

BRITISH COLUMBIA HOUSING
SUPPLEMENTARY GENERAL CONDITIONS TO THE STIPULATED PRICE
CONTRACT (DS)

CCDC2 - 2008

(DESIGN-TENDER)

April 2009 Version

The Agreement is amended as follows:

ARTICLE A-1 THE WORK

Add:

“1.4 The *Owner* requires that the *Contractor* and its *Subcontractors* participate in the BladeRunners program. The level of involvement with the program will be developed in consultation with the BladeRunners Provincial Coordinator and the program’s local Project Coordinator.

The objective of the program is to provide entry level work experience and training in the construction industry for individuals who are employment disadvantaged.

The BladeRunners program provides wage funding assistance available to the employer and ongoing support will be provided by the BladeRunners Provincial Coordinator to employers and BladeRunners placed-participants during the term of their work on the *Project*.

The following conditions shall apply to participation in the program:

- .1 the *Contractor* is required to contact the BladeRunners Provincial Coordinator prior to the start of construction to review the *Contractor’s* participation. Contact the Provincial Coordinator at telephone (604) 688-9116; and
- .2 the individuals selected for placement from the BladeRunners program will be employees of each *Contractor* or *Subcontractor* and may be registered as apprentices if working in a trade area."

ARTICLE A-3 CONTRACT DOCUMENTS

3.1

Add:

- “• The Supplementary General Conditions of the Stipulated Price Contract.”

Add:

“ARTICLE A-9 TIME OF THE ESSENCE

“9.1 All time limits stated in this *Contract* are of the essence of the *Contract*.”

DEFINITIONS

20. **Substantial Performance of the Work**

Delete and replace with the following:

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

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

Add:

"27. **BC Housing**

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

28. **Builders Lien Act**

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

29 **Certificate of Completion**

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

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC1.4 ASSIGNMENT

Add:

“1.4.2 Notwithstanding paragraph 1.4.1, the *Owner* may assign its interest in the *Contract* and any of its rights and remedies available at law to *BC Housing* at any time without the consent of the *Contractor*.”

PART 3 EXECUTION OF THE WORK

GC3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

3.2.2.2 Delete.

Add:

“3.2.7 If the *Contractor* has caused damage to the work of another contractor on the Project, the *Contractor* agrees to settle the matter with the other contractor by negotiation or arbitration. If the other contractor makes a claim against the *Owner* on account of damage alleged to have been so sustained, the *Owner* shall notify the *Contractor* and may require the *Contractor* to defend the action at the *Contractor's* expense. The *Contractor* shall satisfy a final order or judgment against the *Owner* and pay the costs incurred by the *Owner* arising from such action. Paragraph 12.1.6.2 of GC 12.1 INDEMNIFICATION shall apply.”

GC3.7 SUBCONTRACTORS AND SUPPLIERS

3.7.2 Delete and replace with the following:

"Subject to paragraph 3.7.3, the *Contractor* agrees to employ only those *Subcontractors* proposed in writing, including the *Contractor's* own forces, if any, and accepted by the *Owner* with the acceptance of the tender or on entering into this *Contract*. The *Contractor* shall not change any *Subcontractor* without cause and without the written consent of the *Owner*, which consent will not be unreasonably withheld."

GC3.11 USE OF THE WORK

Add:

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

PART 5 PAYMENT

GC5.2 APPLICATIONS FOR PROGRESS PAYMENT

5.2.3 In line 2, after *Place of Work*, add “,which in the opinion of the *Consultant* will be installed within 30 calendar days of delivery, unless agreed otherwise.”.

Add:

5.2.8 The *Contractor* shall submit one copy of all applications for payment and all applications for payment, except the first, shall be accompanied by a form of statutory declaration approved by the *Owner* completed and sworn before a Notary Public or a Commissioner for Oaths for the Province of British Columbia, which statutory declaration must include a statement that all accounts for labour, subcontracts, *Products*, construction machinery and equipment and other indebtedness which may have been incurred by the *Contractor* in the performance of the *Work* covered by the immediately preceding progress claim, and for which the *Owner* might in any way be held responsible, have been paid in full, except holdback monies properly retained.

5.2.9 Every application for payment shall identify the *Value Added Taxes* payable by the *Owner* to the *Contractor* as a separate entry."

GC5.3 PROGRESS PAYMENT

5.3.1.2 Add at the end:

"No certificate for payment will be issued for any of the *Work* and no payment shall be approved, authorized or made unless the *Contractor* has provided all documents as required to be provided at that time under this *Contract* or as otherwise reasonably required by the *Consultant* for the *Consultant* to determine the amount properly due.

5.3.1.3 Delete and replace with the following:

“The *Owner* shall make payment of 90% of the amount as determined by the *Consultant* to be due to the *Contractor* on account in accordance with the provisions of Article A-5 PAYMENT no later than 20 calendar days after the certificate for payment has been issued, provided that the *Owner*, at its sole and absolute discretion, may retain out of such payment the amount of any outstanding liens or claims or any other indebtedness which may have been incurred by the *Contractor* in performing the *Work* and for which the *Owner* may in any way be held responsible. "Other indebtedness" means only such debts incurred by the *Contractor* to persons in privity of contract with the *Contractor*, debts arising out of statutory requirements and, in the case of the *Contractor's* workers, any debts arising out of collective bargaining agreements, legislation applying to workers compensation, employment insurance and minimum wage standards where applicable. Upon request by the *Owner*, the *Contractor* shall forthwith provide a full accounting as to the disbursement of all monies paid by the *Owner* to the *Contractor*, including a complete list of all persons to whom monies remain due and the amounts due."

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

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

Add at the end of paragraph 5.4.1:

“The *Contractor* shall submit the following documents with their request for *Substantial Performance* review by the *Consultant*. These requirements do not limit the *Contractor’s Substantial Performance* obligations noted elsewhere in the *Contract*. A deficiency holdback will be retained for the estimated value of the following items until they are submitted, reviewed and accepted by the *Consultant*:

- .1 the list of all deficient and incomplete items of work including the estimated value of each item;
- .2 complete reports including a balancing report for the mechanical system and certification by all testing, cleaning or inspection authorities or associations as specified in the *Contract Documents*;
- .3 a complete demonstration of all mechanical and electrical systems and electrically-operated devices to the *Owner's* operating and maintenance staff and any training required by the specifications, to the *Owner's* satisfaction;
- .4 all maintenance manuals, operating instructions, maintenance and operating tools, replacement parts or materials and warranties as specified in the *Contract Documents*;
- .5 a complete set of marked up construction drawings and other data in the form specified in the *Contract Documents*, or as required by the *Consultant*, for the production of as built drawings to show all significant *Changes to the Work* made during construction;
- .6 current certification by the Workers Compensation Board that the *Contractor* and all *Subcontractors* are in good standing;
- .7 a statement that all claims and demands for extra work or otherwise, under or in connection with the *Contract*, have been presented to the *Consultant* and that the *Contractor* expressly releases the *Owner* from all claims and demands except those made in writing prior to that date and still unsettled;
- .8 a statutory declaration in accordance with the Construction Contract;
- .9 an updated survey of the Place of the Work prepared by a British Columbia Land Surveyor confirming the exact area of the property, the location of all registered easements or statutory rights of way, and confirming that the position of the buildings, including foundations and overhangs, building heights and finish grades comply with all municipal requirements;

.10 all keys required for the entire *Project*;

5.4.2 Delete and replace with the following:

"Upon receipt of the *Contractor's* request for issuance of a *Certificate of Completion* for all or a designated portion of the *Work*, the *Consultant* will forthwith review the *Work* to verify the validity of the request and no later than 10 working days after the date of the request, will notify the *Contractor* and the *Owner* whether the *Work*, or the designated portion of the *Work*, is substantially performed by delivery of the applicable *Certificate of Completion* for the *Work*. With respect to a request from the *Contractor* for a review by the *Consultant* for issuance of the *Certificate of Completion* for the *Work* in its entirety, the *Consultant* will, in addition to making an inspection and assessment of the *Work* to verify the validity of the request, establish a list of all deficient and incomplete items of work including an estimated value for each item, subject to the approval of such value by the *Owner*. The *Contractor* shall be responsible for all additional costs incurred by the *Owner* for inspection of the *Work* prior to the *Contractor* meeting all requirements set out in paragraph 5.4.1, and such costs shall be deducted from the monies due to the *Contractor* upon *Substantial Performance of the Work*."

Add:

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

5.4.5 No later than 20 calendar days following issuance of the *Certificate of Completion* for the *Work*, the *Owner* shall pay to the *Contractor* the balance of the *Contract Price* less:

- .1 any holdback monies as required by the *Builders Lien Act* to be retained and released in accordance with GC5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK;
- .2 the aggregate amount, if any, determined pursuant to paragraph 5.4.2 multiplied by two; and
- .3 the amount, if any, determined pursuant to GC5.8 WITHHOLDING OF PAYMENT;

and until all of the deficient and incomplete work for which amounts are withheld pursuant to subparagraphs .2 and .3 of this paragraph 5.4.5 are rectified and completed to the satisfaction of the *Consultant*, the *Owner* may withhold the full amounts set out in subparagraphs .2 and .3 of this paragraph 5.4.5 respectively."

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

5.5.1 In line 1, delete "the certificate of *Substantial Performance of the Work*" and replace with "the *Certificate of Completion* for the *Work*".

5.5.2 Delete and replace with the following:

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

5.5.3 Delete.

5.5.5 Delete.

GC5.6 PROGRESSIVE RELEASE OF HOLDBACK

5.6.1 In lines 1 and 2, delete:

“, upon application by the *Contractor*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*”

and replace with the words:

“the *Consultant* has pursuant to paragraph 5.5.2 issued a *Certificate of Completion* for the work of a *Subcontractor* or *Supplier*,”

5.6.2 Delete.

GC5.7 FINAL PAYMENT

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

Add at the end thereof:

"less any monies properly retained by the *Owner* pursuant to the terms of this *Contract* and less any other third party monetary claims against the *Contractor* which are enforceable against the *Owner*."

PART 6 CHANGES IN THE WORK

GC6.1 CHANGES

Add:

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

6.2 CHANGE ORDER

6.2.1 Add at the end:

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

- .1 For *Contractor*, for overhead and profit, 10% of the actual cost of the *Contractor's* work;
- .2 For *Contractor*, for overhead and profit, 5% of the amount for *Subcontractor's* work, being the actual cost of the *Subcontractor's* work plus the amount determined as set out in .3 below;
- .3 For *Subcontractor*, for overhead and profit, 10% of the actual cost of the *Subcontractor's* work.”

Add:

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

GC6.3 CHANGE DIRECTIVE

6.3.6.3 Delete and replace with the following:

“Unless otherwise agreed between the *Owner* and the *Contractor*, the allowance for overhead and profit shall be calculated as follows:

- .1 For *Contractor*, for overhead and profit, 10% of the actual cost of the *Contractor's* work;
- .2 For *Contractor*, for overhead and profit, 5% of the amount for *Subcontractor's* work, being the actual cost of the *Subcontractor's* work plus the amount determined as set out in .3 below;

- .3 For *Subcontractor*, for overhead and profit, 10% of the actual cost of the *Subcontractor's* work."

GC6.4 CONCEALED OR UNKNOWN CONDITIONS

Add:

- "6.4.5 The *Contractor* warrants and represents that it is acquainted with the site comprising the *Place of the Work* having physically inspected such site and reviewed all reports thereon included within the *Contract Documents*."

GC6.5 DELAYS

Add:

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

PART 7 DEFAULT NOTICE

GC7.1 OWNER'S RIGHT TO PERFORM THE WORK, STOP THE WORK, OR TERMINATE THE CONTRACT

- 7.1.1 In line 1, after the word "bankrupt", insert "commits an act of bankruptcy or threatens to commit an act of bankruptcy,"

Add:

- "7.1.7 If the *Owner* terminates the *Contractor's* right to continue with the *Work* in whole or in part or terminates the *Contract*, the *Contractor* shall at the *Contractor's* expense, safeguard the *Work* then completed and the materials and equipment then delivered to the *Place of the Work* and do such other extra work as may be ordered by the *Consultant* for the purpose of leaving the *Work* in a safe and useful condition.
- 7.1.8 Except as provided in paragraphs 7.1.5.3 and 7.1.5.4, the *Contractor* shall have no claim or right of action against the *Owner* for any damages, costs, expenses, loss of profits or otherwise as a result of the termination by the *Owner* of the *Contractor's* right to continue with the *Work* in whole or in part or the termination by the *Owner* of the *Contract*."

GC7.2 CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT

7.2.3.1 Delete.

7.2.3 Add the following to 7.2.3 as a new paragraph following paragraph 7.2.3.4:

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

7.2.4 In line 2, delete the number "5" and replace with the number "20".

Add at the end:

"provided that if the default is of the nature set out in paragraph 7.2.3.4 and such default cannot be reasonably corrected within 20 *Working Days*, the *Owner* shall no longer be considered to be in default if the *Owner*:

- .1 provides the *Contractor* with a reasonable schedule for correction within 20 *Working Days*; and
- .2 corrects the default in accordance with such schedule."

PART 8 DISPUTE RESOLUTION

GC8.2 NEGOTIATION, MEDIATION AND ARBITRATION

Add:

"8.2.9 Unless both parties agree, the *Contractor* shall not stop the *Work*, or any part of the *Work*, pending the resolution of any dispute under the *Contract* between the parties."

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC9.2 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

9.2.1 Add:

"and the *Contractor* shall be deemed to have control and management of the *Place of the Work* with respect to any toxic or hazardous substances or materials which may be brought on to the *Place of the Work* by the *Contractor* or its *Subcontractors*."

9.2.5.4 Add:

"and take all necessary steps in accordance with the instructions of the *Consultant* and all applicable legislation to treat, store or otherwise dispose of the substances or materials."

Delete and replace with the following:

9.2.8.4 The *Contractor* shall indemnify and hold harmless the *Owner*, the *Consultant*, their agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which are brought on to the *Place of the Work* by the *Contractor* or its *Subcontractors*. This obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in GC 12.1 - INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph."

GC9.4 CONSTRUCTION SAFETY

9.4.1 In line 1, delete "subject to paragraph 3.2.2.2 of GC3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS,"

PART 10 GOVERNING REGULATIONS

GC10.1 TAXES AND DUTIES

Add:

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

GC10.2 LAWS, NOTICES, PERMITS AND FEES

Add:

"10.2.8 The *Contractor* shall provide to the *Consultant* copies of all inspection reports from the various authorities having jurisdiction forthwith as they are received from time to time."

GC10.4 WORKERS COMPENSATION

10.4.1 In line 3, after the word "compliance" insert "by the *Contractor* and *Subcontractors*".

Add:

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

PART 11 INSURANCE - BONDS

GC11.1 INSURANCE

11.1 Delete in its entirety and replace with the following:

"11.1.1 The *Owner* shall obtain, maintain and pay for, through *BC Housing*, the following types of insurance coverages described in this 11.1.1 issued by insurance companies licensed to carry on business in British Columbia:

.1 Course of Construction Policy

- (1) The policy shall cover "all risks" of direct physical loss or damage to the property described in (2)(a) below, including the perils of earthquake and flood, subject to customary exclusions.
- (2) The policy shall:
 - (a) be written in the joint names of the *Owner*, the fee simple owner of the *Place of the Work*, *BC Housing*, the *Contractor* and *Subcontractors*, consulting architects, sub consultants, engineers, *suppliers* who perform work at the *Place of the Work*.
 - (b) cover all property forming part of the *Project*, including goods and materials to be incorporated in the *Project* while in storage at the *Place of the Work* or in transit to the *Place of the Work* and within Canada or the U.S.A., including while on a ferry, railway car or transfer barge in connection with land transportation thereof, but such coverage shall not include coverage for the *Contractor's* construction machinery and equipment of any description; and
 - (c) Provide for a limit of coverage not less than the estimated final completed value of the *Project*, with a sub-limit of \$1,000,000 Transit.
- (3) Each claim under the foregoing insurance shall be adjusted separately.

- (4) Claims under the foregoing insurance shall be subject to a deductible of \$10,000 for each and every claim, except for projects with a project value in excess of \$10,000,001, in which case the deductible shall be \$25,000 and, except for the following perils, which shall be subject to the following higher deductibles:
 - (a) \$100,000 for any one loss or series of losses arising out of the peril of flood;
 - (b) 5% of the value of the *Project* at the time and place of loss when the loss arises as a consequence of the peril of earthquake shock, with a minimum deductible of \$250,000;
 - (c) \$25,000 for water damage to interior of building;
 - (d) \$50,000 for testing and commissioning.
- (5) In addition, a minimum waiting period of 1 day for each month of the project term, subject to a minimum of 30 calendar days, shall apply to costs and expenses described in the insurance policy as “soft costs”.
- (6) The foregoing insurance shall be maintained continuously from commencement of the *Work* until *Substantial Performance of the Work*.
- (7) The foregoing insurance shall contain a waiver of the insurer’s subrogation rights against all insureds and their officers, employees and servants, except where a loss is caused by or results from any error or omission in design or any other professional error or omission.
- (8) The foregoing insurance shall provide that, in the event of loss or damage, payment shall be made to *BC Housing* and the *Owner* on their own behalf and on behalf of any and all insureds.
- (9) Exclusions under the foregoing insurance will be as prescribed by the insurer.
- (10) The Contractor shall, at the Contractor’s own expense, comply with all insurance warranties applicable to the foregoing insurance, including watchman, open flame, fence, fire hydrant and hot works operations.

.2 **Wrap Up Liability Policy**

- (1) This shall be a wrap up liability policy that shall:
 - (a) be written in the joint names of the *Owner*, the fee simple owner of the *Place of the Work*, *BC Housing*, the *Contractor* and *subcontractors, consulting engineers, sub consultants or consulting architects and suppliers who perform work at the Place of the Work* provided however that such policy shall exclude

Suppliers whose only function is to supply materials, machinery or other supplies to the project and who do not carry out any installation, construction, or supervisory work on the project and shall exclude security protection organizations or persons providing site protection on or at the project.

- (b) provide the following coverages:
- (i) Premises and Operations Liability;
 - (ii) Products and Completed Operations Liability;
 - (iii) Blanket Contractual Liability;
 - (iv) Cross Liability;
 - (v) Elevator and Hoist Liability;
 - (vi) Contingent Employer's Liability;
 - (vii) Personal Injury Liability;
 - (viii) Shoring, Blasting, Excavating, Underpinning, Demolition, Pile driving and Caisson Work, Work Below Ground Surface, Tunneling and Grading, as applicable;
 - (ix) Broad Form Completed Operations;
 - (x) Broad Form Property Damage; and
 - (xi) Employees as Additional Insureds,

provided however that the insurance does not extend to any activities, work, jobs or undertakings of the insureds other than those directly related to the *Work* under this *Contract*; and

- (c) Provide for a limit of liability not less than \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, subject to a general aggregate limit of \$20,000,000 and a limit of liability not less than \$10,000,000 annual aggregate for completed operations.
- (2) Exclusions under the foregoing insurance will be as prescribed by the insurer.
 - (3) Each claim under the foregoing insurance shall be adjusted separately.
 - (4) Claims under the foregoing insurance shall be subject to a deductible of \$10,000 for each and every claim, except with respect to hot roofing activities, the deductible shall be \$50,000.00.
 - (5) The foregoing insurance shall be maintained continuously from commencement of the *Work* until the insured project is completed and accepted by or on behalf of the owner, provided that the Broad Form Completed Operations coverage shall be maintained for 24 months.

11.1.2 The Contractor shall be responsible for deductible amounts under all policies described in paragraph 11.1.1 except where such amounts may be excluded from the Contractor's responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY.

- 11.1.3 The *Owner* shall promptly provide a copy of each insurance policy described in paragraph 11.1.1 to any insured party upon request.
- 11.1.4 The *Owner* does not represent that the insurance policies described in paragraph 11.1.1 will be sufficient to protect the *Contractor* against all of its responsibilities under the *Contract* or as required by law. The *Contractor* shall obtain such additional insurance as it may consider necessary at its own expense. The insurance coverage described in paragraph 11.1.1 shall in no way limit the *Contractor's* obligations under GC 12.1 INDEMNIFICATION.
- 11.1.5 If there is any conflict between the provisions of this GC 11.1 and the provisions of the insurance as procured by the *Owner*, then the provisions of the insurance as procured shall govern and take precedence, and this GC 11.1 shall be deemed to be amended to conform to the provisions of the actual insurance.
- 11.1.6 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Contractor* shall obtain, maintain and pay for the following types of insurance coverages issued by insurance companies licensed to carry on business in British Columbia and shall cause all of its *Subcontractors* to maintain insurance in forms and with limits appropriate to the work conducted by the subcontractors engaged on the *Project*. If any of the insurance coverage required by the *Contract* is not provided or lapses for any reason whatsoever, the *Contractor* shall, if requested to do so by the *Owner* at the *Contractor's* risk and expense, stop all work on the *Project* until satisfactory evidence of coverage is produced. The insurance coverage required by this paragraph 11.1.6 shall be in forms and amounts acceptable to the *Owner* and shall be issued by an insurer licensed to conduct insurance business in British Columbia. The approval of any insurance policy by the *Owner* shall in no way relieve the *Contractor* of the obligation to provide the insurance referred to in this paragraph 11.1.6:

.1 Automobile Insurance

- (1) This policy shall cover all vehicles owned by the *Contractor* or leased by the *Contractor* and shall provide for third party liability limits not less than \$2,000,000.00 inclusive for bodily injury and property damage.
- (2) Automobile liability insurance shall cover any motor vehicle, trailer or semi-trailer owned, used or operated by or on behalf of the *Contractor* and obligated by law to carry a licence (other than a special licence issued in respect of any motor vehicle, trailer or semi-trailer, chiefly used or operated off highways) as well as self-propelled equipment unlicensed but required to be insured in accordance with the *Motor Vehicle Act*.

.2 Contractor's Equipment Insurance

- (1) This policy shall cover all *Contractor's* tools and equipment used at the *Place of the Work* against "all risks" of direct physical loss or damage, including the perils of earthquake and flood, subject to customary exclusions.
- (2) All such contractor's equipment insurance policies shall contain a waiver of subrogation against the *Owner*, the fee simple owner of the *Place of the Work*, *BC Housing*, the *Contractor*, the *Consultant*, the *Subcontractors*, architects, engineers, consultants and sub-consultants engaged on the *Project*, and shall provide for 60 calendar days prior written notice of cancellation or material change to be given by the insurer(s) to the *Owner* and *BC Housing*.

.3 **Errors and Omission Insurance**

The *Contractor* shall ensure that any consultants engaged by the *Contractor* in the design of the *Work* each carry Errors and Omissions Insurance that has limits appropriate to the risk arising out of the work conducted.

- 11.1.7 The *Contractor* shall be responsible for deductible amounts under all policies described in paragraph 11.1.6 except where such amounts may be excluded from the *Contractor's* responsibility by the terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY.
- 11.1.8 The *Contractor* shall, prior to the commencement of the *Work*, provide the *Owner* with *Certificates of Insurance* evidencing compliance with paragraph 11.1.6. For automobile liability the standard I.C.B.C. *Certificate of Insurance* Form #APV-47 shall be used.
- 11.1.9 The *Owner* shall not be responsible for injury to the *Contractor's* employees or for loss or damage to the *Contractor's* or to the *Contractor's* employees' machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the premises during construction and which may from time to time, or at the termination of the contract, be removed from the premises. The *Contractor* hereby waives all rights of recourse against the *Owner* or any other contractor with regard to damage to the *Contractor's* property.

Delete GC 11.2 CONTRACT SECURITY, including paragraphs 11.2.1 and 11.2.2, and replace with the following:

"GC11.2 BONDS

- 11.2.1 The *Contractor* shall, at least 7 calendar days prior to the commencement of construction, provide to the *Owner* a performance bond and a labour and material payment bond, each in the amount of 50% of the *Contract Price*.
- 11.2.2 All bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in British Columbia and shall be maintained in good standing

until the fulfillment of the *Contract* including all warranty obligations pursuant to GC12.3 WARRANTY, provided that the performance bond may be qualified to exclude the following:

- (a) any warranty obligation for events or circumstances occurring or discovered more than two years after the date of *Substantial Performance of the Work*;
- (b) errors or omissions in design or engineering or breach of warranty of design by the *Contractor*.

Such bonds shall be in the form of the latest editions of CCDC Document 221 (1979) - Performance Bond and CCDC Document 222 (1979) - Labour and Material Payment Bond. The obligee on the bonds shall be the *Owner*, and *B.C. Housing* shall be named as dual obligee on the bonds pursuant to a dual obligee rider acceptable to the *Owner* and *B.C. Housing*.

- 11.2.3 All bonds shall be held and be subject to enforcement by the *Owner* without prejudice to any other legal remedy available to the *Owner*."

PART 12 INDEMNIFICATION--WAIVER--WARRANTY

GC12.1 INDEMNIFICATION

- 12.1.1 Delete and replace with the following:

GC 12.1 – INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, and excepting always losses arising out of the independent acts of the party for whom indemnification is sought, the *Owner* and the *Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this contract, provided such claims are:

- .1 caused by:
 - (a) the acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (b) a failure of the party to the Contract from whom indemnification is sought to fulfill its terms or conditions; and
- .2 made by Notice in Writing within such periods as prescribed by the Limitation Act of the Province of British Columbia.

- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is to be provided by the

owner pursuant to GC 11.1 – INSURANCE, the limit of the GENERAL LIABILITY COVERAGE – GC11.1(a) or the limit of the PROPERTY COVERAGE – GC11.1(b) whichever is pertinent to the loss.

- .2 In respect to losses suffered by the Owner and the Contractor for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the Contract Price as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.00

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

GC 12.2 WAIVER OF CLAIMS

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

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

- 12.2.1.1 Delete “no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*” and replace with the following:

“together with or prior to the *Contractor*’s request or application for the *Certificate of Completion*”.

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

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

- 12.2.3.1 Delete “no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*” and replace with the following:

“together with or prior to the *Contractor*’s request or application for the *Certificate of Completion*”.

12.2.3.4 Add at the end:

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

12.2.4 Delete “should any limitation statute of the Province or Territory of the Place of the Work permit such agreement. If the applicable limitation period does not permit such agreement, within such shorter time as may be prescribed by:

- .1 any limitation statute of the Province or Territory of the Place of the Work; or
- .2 if the Place of the Work is the Province of Quebec, then Article 2118 of the Civil Code of Quebec”

and replace with the following:

“or, as to any defect or deficiency or other claim of which the *Owner* is not aware at the end of the said period of six years, a period of one year after the *Owner* has become aware”.

12.2.8 Immediately before the words “further interim” and again immediately before the words “submit a final account”, insert the following: “, upon request”.

12.2.9 Delete.

12.2.10 Delete.

Add:

12.2.11 For greater certainty, in paragraphs 12.2.1, 12.2.2, 12.2.3 and 12.2.5 of GC 12.2 WAIVER OF CLAIMS, “claims” includes claims based on changes and delay (e.g. under Part 6 CHANGES IN THE WORK).

GC12.3 WARRANTY

Add:

"12.3.7 Where specific warranties or guarantees are required by the *Contract Documents* relating to the *Work* and including without limitation those relating to any fixtures, improvements, appliances, equipment or other chattels for the *Project*, the *Contractor* shall secure such warranties or guarantees from the *Subcontractors* and *Product* suppliers and they shall be assigned to or addressed to and in favour of the *Owner*. The *Contractor* shall cooperate and assist in the enforcement of such warranties or guarantees. The *Contractor* shall deliver the originals plus 2 copies of such warranties or guarantees to the *Owner* no later than 30 calendar days following issuance of the *Certificate of Completion*."

Add the following General Conditions:

"GC13.1 GAS AND ELECTRICITY

- 13.1.1 The occupancy date will be the date of turnover of all gas and electricity billings to the *Owner*. The *Contractor* shall notify the gas and electricity suppliers and the *Owner* in writing as to the date of billing turnover at least 45 calendar days prior to such date.
- 13.1.2 The *Owner* shall be responsible for notifying the gas and electricity suppliers of start-up billing failing which the *Owner* shall reimburse the *Contractor* for all charges accruing thereafter.

GC14.1 PUBLIC STATEMENTS AND SIGNS

- 14.1.1 The *Contractor* shall not make any public statement with respect to the *Project* without the prior written consent of the *Owner* and *BC Housing*.
- 14.1.2 The *Contractor* shall not erect or permit the erection of any sign or advertising at the *Place of the Work* without the prior written approval of the *Owner*.

GC15.1 LIENS

- 15.1.1 The *Contractor* will pay or cause to be paid promptly when due all claims, debts and charges against the *Contractor* or *Subcontractors* engaged by the *Contractor* which might become a lien upon the *Project* arising out of the *Work* performed or materials furnished by the *Contractor* or any *Subcontractors* under the *Contract*, and will not suffer or permit any lien or encumbrance of any kind to be filed against or upon the *Project*, regardless of whether the basis of such lien is a claim against the *Contractor* or any *Subcontractor*.
- 15.1.2 If the *Owner* is not in default in making payment to the *Contractor* as required under this *Contract* and if a claim of builders lien is filed against title to the *Project* by anyone claiming under or through the *Contractor*, the *Owner* may notify the *Contractor* in writing that the filing of such claim or claims of builders lien is a material default by the *Contractor* of its contractual obligations and instruct the *Contractor* to obtain and file a release of the said claim or claims in the Land Title Office within 7 *Working Days* immediately following receipt of such notice.
- 15.1.3 If such default is not corrected within the time specified or subsequently agreed upon in writing, the *Owner*, without prejudice to any other right or remedy it may have, may:
- .1 pay, settle or compromise any such claim or claims of builders lien, or pay into Court sufficient security for the cancellation thereof as determined by the Court and deduct the amount of any such payment from the next ensuing payment which may become due to the *Contractor*; or
 - .2 pay into Court from the holdback account established by the *Owner* in accordance with the *Builders Lien Act* sufficient security for the cancellation of any such claim or claims of builders lien as determined by the Court and this provision will constitute the agreement of the *Contractor* to make such payment

as required under Section 5(2)(c) of the *Builders Lien Act*;

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

- 15.1.4 If the *Owner* is not in default in making payment to the *Contractor* as required under this *Contract*, the *Contractor* will indemnify and save the *Owner* harmless from and against the costs of any and all actions commenced by any lien claimant claiming under or through the *Contractor* against the *Owner* pursuant to the *Builders Lien Act*, including solicitor and client costs.
- 15.1.5 Notwithstanding any other provision of the *Contract*, no payments whatsoever shall be due or owing to the *Contractor* so long as any liens filed by anyone claiming under or through the *Contractor* remain registered against title to the *Project*."

END OF DOCUMENT