

**CANADIAN STANDARD**  
**CONSTRUCTION**  
**MANAGEMENT CONTRACT FORM**  
**BETWEEN**  
**OWNER AND**  
**CONSTRUCTION MANAGER**

**PROJECT:**

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**Canadian Construction Association**  
75 Albert Street, Suite 400  
Ottawa, Ontario  
K1P 5E4

## CONSTRUCTION MANAGEMENT CONTRACT

### AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

**This agreement** made this                      day of                      in the year

**by and between**

hereinafter called the “**Owner**”

**and**

hereinafter called the “**Construction Manager**”

**witnesses:** that the parties agree as follows

#### ARTICLE A-1      SERVICES AND RESPONSIBILITIES

- (a) The **Construction Manager** agrees to provide the services set forth in **GC2-CONSTRUCTION MANAGER'S SERVICES**
- (b) The **Owner** shall be responsible for the development of the design of the **Project** and has retained

hereinafter called the “**Consultant.**” The Consultant's services, duties and responsibilities shall be as described in the Agreement between the **Owner** and the **Consultant.**

## ARTICLE A-2 THE CONSTRUCTION MANAGEMENT TEAM

- (a) The **Construction Manager**, along with the **Owner** and the **Consultant**, shall form the “Construction Management Team,” which will work from the commencement of the Pre-Construction Phase through to completion of the Post-Construction Phase for a period of weeks / months (the “**Contract Time**”) and shall strive to achieve **Substantial Performance of the Project** by the                      day of                      in the year                      .
- (b) The **Construction Manager** shall provide leadership to the Construction Management Team on all matters relating to construction.

## ARTICLE A-3 THE CONSTRUCTION MANAGER AS AGENT

- (a) The **Construction Manager** represents that he is knowledgeable and experienced in the management of the type of construction required for the **Project**. The **Construction Manager** acknowledges that he is being retained by the **Owner** because of his knowledge and expertise in that regard.
- (b) The **Owner** appoints the **Construction Manager** his agent to act in his name in accordance with the terms of this Agreement and for the purpose of the management of the construction of the **Project** described in **ARTICLE A-4 SCOPE OF THE PROJECT**.

## ARTICLE A-4 SCOPE OF THE PROJECT

This [Contract](#) provides for services in connection with the following described [Project](#):

## ARTICLE A-5 CONTRACT FEE

(a) The **Owner** agrees to pay the **Construction Manager** as compensation for his services a Contract Fee of

( \$ ) in Canadian funds earned as follows: dollars

(1) For services performed during the Pre-Construction Phase, a fee of

( \$ ) payable at the rate of dollars

( \$ ) per month; dollars

(2) For services performed during the Construction Phase, a fee of

( \$ ); dollars

(3) For services performed during the Post-Construction Phase, a fee of

( \$ ) payable at the rate of dollars

( \$ ) per month. dollars

Payment of the Contract Fee shall be made in accordance with the provisions of **ARTICLE A-8 PAYMENT** and **GC 10-APPLICATIONS FOR PAYMENT**.

(b) The Contract Fee shall be subject to adjustment as may be required in accordance with the provisions of the **Contract Documents**

## ARTICLE A-6 REIMBURSIBLE EXPENSES

In addition to the Contract Fee stipulated in **ARTICLE A-5 CONTRACT FEE** of this Agreement, the **Owner** agrees to pay the **Construction Manager** for the Reimbursible Expenses he incurs as defined by **APPENDIX 'A'** to this Agreement in accordance with **ARTICLE A-8 PAYMENT** and **GC 10-APPLICATIONS FOR PAYMENT**

## ARTICLE A-7 OWN FORCES WORK

The **Construction Manager** may, subject to the **Owner's** approval, perform work with his own forces. Such work shall be performed in accordance with the terms of this Agreement. The **Owner** shall pay to the **Construction Manager** the cost of such work plus a fee being \_\_\_\_\_ per cent of that cost in addition to all other amounts payable pursuant to this Agreement. For the purposes of this provision, cost of the work shall include and be limited to those items set forth in **APPENDIX 'A' -REIMBURSIBLE EXPENSES** to this Agreement.

## ARTICLE A-8 PAYMENT

(a) The **Owner** agrees to make monthly payments to the **Construction Manager** in Canadian funds on account of Reimbursible Expenses incurred to date, the applicable portion of the Contract Fee earned as described in **ARTICLE A-5 CONTRACT FEE** of this Agreement, any work performed directly by the **Construction Manager** pursuant to **ARTICLE A-7 OWN FORCES WORK** and for Additional Services in accordance with **GC 2.5**

- (b) If the **Owner** fails to make payments to the **Contractor** as they become due under the terms of this **Contract**, or in an award by arbitration or court, interest at per cent ( %) above the prime rate per annum as of the date payment became due on such unpaid amounts shall also become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

Prime rate, for the purposes of this Agreement, means the lowest rate of interest quoted by The Royal Bank of Canada from time to time in the City of to the most credit-worthy borrowers for prime business loans.

## **ARTICLES A-9 RIGHTS AND REMEDIES**

- (a) The duties and obligations imposed by the **Contract Documents** and the rights and remedies available thereunder shall be in addition to and not a substitution for any duties, obligations, rights and remedies otherwise available by law.
- (b) No action or failure to act by the **Owner** or **Construction Manager** shall constitute a waiver of any right or duty afforded either of them under the **Contract**, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **ARTICLE A-10 RECEIPT OF AND ADDRESSES FOR NOTICES**

Communications in writing between the parties shall be considered to have been received by the addressee on the date of delivery if delivered by hand to the individual or to a member of the firm or to an officer of the corporation for whom they are intended or if sent by post or by telegram, to have been delivered within five (5) days of the date of mailing, dispatch or delivery to the telegraph company when addressed as follows:

The **Owner** at

The **Construction Manager** at

## **ARTICLE A-11 LAW OF THE CONTRACT**

The law of the **Place of the Project** shall govern the interpretation of the **Contract**.

## **ARTICLE A-12 LANGUAGE OF THE CONTRACT**

When the **Contract Documents** are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the \* language shall prevail.

This Agreement is drawn in English at the request of all parties hereto;

*ce marche est redige en anglais la demande de toutes les parties.*

\* Complete this statement if the **Contract Documents** have been prepared and issued in both official languages of Canada.

**ARTICLE A-13 PRIOR NEGOTIATIONS, REPRESENTATIONS OR AGREEMENTS**

This Agreement supersedes all prior negotiations, representations or agreements, either written or oral.

**ARTICLE A-14 SUCCESSION**

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

**ARTICLE A-15 DISCOUNTS, REBATES AND REFUNDS**

All cash discounts shall accrue to the Construction Manager unless the Owner deposits funds with the Construction Manager with which to make payments, or makes such payments directly, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the Project shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

In witness whereof the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officers thereunto duly authorized.

SIGNED, SEALED AND DELIVERED

In the presence of:

**Owner**

*name*

\_\_\_\_\_  
*signature*

*name and title*

\_\_\_\_\_  
*signature*

*witness*

*name and title*

*name and title*

**CONSTRUCTION MANAGER**

*name*

\_\_\_\_\_  
*signature*

*name and title*

\_\_\_\_\_  
*signature*

*witness*

*name and title*

*name and title*

NB. Where legal jurisdiction, local practice, or Owner or Construction Manager requirement calls for proof of authority to execute this document, proof of such authority in the form of a certified copy of a resolution naming the person or persons in question as authorized to sign the Agreement for and on behalf of the corporation or partnership, parties to this Agreement, should be attached.

## APPENDIX 'A'

### REIMBURSIBLE EXPENSES

The following items are the Reimbursible Expenses referred to in **ARTICLE A-6 REIMBURSIBLE EXPENSES** and the cost of the work for the purposes of **ARTICLE A-7 OWN FORCES WORK** of the Agreement and shall be at rates prevailing in the locality of the **Place of the Project** except with the prior consent of the **Owner**:

- (a) wages and benefits paid for labour in the direct employ of the **Construction Manager** in the performance of the Project under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by the **Owner** and **Construction Manager**;
- (b) salaries, wages and benefits of the **Construction Manager**'s personnel in whatever capacity employed; salaries, wages and benefits of personnel engaged at shops, or on the road, in expediting the production or transportation of materials or equipment, for that portion of their time spent on the **Project**; salaries, wages and benefits of head office or other personnel, as are indicated below, for that portion of their time spent on the **Project**;
- (c) contributions, assessments or taxes incurred during the performance of the **Contract** for such items as unemployment insurance, workers' compensation, Canada or Quebec Pension Plan and the **Construction Manager**'s employee benefit plan, insofar as such costs are based on wages, salaries or other remuneration paid to employees of the **Construction Manager** and included under paragraphs (a) and (b) above;
- (d) the portion of travel and subsistence expenses of the **Construction Manager** or his officers or employees incurred while travelling in discharge of duties connected with the **Project**;
- (e) the cost of all materials, products, supplies and equipment incorporated into the **Work**, including costs of transportation and storage thereof;
- (f) the cost of materials, products, supplies, equipment, temporary services, utilities and facilities, and hand tools not owned by the workers including transportation and maintenance thereof, which are consumed in the performance of the **Contract**, and cost less salvage value on such items used, but not consumed, which remain the property of the **Construction Manager**;
- (g) rental costs of all tools, machinery and equipment used in the performance of the **Contract**, whether rented from the **Construction Manager** or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof;
- (h) deposits lost;
- (i) the amount of all subcontracts;
- (j) the costs to the **Construction Manager** that result from any **Trade Contractor**'s insolvency or failure to perform;
- (k) the cost of quality assurance such as independent inspection and testing services;

- (l) charges levied by authorities having jurisdiction at the [Place of the Project](#);
- (m) royalties, patent licence fees, and damages for infringement of patents and costs of defending suits therefore subject always to the [Construction Manager](#)'s obligation to indemnify the [Owner](#) pursuant to paragraph 13.1 of [GC 13-PATENT FEES](#);
- (n) premiums for all bonds and insurances which the [Construction Manager](#) is required, by the [Contract Documents](#), to purchase and maintain;
- (o) taxes and duties related to the [Project](#) for which the [Construction Manager](#) is liable other than tax on income payable by the [Construction Manager](#);
- (p) losses and expenses sustained by the [Construction Manager](#) for matters which are the subject of the insurance coverages obtained pursuant to [GC 17-INSURANCE](#) when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable;
- (q) charges for telegrams, telexes, site telephones, courier services, expressage, and petty cash items;
- (r) the cost of removal and disposal of waste products and debris;
- (s) costs incurred due to emergencies affecting the safety of persons or property;
- (t) legal costs, incurred by the [Construction Manager](#), arising out of the performance of the [Contract](#);
- (u) costs incurred by the [Construction Manager](#), with the [Owner](#)'s permission, in expediting the rejected work or the warranty work of [Trade Contractors](#) and costs incurred by the [Construction Manager](#) in correcting defects or deficiencies in the work undertaken by his own forces and repairing damages resulting therefrom either during the course of construction or the warranty period except those arising from a negligent or wilful act of the [Construction Manager](#);
- (v) the cost of financing the [Project](#) in accordance with the method determined by the parties;
- (w) the cost of auditing when requested by the [Owner](#);
- (x) the cost of computer time and usage in accordance with the method determined by the parties;
- (y) such other costs directly incurred by the [Construction Manager](#) in the performance of the [Contract](#) including the following:

It is the intention of the parties that the items referred to herein shall cover and include any and all costs and contingencies incurred by the [Construction Manager](#) in connection with the [Project](#).

## **DEFINITIONS**

The following Definitions shall apply to all Contract Documents.

### **1. The Contract**

The Contract Documents form the Contract. The Contract is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between the parties.

### **2. Contract Documents**

The Contract Documents consist of the executed Agreement between the Owner and the Construction Manager, the General Conditions of the Contract, Supplementary Conditions, Definitions, specifications, drawings and such other documents as are listed in ARTICLE A-4 - SCOPE OF THE PROJECT including amendments thereto incorporated before the execution of the Contract and subsequent amendments thereto made pursuant to the provisions of the Contract and agreed upon between the parties.

### **3. Owner**

The Owner is the person, firm or corporation identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized agent or representative as designated to the Construction Manager in writing.

### **4. Consultant**

The Consultant is the person, firm or corporation identified as such in the Agreement, and is an architect or engineer licensed to practice in the province or territory of the Place of the Project, and is referred to throughout the Contract Documents as if singular in number and masculine in gender.

### **5. Construction Manager**

The Construction Manager is the person, firm or corporation identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Construction Manager means the Construction Manager or his authorized representative as designated to the Owner in writing.

### **6. Trade Contractor**

A Trade Contractor is a person, firm or corporation having a direct contract with the Owner to perform the Work. The term Trade Contractor is referred to throughout the Contract Documents as if singular in number and masculine in gender.

### **7. The Project**

The Project means the total construction and related services to be managed under this Contract of which the Work is a part.

### **8. The Work**

The Work means that portion of the Project performed by a Trade Contractor or by the Construction Manager directly using own forces.

### **9. Place of the Project**

The Place of the Project is the designated site or location of the Project.

**10. Time**

The Contract Time is the time stipulated in paragraph (a) of ARTICLE A-2.

Day means calendar day.

Working day means days other than Saturdays, Sundays and holidays which are observed by the construction industry in the area of the Place of the Project.

**11. Substantial Performance of the Project**

Substantial Performance of the Project is the date when the total construction contemplated by the Project is sufficiently complete in accordance with the Contract Documents.

**12. Total Performance of the Project**

Total Performance of the Project is the date when the total construction and related services contemplated by the Project have been performed to the requirements of the Contract Documents.

**13. Changes in the Project**

Changes in the Project means additions, deletions, or other revisions to the Project within the general scope of the Contract.

# THE GENERAL CONDITIONS OF THE CONSTRUCTION MANAGEMENT CONTRACT

(Hereinafter referred to as the General Conditions)

## GC 1 DOCUMENTS

- 1.1 The Contract Documents shall be signed in duplicate by the Owner and the Construction Manager.
- 1.2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

## GC 2 CONSTRUCTION MANAGER'S SERVICES

- 2.1 The Construction Manager will perform the following services in each of the three phases described below but in doing so, he assumes no responsibility nor offers any expertise with respect to the design of the Project including any and all architectural or engineering aspects which shall be the responsibility of the Consultant and Owner.

### 2.2 PRE-CONSTRUCTION PHASE

#### 2.2.1 *Consultation During Project Development:*

Attend regular meetings with the Construction Management Team during the development of conceptual and preliminary design and preparation of working drawings to advise on site use and improvements, selection of materials, building systems and equipment. Provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to cost including costs of alternative designs or materials, preliminary budgets, and possible economies.

2.2.1.1 Acquaint the Owner and other members of the Construction Management Team with the labour conditions applicable for the duration of the Project.

2.2.1.2 Assist in providing liaison and co-ordination among government authorities, utility companies, and other authorities having jurisdiction over the Place of the Project.

#### 2.2.2 *Planning and Scheduling:*

Prepare, for the Owner's review, a preliminary master time schedule, following consultation with the Construction Management Team, incorporating the sequence and timing of the required basic program decisions, including design time, documentation, bid calls, bid evaluations, trade contract awards and on-site construction activities.

2.2.2.1 Monitor and, if required, revise and update the preliminary schedule as the design proceeds.

2.2.2.2 Finalize the master time schedule for the Owner's approval, and, if necessary, estimate the manpower requirements. Break down this schedule into individual networks for each phase of the Project where necessary showing the sequence and timing for the main construction operations and the milestone completion operations and the milestone completion dates for the various phases.

2.2.2.3 Recommend any equipment or materials which should be pre-ordered to meet the master time schedule

2.2.3 *Project Construction Budget:*

Prepare a Project budget as soon as major Project requirements have been identified, and update periodically for the Owner's approval.

2.2.3.1 Prepare an estimate based on a quantity survey of drawings and specifications at the end of the schematic design phase for approval by the Construction Management Team as the "Project Construction Budget".

2.2.3.2 Update and refine this estimate for the Owner's approval as the development of the drawings and specifications proceeds, and advise the Construction Management Team if it appears that the Project Construction Budget will not be met and make recommendations for corrective action.

2.2.3.3 Evaluate possible alternatives as the design proceeds, in order to permit the selection of the most economical materials and methods that will satisfy the design concept, and the schedule.

2.2.3.4 Establish a cost control program and prepare a projected cash flow for the Project.

2.2.4 *Coordination of Trade Contract Documents:*

Review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect construction feasibility or schedules.

2.2.4.1 Make recommendations to the Owner and the Consultant regarding the division of Work in the drawings and specifications to help facilitate the bidding and awarding of trade contracts, allowing for phased construction, taking into consideration such factors as time of performance, availability of labour, overlapping trade jurisdictions, and provisions for temporary facilities.

2.2.5 *Construction Planning:*

Plan and arrange for supply of temporary services and site facilities including but not limited to office accommodation and supplies, site hoardings, access, storage areas, temporary power and lighting, temporary enclosures, heating, drainage and water facilities, job offices, job security, materials and personnel hoisting facilities and equipment, safety measures, access stairs and ladders, protection of finishes and continuous cleanup.

2.2.5.1 Review with the Consultant the drawings and specifications to eliminate areas of conflict and overlapping in the Work to be performed by the various Trade Contractors.

2.2.5.2 Review with the Construction Management Team the construction insurance needs for the Project.

2.2.5.3 Make recommendations to the Construction Management Team with respect to the bonding of Trade Contractors.

2.2.5.4 Assemble all bid documents for the solicitation of competitive bids for Work to be performed by Trade Contractors. Arrange for the advertising of such bid calls and prepare the necessary prequalification criteria.

2.2.5.5 Analyze the bids received and recommend awards to the Owner. Once awards are approved by the Owner, prepare the trade contracts for execution.

2.2.5.6 Assemble the trade contract documents for all successful Trade Contractors. Check where required that all bonds, insurance policies, and workers' compensation certificates are provided.

- 2.2.5.7 Assist the Construction Management Team in obtaining all approvals, permits, and licenses required for the Project.
- 2.2.5.8 Assist the Owner to arrange for legal surveys of the Project. The Construction Manager shall be responsible for the maintenance of base lines and levels but Trade Contractors shall be responsible for detailed setting out of their work.

## 2.3 CONSTRUCTION PHASE

### 2.3.1 *Project Control:*

Monitor the Work of the Trade Contractors and coordinate the Work with the activities and responsibilities of the Owner, Consultant and Construction Manager.

- 2.3.1.1 Maintain a competent full-time staff at the Place of the Project to coordinate and provide general direction of the Project and progress of the Trade Contractors on the Project.
- 2.3.1.2 Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Management Team.
- 2.3.1.3 Establish procedures for coordination among the Owner, Consultant, Trade Contractors and Construction Manager with respect to all aspects of the Project and implement such procedures.
- 2.3.1.4 Schedule and conduct progress meetings at which Trade Contractors, Owner, Consultant and Construction Manager can discuss jointly such matters as procedures, progress, problems and scheduling.
- 2.3.1.5 Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for work not started or incomplete and recommend to the Owner and Trade Contractors adjustments in the schedule to meet the probable completion date. Provide summary reports of each monitoring and document all changes in schedule. Revise the schedule as required by **GC 5-DELAYS** and **GC 9-CHANGES IN THE PROJECT**.
- 2.3.1.6 Review the adequacy of the Trade Contractors' personnel and equipment and the availability of materials and supplies to meet the schedule. Recommend courses of action to the Owner when requirements of a trade contract are not being met.

### 2.3.2 *Physical Construction:*

Provide all of the construction facilities and services common to the requirements of all Trade Contractors, both temporary and permanent, as are planned and called for in Item 2.2.5 above. Ensure that all bidders are informed of the facilities and services being provided.

- 2.3.2.1 Advise the Owner of work which should best be done by the Construction Manager. Where the Owner approves of work to be done by the Construction Manager, such work shall be performed in accordance with the Contract Documents and, unless otherwise agreed, paid for by the Owner pursuant to **ARTICLE A-4 OWN FORCES WORK**.
- 2.3.2.2 Provide advice and assistance on labour problems in order to minimize work stoppages and in the settlement of jurisdictional or other labour disputes.

- 2.3.3 *Cost Control and Accounting:*  
Develop, implement and maintain an effective system of Project cost control. Revise and refine the initially approved Project Construction Budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Consultant whenever projected cost exceeds budgets or estimates.
- 2.3.3.1 Maintain accounting records and afford the Owner access to these records.
- 2.3.3.2 Provide for and administer the necessary procedures to permit recovery of all tax rebates where applicable.
- 2.3.3.3 If requested, assist the Construction Management Team in implementing changes necessary to bring the projected costs within budgets or estimates.
- 2.3.4 *Changes in the Work:*  
Develop and implement a system for the preparation, review and processing of Changes in the Work. Recommend necessary or desirable Changes in the Work to the Construction Management Team, review requests for Changes in the Work, submit recommendations to the Construction Management Team and assist in their negotiation.
- 2.3.5 *Payments to Trade Contractors:*  
Develop and implement a procedure for the review, certification, processing and payment of applications by Trade Contractors for progress and final payments.
- 2.3.5.1 Expedite the processing of Trade Contractors' invoices.
- 2.3.6 *Other Consultants:*  
Assist the Owner in selecting and retaining the professional services of a surveyor, testing laboratories, geotechnical and other specialists and coordinate these services, without assuming any responsibility or liability of or for these consultants or their work.
- 2.3.7 *Inspection:*  
Periodically inspect the Work of Trade Contractors for defects and deficiencies in the Work without assuming any of the Consultant's responsibilities for inspection. Inspection by the Construction Manager shall not relieve the Trade Contractor from their responsibility for nor make the Construction Manager responsible for construction means, methods, techniques, sequences and procedures, nor for their responsibility to carry out the Work in accordance with their contracts.
- 2.3.7.1 Review the safety programs of each of the Trade Contractors and make appropriate recommendations. In making such recommendations and carrying out such reviews, the Construction Manager shall not be required to make exhaustive or continuous inspections to check safety precautions and programs in connection with the Project. The performance of such services by the Construction Manager shall not relieve the Trade Contractors of their responsibilities for the safety of persons and property, and for compliance with the federal, provincial and local statutes, rules, regulations and orders applicable to the conduct of the Work.
- 2.3.8 *Document Interpretation:*  
Refer all questions for interpretation of the documents prepared by the Consultant to the Consultant.
- 2.3.9 *Shop Drawings and Samples:*  
With the Consultant, establish and implement procedures for expediting the receipt, processing and review of shop drawings and samples.

2.3.10 *Reports and Project Site Documents:*

Submit written progress reports to the Owner and the Consultant including budget and scheduling information. Keep a daily log available to the Owner and the Consultants.

2.3.10.1 Maintain at the Place of the Project, on a current basis, records of all necessary contracts, drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all revisions. Obtain data from Trade Contractors and maintain a current set of Project record documents and operating manuals. At the completion of the Project, deliver all such records to the Owner.

2.3.11 *Substantial Performance of the Work:*

Subject to applicable legislation arrange with the Consultant for the issuance of the necessary certificates respecting substantial performance of the Work or designated portions thereof and prepare with the Consultant a list of incomplete or unsatisfactory items and a schedule for their completion.

2.3.11.1 Distribute substantial performance and total performance certificates.

2.3.12 *Start-Up:*

With the Owner's maintenance personnel and the Consultant, direct the check-out of utilities, operations systems and equipment for readiness and assist in their initial start-up and testing by the Trade Contractors.

2.3.13 *Total Performance of the Work:*

Arrange with the Consultant for the certification of total performance and provide written notice to the Owner and Consultant that the Work is ready for final inspection. Seek and transmit to the Consultant as received warranties, affidavits, releases, bonds, waivers, manuals and record drawings. Turn over to the Owner all keys and maintenance stocks.

## 2.4 POST-CONSTRUCTION PHASE

2.4.1 *Operations:*

Maintain a close relationship with the Owner's operating staff to ensure a smooth and proper takeover of the Project.

2.4.2 *Warranties:*

Assist the Owner in administering warranties of the Trade Contractors.

## 2.5 ADDITIONAL SERVICES

At the request of the Owner, the Construction Manager will provide the following additional services upon written agreement between the Owner and Construction Manager defining the extent of such additional services and the amount and manner in which the Construction Manager will be compensated for additional services.

2.5.1 Services related to investigation, appraisals or valuations of existing conditions, facilities or equipment, or verifying the accuracy of existing drawings or other Owner-furnished information.

2.5.2 Services related to Owner-furnished equipment, furniture and furnishings which are not a part of this Contract.

2.5.3 Services for tenant or rental spaces not a part of this Contract.

- 2.5.4 Obtaining or training maintenance personnel or negotiating maintenance service contracts.
- 2.5.5 Services related to the resolution of claims, adjudication of disputes or litigation.
- 2.5.6 Other:

### **GC 3 TRADE CONTRACTORS**

- 3.1 The Construction Manager will, in accordance with the direction of the Owner, arrange for contracts to be entered into between the various Trade Contractors and the Owner.
- 3.2 The terms and conditions of all trade contracts, including any amendments thereto, shall be subject to the approval of the Construction Manager.

### **GC 4 OWNER'S RESPONSIBILITY**

- 4.1 The Owner shall provide full and timely information regarding his requirements for the Project.
- 4.2 The Owner shall designate in writing a representative who shall be fully acquainted with the Project and shall have the authority to act on the Owner's behalf in relation to all duties and responsibilities of the Owner under this Contract including the authority to issue and approve the Project Construction Budget and Changes in the Project and who shall furnish information expeditiously and tender decisions promptly. The Construction Manager shall in all respects be entitled to rely upon such designated representative as having full and complete authority in all matters.
- 4.3 The Owner shall retain a Consultant who shall be responsible for the design and design-related services required for the Project. The duties, responsibilities and services to be provided by the Consultant shall be described in the agreement between the Owner and the Consultant, a copy of which shall be furnished to the Construction Manager. The agreement between the Owner and the Consultant shall not be modified without written notification to the Construction Manager.
- 4.4 The Owner shall furnish promptly to the Construction Manager all necessary information regarding the Place of the Project including surveys as to the physical characteristics of the site, soils reports and subsurface investigations, legal limitations, utility locations and legal description. The Construction Manager shall have no responsibility or liability with respect to these matters including their suitability or non-suitability to the Project and shall be entitled to rely entirely upon the completeness and accuracy thereof.
- 4.5 The Owner shall arrange to secure and pay for all necessary approvals, permits, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.
- 4.6 The Owner shall furnish such legal and auditing services as are required for the performance of the Contract.
- 4.7 The Owner shall provide, maintain and pay for the insurance coverages outlined in **GC 17-INSURANCE**.

- 4.8 The Owner shall promptly notify the Construction Manager in writing of any defective, faulty or nonconforming work of which he becomes aware.
- 4.9 The Owner shall provide for the payment of all Trade Contractors in accordance with the terms and conditions of his agreements with such Trade Contractors and in conformity with the payment certificates issued by the Consultant.
- 4.10 The Owner and the Consultant shall communicate with the Trade Contractors solely through the Construction Manager.
- 4.11 The Owner shall ensure that adequate financing is available in order to ensure the completion of the Project

## **GC 5 DELAYS**

- 5.1 If the Construction Manager is delayed at any time in the progress of the Project by any act or omission of the Owner or the Consultant or anyone engaged by them directly or indirectly, then the Contract Time shall be extended by a reasonable period of time and the Contract Fee shall be adjusted by a reasonable amount.
- 5.2 If the Construction Manager is delayed at any time in the progress of the Project by a stop work order issued by a court or other public authority and, providing that such order was not issued as the result of an act or fault of the Construction Manager or anyone employed or engaged by him directly or indirectly, then the Contract Time shall be extended by a reasonable period of time and the Contract Fee shall be adjusted by a reasonable amount.
- 5.3 If the Construction Manager is delayed in the progress of the Project by labour disputes, strikes, lock-outs, fire, unusual delay in transportation, adverse weather conditions not reasonably foreseeable, unavoidable casualties or, without limit to the foregoing, any cause beyond the Construction Manager's control, then the Contract Time shall be extended by a reasonable period of time and the Contract Fee shall be adjusted accordingly.
- 5.4 No extension of the Contract Time nor adjustment to the Contract Fee shall be made for delay unless written notice of claim is given to the Owner within thirty (30) days after the occurrence of the event giving rise to the delay.
- 5.5 Where the Owner and Construction Manager are unable to agree upon the appropriate adjustment to be made to the Contract Time or Contract Fee, such adjustment shall be determined in accordance with **GC 11-DISPUTES**.

## **GC 6 OWNER'S RIGHT TO PERFORM CONTRACT OR TO TERMINATE CONTRACT**

- 6.1 If the Construction Manager should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of his insolvency, or if a receiver is appointed because of his insolvency, the Owner may, without prejudice to any other right or remedy he may have, by giving the Construction Manager or receiver or trustee in bankruptcy written notice, terminate the Contract.
- 6.2 If the Construction Manager should neglect to provide the services required by the Contract to a substantial degree, the Owner may notify the Construction Manager in writing that he is in default of his contractual obligations and instruct him to correct the default within seven (7) working days immediately following the receipt of such notice.

- 6.3** If the correction of the default cannot be completed in the seven (7) working days specified, the Construction Manager shall be in compliance with the Owner's instructions if he:
- commences the correction of the default within the specified time and,
  - provides the Owner with an acceptable schedule for such correction, and
  - completes the correction in accordance with such schedule.
- 6.4** If the Construction Manager fails to correct the default in the time specified or subsequently agreed upon, the Owner, without prejudice to any other right or remedy he may have, may:
- correct such default and deduct the cost thereof from any payment of fee then or thereafter due the Construction Manager, or
  - terminate the Construction Manager's right to perform the Contract in whole or in part or terminate the Contract.
- 6.5** If the Owner terminates the Construction Manager's right to perform the Contract, he shall:
- be entitled to take possession of the premises and all materials, equipment, tools, construction equipment and machinery owned by the Construction Manager and finish the Project by whatever method he may consider expedient, and
  - pay to the Construction Manager those further amounts to which he is entitled in accordance with **ARTICLE A-6 REIMBURSIBLE EXPENSES** and **ARTICLE A-7 OWN FORCES WORK** plus the proportionate amount of the Contract Fee earned to the date of termination, and
  - pay to the Construction Manager fair compensation, either by purchase or rental, at the option of the Owner, for any construction tools or machinery and equipment retained for use on the Project, and
  - assume and become liable for all obligations, commitments and unliquidated claims that the Construction Manager may have therefore, in good faith, undertaken or incurred in connection with the said Project.

The Construction Manager shall, as a condition of receiving the payments described, execute and deliver all such papers and take such action, including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in himself the rights and benefits of the Construction Manager under the obligations or commitments to be assumed by the Owner.

- 6.6** After the completion of the Pre-Construction Phase, if the final cost estimates make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate the Contract and shall pay the Construction Manager his fee in accordance with **ARTICLE A-5 CONTRACT FEE** plus any Reimbursible Expenses incurred pursuant to **ARTICLE A-6 REIMBURSIBLE EXPENSES** or **ARTICLE A-7 OWN FORCES WORK**.

## **GC 7 SUSPENSION ABANDONMENT OR TERMINATION BY OWNER WITHOUT CAUSE**

- 7.1** Should the Project be suspended, abandoned or terminated at any time prior to its completion by the Owner, the Construction Manager shall be entitled to be paid in addition to the fee computed in accordance with **ARTICLE A-5 CONTRACT FEE** and those further amounts recoverable under **ARTICLE A-6 REIMBURSIBLE EXPENSES** and **ARTICLE A-7 OWN FORCES WORK**, a sum in compensation for the loss of income experienced by the Construction Manager as a result of the premature termination of this Agreement calculated as follows:
- per cent of the Contract Fee if the suspension, abandonment or termination occurs during the Pre-Construction Phase;
  - per cent of the Contract Fee if the suspension, abandonment or termination occurs during the Construction Phase;
  - per cent of the Contract Fee if the suspension, abandonment or termination occurs during the Post-Construction Phase.

7.2 Suspension shall be deemed to have occurred should work on the Project have been stopped at the Owner's request and should such stoppage or stoppages have continued individually or collectively for a period of sixty (60) days.

## **GC 8 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE CONTRACT**

8.1 If the Owner should be adjudged bankrupt or makes a general assignment for the benefit of creditors because of his insolvency or if a receiver is appointed because of his insolvency, the Construction Manager may, without prejudice to any other right or remedy he may have, by giving the Owner or receiver or trustee in bankruptcy written notice, terminate the Contract.

8.2 If the Project or a substantial part thereof should be stopped or otherwise delayed for a period of thirty (30) days or more under an order of a court or other public authority having jurisdiction and providing that such order was not issued as the result of an act or fault of the Construction Manager, the Construction Manager may, without prejudice to any other right or remedy he may have, by giving the Owner written notice, terminate the Contract.

8.3 Should the Owner suspend the Project for a period of sixty (60) days as contemplated by **GC 7-SUSPENSION ABANDONMENT OR TERMINATION BY OWNER WITHOUT CAUSE**, and the Owner has not instructed the Construction Manager to resume the Project within five (5) working days after the Construction Manager gives the Owner written notice of his intention to resume the Project, and providing such suspension was not due to the default of the Construction Manager, then the Construction Manager may, without prejudice to any other rights or remedies he may have, by giving the Owner written notice, terminate the Contract.

8.4 The Construction Manager may notify the Owner in writing that the Owner is in default of his contractual obligations if:

- (a) the Owner fails to pay the Construction Manager when due those amounts which are due and payable in accordance with the Contract or an award by arbitration or court, or
- (b) the Owner violates the requirements of the Contract to a substantial degree.

The Construction Manager's written notice to the Owner shall advise that if the default is not corrected in the seven (7) working days immediately following the receipt of the written notice the Construction Manager may, without prejudice to any other right or remedy he may have, terminate the Contract.

8.5 If the Construction Manager terminates the Contract as herein set out, he shall be paid forthwith all sums to which he is entitled pursuant to paragraph 7.1 of **GC 7-SUSPENSION, ABANDONMENT OR TERMINATION BY OWNER WITHOUT CAUSE**.

## **GC 9 CHANGES IN THE PROJECT**

9.1 Should the Owner during the Pre-Construction Phase require a significant revision in the design concept then developed, the Contract Fee and the Contract Time shall be subject to an appropriate adjustment. Any additional fee to which the Construction Manager is entitled shall be such sum as having regard to the total fee payable by this Contract for the Pre-Construction Phase represents the amount of the services provided by the Construction Manager which must be duplicated by such change. The Contract Time and the date for Substantial Performance of the Project shall each be extended to reflect such additional time as may reasonably be required having regard to all circumstances as a result of the change required by the Owner.

- 9.2 Should the Owner or his Consultant make changes in all or any portion of the work during the course of the Construction Phase and should such changes singly or collectively have the effect of extending the Contract Time or the date of Substantial Performance or Total Performance of the Project, the Construction Manager shall be entitled to payment of an additional fee having regard to that portion of the fee allocated to the Construction Phase of the Agreement as reflects the additional time for which the Construction Manager is required to be engaged on the Project.
- 9.3 The Construction Manager shall advise the Owner promptly when he determines that changes as herein contemplated will delay the date of Substantial Performance of the Project, extend the Contract Time, and entitle the Construction Manager to payment of an additional fee.
- 9.4 If the Owner and Construction Manager cannot agree on the change in Contract Time and Contract Fee, the matter shall be determined in accordance with the provisions of **GC 11-DISPUTES**.

## **GC 10 APPLICATIONS FOR PAYMENT**

- 10.1 The Construction Manager shall submit to the Owner on a monthly basis an application for payment covering all Reimbursible Expenses incurred during the previous period pursuant to **ARTICLE A-6 REIMBURSIBLE EXPENSES** and the amount of the Contract Fee then due as provided in **ARTICLE A-5 CONTRACT FEE** and for work performed directly by the Construction Manager pursuant to **ARTICLE A-7 OWN FORCES WORK**.
- 10.2 (a) The Pre-Construction Phase portion of the Contract Fee shall be payable monthly as set out in **ARTICLE A-5 CONTRACT FEE**. The balance of the Pre-Construction Phase fee, if any, shall be paid at the commencement of construction.
- (b) Prior to commencement of construction, the Construction Manager shall, in accordance with sub-paragraph 2.2.2.2 of **GC-2 CONSTRUCTION MANAGER'S SERVICES**, provide a schedule showing the time required to achieve Substantial Performance of the Project. That portion of the fee payable for the Construction Phase shall be payable in equal monthly installments determined by dividing the Construction Phase portion of the fee by the number of months scheduled from commencement of construction to achievement of Substantial Performance of the Project. Upon certification of Substantial Performance of the Project, the balance, if any, of the Construction Phase fee shall become due and payable.
- (c) Should the state of completion of the Project at any time during the Construction Phase be delayed through no fault of the Owner or his Consultant, then the amount payable by the Owner each month shall be such that the total of all sums paid in monthly installments on account of the Construction Phase fee to the Construction Manager to date of payment when related to the total Construction Phase fee as a percentage reflects the degree of completion of the construction of the Project at the date of that payment. Thereafter the amount of the fee payable monthly shall be adjusted either up or down so as to ensure that the total fees paid to the Construction Manager monthly when related to the total fee payable under this Contract for the Construction Phase is equal to the degree of completion of construction of the Project. In any event the Construction Manager shall be entitled to payment in full of his Construction Phase fee upon certification of Substantial Performance of the Project.
- (d) The fee for the Post-Construction Phase shall be paid in equal monthly installments in accordance with **ARTICLE A-5 CONTRACT FEE** commencing the end of the first month following Substantial Performance of the Project with the balance paid at Total Performance of the Project.
- 10.3 The Owner shall make payment to the Construction Manager on account in accordance with the provisions of **ARTICLE A-8 PAYMENT** no later than fifteen (15) days following the date of receipt of an application for payment.

## **GC 11 DISPUTES**

- 11.1** Differences between the parties to the Contract as to the interpretation, application or administration of this Contract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, shall be settled in accordance with the requirements of this General Condition.
- 11.2** If the parties so agree the dispute shall be submitted to arbitration in accordance with the provisions of the arbitration legislation of the Place of the Project.
- 11.3** If no agreement is made for arbitration then either party may submit the dispute to such judicial tribunal as the circumstances may require.

## **GC 12 ASSIGNMENT**

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

## **GC13 PATENT FEES**

- 13.1** The Construction Manager shall hold the Owner harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Construction Manager's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent or invention by the Construction Manager or anyone for whose acts he may be liable.
- 13.2** The Owner shall hold the Construction Manager harmless against, claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Construction Manager's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent or invention in executing anything for the purpose of the Contract, the model, plan or design of which was supplied to the Construction Manager for the performance of the Contract.

## **GC 14 WAIVER**

- 14.1** As of the date of Total Performance of the Project, the Owner expressly waives and releases the Construction Manager from all claims against the Construction Manager including without limitation those that might arise from the negligence or breach of contract by the Construction Manager except one or more of the following:
- (a) those made in writing prior to Total Performance of the Project and still unsettled;
  - (b) those arising from the provisions of **GC 16 -INDEMNIFICATION BY CONSTRUCTION MANAGER**;
  - (c) those made in writing within a period of one (1) year from the date of Substantial Performance of the Project and arising from any liability of the Construction Manager for damages resulting from the performance of this Contract with respect to substantial defects or deficiencies in the Project for which the Construction Manager is proven responsible.

As used herein 'substantial defects or deficiencies' means those defects or deficiencies in the Project which affect the Project to such an extent or in such a manner that a significant part or the whole of the Project is unfit for the purposes intended.

- 14.2** As of the date of Total Performance of the Project, the Construction Manager expressly waives and releases the Owner from all claims against the Owner including without limitation those that might arise from the negligence or breach of contract by the Owner except:
- (a) those made in writing prior to the date of Total Performance of the Project;
  - (b) those arising from the provisions of **GC 15-INDEMNIFICATION BY THE OWNER**.

#### **GC 15 INDEMNIFICATION BY THE OWNER**

- 15.1** The Owner shall indemnify and hold harmless the Construction Manager, his agents and employees, from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by third parties, including all legal fees, costs and expenses incurred in defending such claims, that arise out of or are attributable to the performance of the Contract except any proportion thereof which is attributable to acts or omissions of the Construction Manager, his agents or employees, which constitute a breach of this Contract and for which the Construction Manager is liable under the terms of this Contract.
- 15.2** The Owner shall indemnify and hold harmless the Construction Manager, his agents and employees, from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the performance of the Contract which are:
- (a) attributable to a lack of or defect in title or an alleged lack of or defect in title to the Place of the Project; or
  - (b) attributable to the negligence of or a breach of contract by the Consultant or Owner; or
  - (c) attributable to the negligence or breach of contract by any Trade Contractor.

#### **GC 16 INDEMNIFICATION BY CONSTRUCTION MANAGER**

- 16.1** The Construction Manager shall indemnify and hold harmless the Owner, his agents and employees, from and against claims, demands, losses, costs, damages, actions, suits or proceedings by third parties that arise out of, or are attributable to, the Construction Manager's performance of the Contract (hereinafter the called 'claims'), provided such claims are:
- (a) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property; and
  - (b) caused by negligent acts or omissions of the Construction Manager or those directly employed or engaged by the Construction Manager;
  - (c) made in writing within a period of one (1) year from the date of Substantial Performance of the Project.

The Owner expressly waives the right to indemnity for claims other than those stated above.

- 16.2** The obligation of the Construction Manager to indemnify hereunder shall be limited to the dollar amounts which are recoverable under the insurance coverages maintained pursuant to **GC 17-INSURANCE**.

#### **GC 17 INSURANCE**

- 17.1** The Owner undertakes and agrees at his cost to maintain insurance insuring the interest of and indemnifying the Construction Manager against any liability which he might incur as a result of damage to or injury sustained to any portion of the Project. The Owner agrees that the Construction Manager may place the liability portion of such insurance with the insurer of his choice providing the premiums are competitive or to maintain continuity in regard to completed operations coverage.