PROVINCIAL OWNER CONTROLLED CONSTRUCTION INSURANCE PROJECTS

Insurance, contract security and indemnity risk provisions to be included in Supplementary General Conditions to the CCDC 14 – 2013 Contracts for Health entity projects insured by the Owner with an estimated construction value from Five Million ($5,000,000) up to Seventy-Five Million Dollars ($75,000,000).

MODIFICATIONS TO ARTICLES OF THE AGREEMENT

ARTICLE A-5 PAYMENT, 5.2 is deleted in its entirety.

MODIFICATIONS TO GENERAL CONDITIONS

GC 11.1 INSURANCE, replace entirely with the following:

GC 11.1 - INSURANCE

Without restricting the generality of GC 12.1—INDEMNIFICATION, insurance and coverage will be arranged and paid for as under-noted:

11.1.1 For the period when the *Owner's* Commercial General Liability – Wrap up Insurance is not in force, the *Design-Builder* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance with insurers licensed in British Columbia:

(a) Commercial General Liability Insurance with a limit of not less than FIVE MILLION DOLLARS ($5,000,000), inclusive per occurrence against bodily injury and property damage, and the *Owner* is to be added as an additional insured and include a cross liability clause. This insurance shall be primary and not require the sharing of any loss by any insurer of the *Owner*.

11.1.2 The *Design-Builder* or the *Consultant* during the term of this *Contract* will provide and maintain Professional (Errors and Omissions) Liability Insurance protecting the *Design-Builder* or the *Consultant* and if applicable the *Consultant's* insurable consultants and their respective servants, agents or employees, against any loss or damage arising out of the professional services rendered by any of them under this *Contract*. Such insurance shall be for an adequate amount acceptable to the *Owner* and shall in any event be not less than:

(i) For construction valued at ZERO DOLLARS ($0.00) to FIFTEEN MILLION DOLLARS ($15,000,000):
ONE MILLION DOLLARS ($1,000,000) per claim;

(ii) For construction valued over FIFTEEN MILLION DOLLARS ($15,000,000) TO THIRTY MILLION DOLLARS ($30,000,000):
TWO MILLION DOLLARS ($2,000,000) per claim; and

(iii) For construction valued over THIRTY MILLION DOLLARS ($30,000,000) to SEVENTY-FIVE MILLION DOLLARS ($75,000,000):
FIVE MILLION DOLLARS ($5,000,000) per claim.

The sub-consultants of the *Consultant* or *Other Consultants* shall maintain a limit of no less than TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000) Professional (Errors and Omissions) Liability Insurance.

If coverage is provided by the *Consultant*, then such Professional (Errors and Omissions) Liability Insurance will not contain a "Design-Build" exclusion.

Construction valued over SEVENTY-FIVE MILLION DOLLARS ($75,000,000) must be referred to Risk Management Branch. The *Design-Builder* or *Consultant* may be required to insure against Professional (Errors and Omissions) Liability on a single Project basis.

11.1.3 **The *Design-Builder* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance with insurers licensed in British Columbia and in forms and amounts acceptable to the *Owner*:**

(a) Automobile Liability Insurance in respect of each owned or leased vehicle if used directly or indirectly in the performance of the *Work*, subject to limits of not less than TWO MILLION DOLLARS ($2,000,000) inclusive per occurrence. This insurance shall be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant* in consultation with the *Design-Builder* and the *Owner.*

(b) Owned or Non-Owned Aircraft (including Unmanned Aircraft Vehicles) Liability Insurance if used directly or indirectly in the performance of the *Work*, subject to limits not less than TWO MILLION DOLLARS ($2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and including aircraft passenger hazard where applicable. The insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance shall be maintained continuously from commencement of the work involving aircraft (including unmanned aircraft vehicles) until such work is completed.

(c) Owned or Non-Owned Watercraft Liability Insurance if used directly or indirectly in the performance of the *Work*, subject to limits of not less than TWO MILLION DOLLARS ($2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. The insurance will name the *Owne*r as an additional insured and include a cross liability clause. This insurance shall be maintained continuously from commencement of the work involving watercraft until such work is completed.

(d) Contractors Pollution Liability Insurance, where the *Design-Builder's* performance or the *Subcontractor's* performance of the *Work* is associated with hazardous materials clean up, removal and/or containment, transit or disposal. This insurance must have a limit of liability not less than TWO MILLION DOLLARS ($2,000,000) inclusive per occurrence insuring against bodily injury, death, and damage to property including loss of use thereof.

Any insurance required under this clause 11.1.3 (d) must name the *Owner* as an additional insured, but only with respect to liability arising out of the *Design-Builder* or the *Subcontractor's* performance of the *Work*. Such insurance must include sudden and accidental and gradual pollution events for third party liability including ongoing and completed operations and shall not be impaired by any, biological contaminants

(without limitation, mould and bacteria), asbestos, or lead exclusions. Any 'insured vs. insured' exclusion shall not prejudice coverage for the *Owner* and shall not affect the *Owner's* ability to bring suit against the *Design-Builder* as a third party.

This insurance shall be maintained continuously from commencement of the work involving hazardous materials clean-up, removal and/or containment, transit and disposal until such work is completed and including a twenty-four (24) month extended reporting period if any such insurance is provided on a claims-made basis.

(e) Hot Roofing or Installation of Hot Membranes

If the project is a renovation involving hot roofing work or installation of hot membranes, the contractor will provide, maintain and pay for a liability policy insuring hot roofing or installation of hot membrane operations with a limit of not less than TWO MILLION DOLLARS ($2,000,000) inclusive per occurrence against bodily injury and property damage. This insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance will be treated as primary coverage and the *Owner's* Commercial General Liability - Wrap up Insurance will be treated as excess coverage.

Such insurance shall include, but not be limited to:

.01 Premises and Operations Liability;
.02 Products and Completed Operations;
.03 Owner's and Contractor's Protective Liability;
.04 Contractual Liability;
.05 Contingent Employer's Liability;
.06 Personal Injury Liability;
.07 Non-Owned Automobile Liability;
.08 Cross Liability;
.09 Employees as Additional Insureds; and
.10 Broad Form Property Damage.

This insurance shall be maintained continuously from commencement of hot roofing or installation of hot membrane work until such work is completed.

11.1.4 Any insurance required under clauses 11.1.1 (a), 11.1.2 and 11.1.3 (b), (c), (d) and (e) must be endorsed to provide the *Owner* with 30 days' advance written notice of cancellation.

11.1.5 As may be applicable, the *Design-Builder* must cause all *Subcontractors* to comply with the insurance requirements outlined in clauses 11.1.2 and 11.1.3 (a) (b), (c), (d) and (e).

11.1.6 **The *Owner* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance and coverages:**

(a) Commercial General Liability – Wrap Up Insurance with a limit of not less than TEN MILLION DOLLARS ($10,000,000) inclusive per occurrence, TWENTY MILLION DOLLARS ($20,000,000) general aggregate for third party bodily injury, death, and damage to property including loss of use thereof, product/completed operations liability with a limit of not less than TEN MILLION DOLLARS ($10,000,000) aggregate.

This insurance will cover the *Owner*, the *Design-Builder*, *Subcontractors*, *Consultant*, sub-consultants and anyone employed by them to perform a part or parts of the *Work* but excludes all professional services and excluding suppliers whose only

function is to supply and/or transport products to the project site, or security protection persons or organizations providing project site protection on or at the insured project. The insurance does not extend to any activities, works, jobs or undertakings of the insureds other than those directly related to the *Work* of this *Contract*.

The insurance will contain a waiver of the *Owner's* rights of subrogation against all protected entities except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omission.

Such insurance shall include, but not be limited to:

.01 Premises and Operations Liability;
.02 Products and Completed Operations Liability (24 months);
.03 Blanket Written Contractual Liability;
.04 Cross Liability and/or Severability of Interests;
.05 Contingent Employer's Liability;
.06 Personal Injury Liability;
.07 Shoring, Blasting, Excavating, Underpinning, Demolition, Piledriving, Subsurface and Grading, as applicable;
.08 Limited Pollution Liability (TWO MILLION DOLLARS ($2,000,000))
.09 Broad Form Tenants Legal Liability (ONE MILLION DOLLARS ($1,000,000))
.10 Operation of Attached Machinery
.11 Forest Fire Fighting Expenses (ONE MILLION DOLLARS ($1,000,000))

There will be a deductible not exceeding FIFTY THOUSAND DOLLARS ($50,000) per occurrence except with respect to completed operations, to which a deductible not exceeding ONE HUNDRED THOUSAND DOLLARS ($100,000) per occurrence will apply.

This insurance will be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant* in consultation with the *Design-Builder* and the *Owner*, plus with respect to completed operations cover a further period of twenty-four (24) months.

(b) Course of Construction (Builders Risk) coverage, against "All Risks" of direct physical loss or damage including the peril of equipment breakdown, and will cover all materials, property, structures and equipment purchased for, entering into, or forming part of the *Work* while located anywhere within Canada and continental United States of America during construction, erection, installation and testing and commissioning, but such coverage may be subject to off-site storage and transit exposure sub-limits and shall not include coverage for the *Design-Builder* and *Subcontractor's* equipment of any description.

There will be a deductible not exceeding:

(1) TWENTY THOUSAND DOLLARS ($20,000) for each and every occurrence where the project value is TEN MILLION DOLLARS ($10,000,000) or less, or;
(2) FIFTY THOUSAND DOLLARS ($50,000) for each and every occurrence where the project value exceeds TEN MILLION ($10,000,000)

except for the following:

Earthquake with a deductible not exceeding FIVE PERCENT (5%) of the total project value at the time of the loss, subject to a minimum TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000);

Water Damage perils (includes Flood and Sewer and Drain Back Up) with a deductible not exceeding ONE HUNDRED THOUSAND DOLLARS ($100,000);
Soft Costs with a one day waiting period for each month of the estimated project term subject to a minimum waiting period of 30 days will apply with respect to soft costs.

The coverage will include as a protected entity, the *Owner*, the *Design-Builder*, *Consultant* and each *Subcontractor* who is engaged in the *Project*.

The coverage will contain a waiver of the *Owner's* rights of subrogation against all protected entities except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omissions, or manufacturers (not employees of a protected entity).

The *Design-Builder* will, at its own expense, take precautions to prevent fires occurring in or about the *Work* and will observe, and comply with, all insurance policy warranties and all laws and regulations in force respecting fires.

This insurance will be maintained continuously from commencement of the *Work* and will be kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant* in consultation with the *Design-Builder* and the *Owner.*

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

11.1.8 The *Design-Builder* will also provide, maintain and pay for any other insurance that the *Design-Builder* is required by law to carry, or which the *Design-Builder* considers necessary.

11.1.9 The *Design-Builder* and/or its *Subcontractors*, the *Consultant* and sub-consultants as may be applicable, will be responsible for any deductible amounts under the policies of coverage and insurance except for the perils of flood and earthquake.

11.1.10 The *Owner* will, upon request, provide the *Design-Builder* with proof of insurance of those coverages and insurances required to be provided by the *Owner* prior to commencement of the *Work* and subsequent certified copy of policies within a reasonable time period thereafter.

11.1.11 The *Design-Builder* will provide the *Owner* with proof of insurance for those insurances required to be provided by the *Design-Builder* prior to the commencement of the *Work* in the form of a completed Certificate of Insurance and will also provide a certified copy of any required policies upon request.

11.1.12 The *Owner* will not be responsible for injury to the *Design-Builder's* employees or for loss or damage to the *Design-Builder's* or to the *Design-Builder's* employees' machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the project site during construction and which may, from time to time, or at the termination of this *Contract*, be removed from the project site. The

Design-Builder hereby waives all rights of recourse against the *Owner* with regard to damage to the *Design-Builder's* property.

11.1.13 If the *Design-Builder* fails to provide, maintain and pay for insurance as required by this schedule, other than automobile liability insurance, the *Owner* may obtain and pay for the required insurance, the cost of which will be payable on demand by the *Owner*. The Owner may offset such amounts from any monies due to the *Design-Builder* if not paid within 15 days.

GC 11.2 CONTRACT SECURITY, delete entirely and replace with the following:

GC 11.2 - CONTRACT SECURITY

11.2.1 The *Design-Builder* shall prior to commencement of the *Work* furnish performance and labour and material payment bonds within fourteen (14) days of the date of this *Contract*. Each bond must be in a sum equal to 50% of the total *Contract Price*. The bonds must be issued on the latest CCDC-221 or CCDC-222 approved forms or other such forms approved by the Surety Association of Canada and issued by a surety company registered in the Province of British Columbia or another surety company acceptable to the *Owner*. The *Design-Builder* must maintain the bonds in good standing until the fulfilment of the *Contract*.

GC 12.2 INDEMNIFICATION, delete GC 12.2.1 and 12.2.2 and replace with the following:

GC 12.2 – INDEMNIFICATION

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

.1 caused by:

(1) the acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or;
(2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

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

12.2.2 The obligation of either party to indemnify as set forth in paragraph 12.2.1 shall be limited as follows:

.1 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the limit of:
(1) Commercial General Liability coverage – GC 11.1.1(a)
(2) Commercial General Liability – Wrap Up Insurance GC 11.1.6 (a); or
(3) Course of Construction (Builders Risk) – GC 11.1.6 (b)

whichever is pertinent to the loss.

.2 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of:
(1) the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or;
(2) TWO MILLION DOLLARS ($2,000,000.00),
but in no event shall the sum be greater than TWENTY MILLION DOLLARS ($20,000,000.00).

.3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.2.2.1 and 12.2.2.2 shall apply.

GC 12.3 LIMITATION OF LIABILITY FOR DESIGN SERVICES, delete entirely and replace with the following:

GC 12.3 – LIMITATION OF LIABILITY FOR DESIGN SERVICES

12.3.1 Notwithstanding any other provisions of this *Contract,* the *Design-Builder's* liability for claims which the *Owner* may have against the *Design-Builder*, including the *Design-Builder's* officers, directors, employees and representatives, that arise out of, or are related to, the *Design Services,* shall be limited to claims arising from errors, omissions, or negligent performance of *Design Services* by the *Consultant* or *Other Consultant.* For greater certainty, no dollar limit applies.