitary wastes will be permitted to enter any drain or watercourse other than sanitary sewers. No sediment, debris, or other substance will be permitted to enter sanitary sewers without authorization of the receiving sanitary sewer service, and all possible best management practices will be taken to prevent materials from entering into any drain or watercourse.

10.5.2 If dewatering of excavations is required, appropriate Builder(s) will obtain the necessary permits from local Governmental Authorities for discharge of the dewatering effluent. The appropriate Builder(s) will be responsible for assuring that water quality of the discharge meets the appropriate permit requirements prior to any discharge.

**10.6 Erosion Control.** If applicable to the Construction Work, the appropriate Builder(s) that will perform erosion control portions of the Work will collaborate with the civil engineer during the design process to develop an erosion control plan that is consistent Applicable Law to prevent soil erosion at the Project Site and adjacent property resulting from construction operations. Effective measures will be initiated before commencement of clearing, grading, excavation, or other operations that will disturb the natural protection.

10.6.1 Erosion and sedimentation control practices will include installation of silt fences, straw wattle, soil stabilization, re-vegetation, and runoff control to limit increases in sediment in storm water runoff, including but not limited to, detention basins, straw bales, silt fences, check dams, geo-fabrics, drainage swales, and sand bag dikes.

10.6.2 The Construction Work will be scheduled to expose areas subject to erosion for the shortest possible time, and natural vegetation will be preserved to the greatest extent practicable. Temporary storage and construction buildings will be located, and construction traffic routed, to minimize erosion. Temporary fast-growing vegetation or other suitable ground cover will be provided as necessary to control runoff.

**10.7 Traffic Control.** Contractor will prepare a traffic control plan in accordance with Applicable Law.

10.7.1 Traffic control will include signs, warning lights, reflectors, barriers, and other necessary safety devices and measures, including sufficient flagmen to direct vehicular traffic through the construction areas. No material or equipment will be stored or parked where it will interfere with the free and safe passage of public traffic.

10.7.2 All traffic associated with construction operations including, without limitation, delivery and mail trucks, will enter through the construction site access gate. Contractor will provide signs directing construction and delivery traffic to this gate and will take all necessary steps to minimize inconvenience to Owner, landlord(s), other tenants/occupants, and the general public throughout the construction process. No driveways or private roads will be blocked without notifying the property owner, and access must be restored during all non-working hours.

10.7.3 Safe access must be maintained for pedestrian traffic throughout any public work area at all times.

10.7.4 At least one lane of traffic in each direction on roads used on the Project must be kept open at all times unless prior approval is provided by the PMT and any affected Governmental Authorities. No roads will be blocked or made inaccessible without prior consent of the PMT and the affected Governmental Authorities. Under no circumstances will Builders block or obstruct fire lanes.

**10.8 Security.** Each Party will be responsible for the security of its workers and their tools, materials and equipment located on and moving to and from the jobsite. All tools and equipment belonging to Parties and their Representatives must be clearly identified as such. Parties' responsibility for Work in progress and materials and equipment required for the performance of its obligations under this Agreement will include without limitation the following:

10.8.1 Receiving, unloading, inspecting, and storing materials and equipment in a secure place and in a manner subject to Owner's review and approval. Storage of materials and equipment subject to degradation by the elements must be in weather tight enclosures;

10.8.2 Delivering from storage to the jobsite all required materials and equipment; and

10.8.3 Maintaining complete and accurate records, to be made available for Owner's review, of all materials and equipment received, stored and issued for use in performance of the Work.

**10.9 Loss, Theft, or Damage.** Parties will perform their obligations under this Agreement in a manner so as to avoid exposure to the risk of loss, theft, or damage by vandalism, sabotage, or any other means to any Work, materials and equipment, or other property at the jobsite. Parties will inspect all Work and materials and equipment to determine whether any conditions exist that might involve exposure to such risks and, to the extent such conditions exist, will immediately correct such conditions. Parties will not be entitled to any extension of time or additional compensation on account of Parties' failure to protect any materials and equipment or Work in progress.

**10.10 Approvals and Authorizations.** Parties must plan and conduct their operations and perform the Work so as not to do any of the following unless and until all required approvals and authorizations have been obtained:

10.10.1 Damage, close, or obstruct any utility installation, highway, road, or other property;

10.10.2 Disrupt or otherwise interfere with the operation of any pipeline, communication cable, electric transmission line, or structure; or

10.10.3 Damage or destroy vegetation, trees, plants, shrubs, grass, or any cultivated or planted areas on or adjacent to the jobsite including damage caused by operation of equipment or stockpiling of materials.

## **11. PERMITS AND FEES**

**11.1 Permits and Fees.** The Contractor will secure and pay for the overall building permit and other permits and governmental fees, licenses, and inspections necessary for proper

execution and completion of the Construction Work and that are not otherwise the responsibility of another Builder or subcontractor. The other Builders and subcontractors will be responsible for securing and paying for their individual trade specific permits, licenses, and inspections. Owner will be responsible for any permits or approvals required of Owner by Applicable Laws in order to develop the Project, and the other Parties will provide any necessary assistance. Permits, fees, and inspections are Chargeable Costs, other than those paid directly by Owner.

## **12. HAZARDOUS MATERIALS**

**12.1 Pre-existing Hazardous Conditions.** Except to the extent remediation of existing Hazardous Materials is included in a Builder's scope of work, Owner is responsible for all Hazardous Materials existing at the Project Site prior to commencement of the Construction Work and will separately contract for the remediation of pre-existing Hazardous Materials. Owner will indemnify, defend and hold harmless the other Parties from any claims, damages, and liability to the extent arising from those pre-existing Hazardous Materials. Notwithstanding the above, each Builder will defend, indemnify, and hold harmless Owner and the other Parties from any claims, demands, and liability to the extent arising from that Builder's negligent handling, transporting, treating or disturbing of pre-existing Hazardous Materials, as well as any Hazardous Materials brought onto the Project Site by that Builder or any of its subcontractors or suppliers.

**12.2 Introduction of Hazardous Materials.** Unless specifically required by the Contract Documents, or reasonably required by the construction process, the Builders may not use, introduce to the Project Site, or incorporate into the Project any Hazardous Materials. If Hazardous Materials are specifically required by the Contract Documents, the Builders will take all necessary precautions to protect workers and the public from deleterious exposure to the Hazardous Materials and will properly and lawfully dispose of any residual Hazardous Materials.

**12.3 Reporting of Hazardous Materials Release.** If Hazardous Materials are released at or from the Project Site, the observing Builder will immediately notify the PMT and the Contractor will timely notify all Governmental Authorities having jurisdiction over the release.

## **13. CLEANING UP AND RECYCLING**

**13.1 Material Recycling.** Builders and their subcontractors will comply with any municipal code standards regarding reduction of the amount of waste material generated during construction and reuse/recycle materials where possible. The Project Requirements may impose other green building standards on the Project. The Builders and their subcontractors must comply with any Applicable Laws regarding reduction of the amount of waste material generated during construction and reuse and recycle of construction materials.

**13.2 Cleaning Up.** Builders will keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of their Construction Work, the Builders are responsible for lawfully removing and disposing of waste materials, rubbish, construction tools and equipment, machinery and surplus materials from and about the Project. If the Builders fail to clean up as provided in the Contract Documents, Owner may do so and the cost associated with the clean-up will be allocated by Owner among the Builders without increase to the Target Cost.



## **14. LEAN PRINCIPLES**

**14.1 Lean Construction.** To the extent directed by the PMT, the Parties will utilize Lean principles and techniques as developed or defined by the Lean Construction Institute™ and as generally identified below.

**14.2 Open Communication.** Communication is open, clear, and direct. It is important that all Parties be apprised of information that affects their performance or which they can impact. Whenever possible, communication should be directly between the immediate participants through the most expeditious manner, with information or decisions documented and made available to Project Participants. The goal of communication in Lean is to assure that all Project Participants have a high level of common understanding.

**14.3 Collaboration.** The Parties will freely share concepts and ideas with other Project Participants to improve the overall Project outcome. Within the limits of licensing or professional registration, the Parties will review the Work of other Project Participants and recommend improvements and will openly consider suggestions from other Project Participants regarding the individual Party's Work. Nothing in this paragraph changes a Party's responsibility for its scope of Work or requires the Party to assume responsibility for the Work of others or to engage in Work that requires licensure beyond that required to perform its respective scope of Work.

**14.4 Reliable Promising.** Effective Project planning requires that each Project Participant clearly communicates its needs and must provide reliable promises to other Project Participants with regard to its own performance. If a Project Participant discovers that it will not achieve a promise, it must immediately inform the PMT identifying when it can perform, and any impediments to its performance.

**14.5 Commitment-Based (Pull) Scheduling.** The Achievement Events will be collaboratively developed by the Project Participants based on Owner schedule requirements and realistic durations agreed by those who are primarily responsible for delivering the information, services, or materials for various components of the Project. In making detailed work plans for accomplishing the various Achievement Events, Project Participants will use a planning system based on requests and commitments by Project Participants to each other for information, materials, or resources that the requester needs to accomplish its task by a certain time. This optimizes the flow of Work through the Project by increasing schedule reliability and reducing bottlenecks and activity that does not facilitate achievement of the Achievement Events.

**14.6 Elimination of Waste.** Design or construction effort that does not add value is waste and should be reduced or eliminated. Design effort that is not necessary for construction or for regulatory purposes, should be avoided. Similarly, construction resources and materials that are not incorporated into the completed Project should be reduced or eliminated. The Project Participants will maximize the use of just-in-time delivery of materials and information to reduce waste associated with maintaining inventories.

**14.7 Quality and Reduction in Rework.** Quality is created through careful work, not by inspection and rejection. The Project team will consider innovative ways to design Work that reduces the risk of installation errors. Each Project Participant must strive to accurately complete its Work and should identify any Work that does not meet the Project requirements, so that necessary corrections can be identified and executed before, or at the time, the Work is

being performed. Project Participants should strive to eliminate rework. Contractor will collaborate with the Builders and subcontractors to develop clear and effective procedures for a trade to hand off its work to follow-on trades so that any quality deviations are caught early.

**14.8 Best Person.** Work is performed, to the greatest extent possible, by the organization or individual best capable of performing that Work.

**14.9 Value of Ideas, not Status of Author.** Open communication and collaboration leads to the development of new ideas and concepts. Good ideas can come from any team member and it is the value of the ideas, not the role or status of the author, that determines whether an idea or concept will be used.

**14.10 Optimize the Whole Project, not its Components.** Under the leadership of the PMT, each Project Participant will focus efforts on creating value for the Project as a whole within the Project Requirements. Efforts to optimize any individual team member's portion of the Work must benefit the entire Project to be justifiable.

**14.11 Continuous Improvement.** Lessons learned are generated continuously and used to guide and improve processes while the Project is underway rather than only at its conclusion.

**[END OF EXHIBIT]**

## **EXHIBIT L-1 Owner Provided Insurance**

### **1. OVERVIEW**

Owner will obtain the insurance coverages specified in this Exhibit L-1. Builders and Designers will obtain and maintain the insurance coverages required Exhibits L-2 and L-3, respectively. All policies will be issued by underwriters licensed to conduct business in British Columbia. All policy limits may be satisfied by any combination of primary, excess and umbrella limits. If deductibles, self-insured retentions are incurred prior to Final Completion, they are deemed Chargeable Costs under the Agreement for the purpose of calculating Final Actual Cost. If deductibles, self-insured retentions or retained loss are incurred after Final Completion, they are not Chargeable Costs but are paid by the insured party or parties directly benefiting from the insurance.

### **2. WRAP UP INSURANCE**

#### **2.1 General.**

Owner will obtain Commercial General Liability insurance that jointly names as insureds Owner, Builder, Standard Subcontractors, Designers, Standard Subcontractors and Project Managers, if any.

#### **2.2 Term.**

The policy will be carried from the date of commencement of the work until 24 months from the date of Substantial Performance of the Project.

#### **2.3 Scope.**

The insurance coverage will be on an occurrence bases and at least as comprehensive as the insurance provided by IBC Form 2100 and IBC Form 2320. The insurance will be primary and non-contributing with any other insurance carried by Owner, Builders or Designers. The policy will include an extension for a standard provincial and territorial form of non-owned automobile liability policy.

2.3.1 This policy shall include but not be limited to:

- (a) Cross-liability and severability of interest
- (b) Blanket Contractual
- (c) Products and Completed Operations
- (d) Premises and Operations Liability
- (e) Personal Injury Liability
- (f) Contingent Employers Liability
- (g) Owners and Contractors Protective

- (h) Broad Form Property Damage
- (i) Firefighting Expenses
- (j) Elevator and Hoist Liability
- (k) Attached Machinery – while loading and unloading

2.3.2 If applicable to the Project, coverage will also include shoring, blasting, excavation underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.

2.3.3 If the work involves asbestos removal, the policy will either provide coverage for this exposure or coverage will be provided through a professional liability policy.

## **2.4 Liability Limits and Deductibles**

Coverage	Per Occurrence	Policy Aggregate
General Liability		
Completed Operations		

## **2.5 Cooperation**

Builders, Designers, Standard Subcontractors and Standard Subconsultant will comply with reasonable requirements of the Wrap-Up insurer or insurers regarding, record keeping, reporting of accidents and occurrences, complying with safety programs, and cooperation in the investigation and defence of claims.

## **3. BUILDERS' RISK INSURANCE**

Owner will obtain Broad Form Builders' Risk property insurance in the joint names of the Owner, Builders and Standard Subcontractors.

### **3.1 Policy Limit**

The policy limit will be 1.1 times the sum of the estimated Chargeable Costs of the Builders, contingency associates with the estimated Chargeable Costs and their respective Stipulated Profits at the time the Target Cost is set. If the estimated Chargeable Costs and Stipulated Profits is reduced during the Project, Owner may reduce the policy limit proportionally.

### **3.2 Scope**

The insurance coverages will not be substantially less than the insurance provided by IBC Forms 4042 and 4047 in effect at the time the Target Cost is set. The policy will include permission of occupancy for the purpose intended prior to completion.

### **3.3 Term**

The Builder's Risk insurance will be provided from the commencement of Construction Work until 10 days after Substantial Performance of the Project until the earliest of:

3.3.1 10 calendar days after the date Substantial Performance of the Project is achieved;

3.3.2 Upon conclusion of 30 consecutive calendar days during which the Project has been left unattended; or

3.3.3 Upon conclusion of 30 consecutive calendar days during which no construction activity occurred.

### **3.4 Loss and Adjustment**

#### **3.4.1 Cooperation**

If a loss or damage occurs, Builders and Designers will assist Owner in providing evidence and adjustment of the loss or damage. Owner, at its sole option, may designate Builders or Designers, or some of them, to present and support the Builders' Risk claim.

#### **3.4.2 Payment of Proceeds and Adjustment of Target Cost**

##### **(a) Net Payment**

The Net Payment is the actual proceeds received from the Builders' Risk insurer less Owner's (or the parties designated by Owner) reasonable cost of presenting, prosecuting, and adjusting the claim and less the deductible or retained loss, if any.

##### **(b) Payment**

The policy will provide that payment will be made to Owner, on its behalf and on behalf of the Builders, Designers, Standard Subcontractors and Standard Subconsultants, as their interest appear. Builders, Designers, Standard Subcontractors and Standard Subconsultants agree that if the Target Price is increased by the Net Payment, then Owner will retain the full Net Payment which will be used to pay Chargeable Costs as they are incurred. However, if any portion of the Net Proceeds is paid directly to a Builder, Designer, Standard Subcontractor or Standard Subconsultant then the increase in Target Price, if any, will exclude the amount of the insurance proceeds not paid to the Owner.

## **4. BOILER AND MACHINERY/EQUIPMENT BREAKDOWN**

Owner will obtain Boiler and Machinery/Equipment Breakdown insurance in the joint names of Owner, Builders, Designers, Subconsultants and Subcontractors with a deductible amount agreed by Owner in consultation with the PMT. The coverage will be maintained from commencement of the Construction Work until 10 calendar days after Substantial Performance.

## **5. PROJECT SPECIFIC PROFESSIONAL LIABILITY INSURANCE**

### **5.1 Overview**

Owner will provide Project Specific Professional Liability (PSPL) Insurance that provides defence and indemnity against claims for negligent acts, errors, or omissions in the

performance, or failing to perform, professional services by Designers, Builders, Subconsultants and Subcontractors regarding the Project, subject to the limits, self-insured-retention, conditions, and exclusions of the policy. The policy will be procured on a claims made and reported basis.

## **5.2 Term, Retroactive Date, and Extended Reporting Period**

The PSPL policy term will be no later than the commencement of Construction Work and will continue for \_\_\_\_ years after Substantial Performance of the Work. The policy will have an Extended Reporting Period of \_\_\_\_ years after completion of the policy term and a Retroactive Date no later than the commencement of Design Services under the Agreement.

## **5.3 Rectification or Mitigation [Optional]**

### **5.3.1 Overview**

If the PSPL includes coverage for the rectification or mitigation of design defects, then Owner will be the insured under this coverage and insurer will make all payments under this coverage to owner. A rectification or mitigation claim (Rectification Claim) compensates Owner for the cost of rectifying a design defect, as more completely described in the rectification or mitigation coverage within the PSPL.

### **5.3.2 Net Payment**

All payments for a Rectification Claim will be made directly to Owner. The Net Payment is the amount received by Owner under the rectification or mitigation coverage for a Rectification Claim, less Owner's costs of prosecuting or adjusting the claim.

### **5.3.3 Payment and Adjustment of the Target Cost**

If a rectification or mitigation claim is paid prior to Final Completion, the Target Cost will be increased by the Net Payment and Owner will use the Net Payment to pay Chargeable Costs. If a rectification or mitigation claim is made after Final Completion, the Net Proceeds will be allocated as follows:

(a) If the Final Actual Cost exceeded the Target Cost, Owner retains from Net Proceeds the difference between Final Actual Costs and the Target Cost.

(b) If the Final Actual Costs exceeded the Target Cost, but there are Net Proceeds remaining after Owner's deduction in \_\_\_\_ (Remaining Net Proceeds); then the Remaining Net Proceeds will be distributed to the Builders and Designers in proportion to their ICL percentages until they would receive their full Stipulated Profit. If any Remaining Net Proceeds remains, it will be shared between Owner and the Project Team in accordance with the shared savings percentages under the Agreement.

(c) If Final Actual Cost was less than or equal to the Target Cost, the Remaining Net Proceeds are shared between Owner and the Project Team in accordance with the shared savings percentages under the Agreement.

**End of Exhibit**

## **EXHIBIT L-2 Builder Provided Insurance**

### **1. OVERVIEW**

Contractor must obtain and maintain the insurance coverages required by this Exhibit. All defined terms have the same meaning as used in the Agreement.

#### **1.1 Term**

The insurance coverages must commence no later than the date of execution of the Agreement and continue until completion of the Warranty period. If Professional Liability is required, it must be maintained for 6 years after Substantial Performance.

##### **1.1.1 Completed Operations**

Completed operations coverage under Contractor's General Liability policy must continue for 24 months after Substantial Performance.

#### **1.2 Insurers**

All insurers providing coverage must be licensed to issue insurance policies in the province where the Project is located and where any Construction Work is performed.

#### **1.3 Stacking of policies**

Excess and umbrella policies may be used to achieve the required limits of liability.

#### **1.4 Insurance Amounts are not Limitations**

This Exhibit establishes the minimum insurance required by the Agreement, but does not limit, in any way, Contractor's liability under the Agreement or at law, nor does it create any limit on Contractor's obligation to indemnify Parties, to the extent required by the Agreement.

#### **1.5 Additional Insureds**

1.5.1 Scope. Contractor must have the following persons and organizations added as additional insureds to the insurance policies required by this Exhibit, except Professional Liability, Contractor's Equipment, and Worker's Compensation.

##### **1.5.2 Additional Insureds**

- (a) Owner, its officers, directors, and employees;
- (b) [Add, affiliates, lenders, or other additional insureds].

#### **1.6 Waiver of subrogation**

Except for professional liability, the insurance provided by Contractor must waive all rights of subrogation against the Additional Insureds in Section 1.5.2 and the Parties to the Agreement, and their officers, directors, partners, and employees.

## 1.7 Certificates of Insurance

Contractor must provide Owner with certificates evidencing the insurance required by this Exhibit no later than 10 days after execution of the Agreement. The certificate must identify each insurer, its liability limit, whether it is primary, excess or umbrella, the policy number, the inception date and the renewal or expiration date for the policy. If any policy expires or must be renewed before the Term stated in Section 1.1, Contractor must provide Owner, prior to expiration of any policy, with certificate of insurance evidencing the uninterrupted continuation of coverage required by this Exhibit.

## 2. LIMITS AND DEDUCTIBLES

The minimum liability limits and the maximum deductible amounts are set forth in Table 1, below.

**Table 1: Insurance Limits and Deductibles**

Type	Liability Limit <sup>1</sup>	Aggregate Liability	Deductible <sup>2</sup>
General Liability	\$10,000,000	\$10,000,000	\$25,000
Automobile Liability	\$10,000,000	\$10,000,000	\$25,000
Aircraft & Watercraft	\$10,000,000	\$10,000,000	10,000
Unmanned Aerial Vehicle	\$5,000,000	\$5,000,000	10,000
Contractor's Pollution Liability	\$5,000,000	\$5,000,000	25,000
Professional Liability	\$10,000,000	\$10,000,000	\$50,000
<sup>1</sup> Liability limits are per occurrence, per accident, or per claim, as applicable.			
<sup>2</sup> Self-insured retention for professional liability.			

## 3. GENERAL LIABILITY

Contractor must obtain and maintain general liability insurance providing coverage equal or better than the coverage afforded by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. The policy must provide coverage for completed operations for the period defined in Section 1.1.1.

If Owner provides wrap-up insurance providing general liability coverage for Contractor, Contractor's insurance will be excess of the wrap-up insurance, if the wrap-up insurance and contractor's insurance co-insure, but will be primary in all instances where the wrap-up insurance does not provide coverage for an occurrence or accident.

## 4. AUTOMOBILE LIABILITY

Contractor must obtain and maintain automobile liability insurance for all vehicles that are owned or leased by Contractor that are required by law to be insured under a contract by a Motor Vehicle Liability Policy. The policy must provide coverage for bodily injury, death, and damage to property. If the policy has been issued pursuant to a government-operated automobile insurance system, the Contractor must provide the Owner with confirmation of automobile insurance coverage for all automobiles registered in Contractor's name.



## **5. AIRCRAFT AND WATERCRAFT LIABILITY**

If aircraft or watercraft are directly or indirectly used in the performance of the Construction Work, Contractor must obtain and maintain aircraft and watercraft liability for owned and non-owned aircraft or watercraft for bodily injury, death, and damage to property, including loss of use, with limits and deductibles as set forth in Table 1. The aircraft passenger hazard limit must be equal to the liability limit. Aircraft and Watercraft Liability insurance must be in a form acceptable to Owner.

## **6. UNMANNED AERIAL VEHICLE LIABILITY**

If unmanned aerial vehicles (UAV) are directly or indirectly used in the performance of the Construction work, Contractor must obtain for owned and non-owned UAVs insurance for bodily injury, death, and damage to property, including loss of use, with limits and deductibles as set forth in Table 1.

## **7. CONTRACTOR'S POLLUTION LIABILITY INSURANCE**

Contractor must obtain and maintain contractor's pollution liability insurance providing coverage for bodily injury, death, and damage to property.

## **8. CONTRACTOR'S EQUIPMENT INSURANCE**

Contractor acknowledges that Owner's insurance does not provide coverage to Contractor for loss or damage to its equipment and Contractor waives any claim against Owner for these losses. Contractor represents that it has or will obtain contractor's equipment insurance coverage on an "all risks" basis that does not allow subrogation claims by the insurer against the Owner.

## **9. PROFESSIONAL LIABILITY**

If Contractor's work scope includes design as well as construction of specific systems, and Owner does not provide a Project Specific Professional Liability policy, either Contractor, or the subcontractor providing the Design Services, must obtain and maintain professional liability insurance meeting the requirements of Exhibit L-3 and with liability limits, terms, extended reporting period, and self-insured retentions agreed by Owner in writing.

## **10. SUBCONTRACTORS**

[Contractor's subcontractors must provide insurance that complies with the provisions of this Exhibit, except that the limits of liability, deductibles or self-insured retentions will be agreed between Owner and Contractor.]

[Contractor's subcontractors must provide insurance that complies with the provisions of this exhibit, except that the limits of liability, deductibles or self-insured retentions are specified in Table 2, below.]

**Table 2: Subcontractor Insurance**

Type	Liability Limit <sup>1</sup>	Aggregate Liability	Deductible <sup>2</sup>
General Liability	10,000,000	10,000,000	25,000
Automobile Liability	10,000,000	10,000,000	25,000
Aircraft & Watercraft	5,000,000	5,000,000	10,000
Unmanned Aerial Vehicle	5,000,000	5,000,000	10,000
Contractor's Pollution Liability	5,000,000	5,000,000	25,000
Professional Liability	5,000,000	5,000,000	50,000
<sup>1</sup> Liability limits are per occurrence, per accident, or per claim, as applicable.			
<sup>2</sup> Self-insured retention for professional liability.			

## **11. WORKERS' COMPENSATION**

1.1.1 Contractor will, and will require its Subcontractors, to always be in full compliance with all Applicable Laws related to workers compensation at the Project and anywhere that Construction Work is being performed.

Contractor must indemnify, defend, and hold harmless the Additional Insureds from and against all claims, demands, losses, costs, damages, actions, or proceedings by any employee of Contractor or its subcontractors, or by WorkSafeBC with respect to workers' compensation insurance. This indemnification survives the completion of the Work or the termination, for any reason, of the Agreement.

**End of Exhibit**

## **EXHIBIT L-3 Designer Provided Insurance**

### **1. OVERVIEW**

Designer must obtain and maintain the insurance coverages required by this Exhibit. All defined terms have the same meaning as used in the Agreement.

#### **1.1 Term**

The insurance coverages must commence no later than the date of execution of the Agreement and continue until completion of the Warranty period. If Professional Liability is required, it must be maintained for 6 years after Substantial Performance.

##### **1.1.1 Completed Operations**

Completed operations coverage under Designer's General Liability policy must continue for 24 months after Substantial Performance.

#### **1.2 Insurers**

All insurers providing coverage must be licensed to issue insurance policies in British Columbia.

#### **1.3 Stacking of policies**

Excess and umbrella policies may be used to achieve the required limits of liability.

#### **1.4 Insurance Amounts are not Limitations**

This Exhibit establishes the minimum insurance required by the Agreement, but does not limit, in any way, Designer's liability under the Agreement or at law, nor does it create any limit on Designer's obligation to indemnify Parties, to the extent required by the Agreement.

#### **1.5 Additional Insureds**

1.5.1 Scope. Designer must have the following persons and organizations added as additional insureds to the insurance policies required by this Exhibit, except Professional Liability, Designer's Equipment, and Worker's Compensation.

##### **1.5.2 Additional Insureds**

- (a) Owner, its officers, directors, and employees;
- (b) [Add, affiliates, lenders, or other additional insureds].

#### **1.6 Waiver of subrogation**

Except for professional liability, the insurance provided by Designer must waive all rights of subrogation against the Additional Insureds in Section 1.5.2 and the Parties to the Agreement, and their officers, directors, partners, and employees.

## **1.7 Certificates of Insurance**

Designer must provide Owner with certificates evidencing the insurance required by this Exhibit no later than 10 days after execution of the Agreement. The certificate must identify each insurer, its liability limit, whether it is primary, excess or umbrella, the policy number, the inception date and the renewal or expiration date for the policy. If any policy expires or must be renewed before the Term stated in Section 1.1, Designer must provide Owner, prior to expiration of any policy, with certificate of insurance evidencing the uninterrupted continuation of coverage required by this Exhibit.

## **2. LIMITS AND DEDUCTIBLES**

The minimum liability limits and the maximum deductible amounts are set forth in Table 1, below.

***Table 1: Insurance Limits and Deductibles***

Type	Liability Limit <sup>1</sup>	Aggregate Liability	Deductible <sup>2</sup>
General Liability	\$10,000,000	\$10,000,000	\$25,000
Automobile Liability	\$10,000,000	\$10,000,000	\$25,000
Professional Liability	\$10,000,000	\$10,000,000	\$50,000
<sup>1</sup> Liability limits are per occurrence, per accident, or per claim, as applicable.			
<sup>2</sup> Self-insured retention for professional liability.			

## **3. GENERAL LIABILITY**

Designer must obtain and maintain general liability insurance providing coverage equal or better than the coverage afforded by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. The policy must provide coverage for completed operations for the period defined in Section 1.1.1.

If Owner provides wrap-up insurance providing general liability coverage for Designer, Designer's insurance will be excess of the wrap-up insurance, if the wrap-up insurance and Designer's insurance co-insure, but will be primary in all instances where the wrap-up insurance does not provide coverage for an occurrence or accident.

## **4. AUTOMOBILE LIABILITY**

Designer must obtain and maintain automobile liability insurance for all vehicles that are owned or leased by Designer that are required by law to be insured under a contract by a Motor Vehicle Liability Policy. The policy must provide coverage for bodily injury, death, and damage to property. If the policy has been issued pursuant to a government-operated automobile insurance system, the Designer must provide the Owner with confirmation of automobile insurance coverage for all automobiles registered in Designer's name.

## **5. PROFESSIONAL LIABILITY**

If Owner provides a Project Specific Professional Liability Policy (PSPL) that insures Designer and its Subconsultants against claims arising from negligent acts, errors, and omissions in their performance of professional services for the Project, then Designer and its Subconsultants need

not provide professional liability insurance for this Project. If they choose to have professional liability insurance in addition to the PSPL, they may do so, but at their sole cost.

If Owner does not provide a PSPL, Designer and its Subconsultants must obtain and maintain professional liability insurance with the minimum liability limits and maximum self-insured retentions specified in this Exhibit. The professional liability insurance must have a retroactive date that precedes any Design Services for this Project and an extended reporting period of at least 30 days after policy expiration. If the professional liability policy expires during pendency of the Project, or for a period of 6 years after Final Completion, Designer and its Subconsultants must renew or replace the professional liability policy with a policy of equivalent terms, retroactive date, liability limits and self-insured retentions to assure continuous coverage from inception of Design Services through 6 years after Final Completion.

## **6. SUBCONSULTANTS**

[Designer's Subconsultants must provide insurance that complies with the provisions of this Exhibit, except that the limits of liability, deductibles or self-insured retentions will be agreed between Owner and Designer.]

[Designer's Subconsultants must provide insurance that complies with the provisions of this Exhibit, except that the limits of liability, deductibles or self-insured retentions are specified in Table 2, below.]

**Table 2: Subconsultant Insurance**

Type	Liability Limit <sup>1</sup>	Aggregate Liability	Deductible <sup>2</sup>
General Liability	10,000,000	10,000,000	25,000
Automobile Liability	10,000,000	10,000,000	25,000
Professional Liability	5,000,000	5,000,000	50,000
<sup>1</sup> Liability limits are per occurrence, per accident, or per claim, as applicable.			
<sup>2</sup> Self-insured retention for professional liability.			

## **7. WORKERS' COMPENSATION**

1.1.1 Designer will, and will require its Subconsultants, to always be in full compliance with all Applicable Laws related to workers compensation at the Project and anywhere that Design Services are being performed. If Design Services are being performed outside of British Columbia, Designer represents and warrants that it has obtained Workers' Compensation and Employer Liability Insurance as required or usual at Designer's offices outside of British Columbia.

Designer must indemnify, defend, and hold harmless the Additional Insureds from and against all claims, demands, losses, costs, damages, actions, or proceedings by any employee of Designer or its Subconsultants, or by WorkSafeBC, or similar Workers' Compensation regulators with jurisdiction over Designer's operations, with respect to workers' compensation insurance. This indemnification survives the completion of the Project or the termination, for any reason, of the Agreement.

**End of Exhibit**

**Integrated Form of Agreement**  
**Exhibit M – Key Employees**

<b>Company</b>	<b>Title</b>	<b>Name</b>

**[END OF EXHIBIT]**