

INTEGRATED PROJECT DELIVERY AGREEMENT

Mosaic Centre

DRAFT



BUSINESS TERMS SHEET

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

Senior Management Team (SMT)	Owner: Dennis Cuku Architect: Shafraaz Kaba Contractor: Jennifer Hancock	
Project Management Team (PMT)	Owner: Dennis Cuku Architect: Shafraaz Kaba and Vedran Skopac Contractor: Jennifer Hancock and Mark Moran	
Target Cost	\$11,033,323	
ICL amounts & ICL Percentages of Risk/Reward Team	Exhibit G	
Architect's Overhead Multiplier	2.75	
Contractor's Overhead Multiplier	3.18	
Change Order % (ICL Change Limitation Section 11.4.)	Work performed by or through Architect.	5%
	Work performed by or through Contractor.	5%
Date for Substantial Performance of the Project	April 15, 2015	
Date for Final Completion of the Project	May 15, 2015	

EXHIBITS

Exhibit		Status at Contract Signing
Exhibit A	Definitions	Included
Exhibit B	Project Objective	
B-1	Owner's Program Objective	Included
B-2	Target Cost Breakdown	By Amendment
B-3	Not Used	
B-4	Milestones	By Amendment
B-5	Implementation Document List	By Amendment
Exhibit C	Contract Task Matrix	By Amendment
Exhibit D	General Conditions to the Agreement	Included
Exhibit E	Architect's Chargeable Costs	Included
E-1	Billable Rates	Included
Exhibit F	Contractor's Chargeable Costs	Included
F-1	Billable Rates	Included
F-2	Equipment Rates	
Exhibit G	ICL Distribution Spreadsheet	Included
Exhibit H	Project Insurance Requirements	
H-1	Owner Provided Insurance	Not Used
H-2	Contractor Provided Insurance	Included
H-3	Architect Provided Insurance	Included
Exhibit I	Not Used	
Exhibit J	Key Employees	Included
Exhibit K	Payment Protocol	Included

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS	2
1.1 Defined Terms.....	2
2. THE PROJECT	2
2.1 The Project.....	2
2.2 Project Objective	2
2.3 Project Phases and Stages	2
2.4 Collaboration	2
3. THE PARTIES	3
3.1 Relationship of the Parties	3
3.2 Key Employees	3
3.3 Owner.....	3
3.4 Architect	4
3.5 Contractor	5
4. PROJECT MANAGEMENT	8
4.1 Project Management Team.....	8
4.2 Senior Management Team; Owner’s Directive	9
4.3 Written Confirmation of Decisions	9
4.4 Personnel Management	10
5. SUBCONTRACTS AND CONSULTING AGREEMENTS	10
5.1 Written Agreements	10
5.2 Licensing Requirements.....	11
5.3 Required Pass Through Provisions.....	11
5.4 Separate Contractors.	12

6. RESPONSIBILITIES BY PHASE 13

6.1 Validation Phase 13

6.2 Design/Preconstruction Phase 14

6.3 Construction Phase 16

7. COMPENSATION 16

7.1 General 16

7.2 Contractor Self-Performed Work 17

7.3 Incentive Compensation Layer 18

8. RISK/REWARD PROGRAM 18

8.1 General 18

8.2 Contractor’s ICL Pass-through 18

8.3 Architect’s ICL Pass-through 18

8.4 ICL Distribution Schedule 18

8.5 Milestone ICL Payments 19

8.6 Milestone Estimate 19

8.7 Milestone Overpayment 19

8.8 ICL Adjustments 19

9. PAYMENT 20

9.1 Chargeable Costs 20

9.2 Periodic Payments 20

9.3 Final Payment 20

9.4 Materials and Equipment 20

9.5 Supporting Documents 21

9.6 Right to Withhold 21

9.7 No Right to Stop Work 22

9.8 Reliance 22

9.9 Warranty of Title 22

9.10 No Waiver 22

9.11 Payments to Subcontractors and Suppliers 22

9.12 Payment to Consultants 22

9.13 Records and Audits 22

10. CONTRACT TIME 23

10.1 Contract Time 23

10.2 Commencement of the Construction Work 23

10.3 Project Staging 23

10.4 Project Scheduling 23

10.5 Permitted Delays 24

10.6 Notice 24

10.7 Schedule Slippage 24

10.8 Acceleration 24

11. CHANGES 24

11.1 Permitted Changes 24

11.2 Changes to Cost 25

11.3 Changes to the Contract Time 25

11.4 Limitation on Changes to ICL 25

11.5 Change Order Procedure 25

11.6 Owner’s Directive 25

12. LIABILITY ALLOCATION 26

12.1 Waiver of Liability 26

12.2 Allowed Claims 26

12.3 Indemnification 27

12.4 Site Safety 28

12.5 Joint Defense of Third-Party Claims 28

13. PROJECT INSURANCE 28

 13.1 General 28

 13.2 Bonding or Subcontractor Default Insurance 28

14. WARRANTY 29

 14.1 Warranty and Correction of Work 29

15. DISPUTE RESOLUTION 29

 15.1 Scope 29

 15.2 Continued Performance 29

 15.3 Permitted Disputes 29

 15.4 Notice 29

 15.5 Senior Management Team Meeting 29

 15.6 Mediation 30

 15.7 Arbitration 30

16. DEFAULT, SUSPENSION AND TERMINATION 31

 16.1 Termination for Convenience 31

 16.2 Suspension 31

 16.3 Owner Termination for Cause 32

 16.4 Architect/Contractor Termination for Cause 33

17. MISCELLANEOUS PROVISIONS 33

 17.1 License 33

 17.2 Confidentiality 33

 17.3 Compliance With Anti-Corruption Laws 33

17.4 Notices 34

17.5 Governing Law 34

17.6 Commencement of Statute of Limitations 34

17.7 Assignment 34

17.8 Notice of Dissolution and Other Change of Business 35

17.9 Severability..... 35

17.10 No Third-Party Beneficiaries 35

17.11 Rights and Remedies..... 35

17.12 Survival..... 35

17.13 Waiver..... 35

17.14 Execution..... 35

17.15 Counterparts.. 35

17.16 Exhibits..... 36

17.17 Entire Agreement 36

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INTEGRATED PROJECT DELIVERY AGREEMENT

This Integrated Project Delivery Agreement (“**Agreement**”) is entered into on [insert date], 2014 (“**Effective Date**”) among:

The Owner (“**Owner**”):
Cuku’s Nest Enterprises
#208, 2520 Ellwood Drive SW
Edmonton AB T6X 0A9

The Architect (“**Architect**”):
Manasc Isaac
10225 100 Avenue
Edmonton AB T5J 0A1

The Contractor (“**Contractor**”):
Chandos Construction Ltd
6720 104 St. NW
Edmonton AB T6H 2I4

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1. DEFINITIONS

1.1 Defined Terms. Defined terms and titles of Exhibits will be capitalized throughout the Agreement and the General Conditions to the Agreement (Exhibit D). The definitions for this Agreement are set forth in alphabetical order in Exhibit A. The Owner, Architect, and Contractor may be individually referred to as a Party and will be collectively referred to throughout this Agreement as the Parties. References to “subcontractor” or “consultant” in lower case refer to all subcontractors and consultants of any tier, including the Risk/Reward Subcontractors and Risk/Reward Consultants.

2. THE PROJECT

2.1 The Project. Mosaic Centre for Conscious Community and Commerce is an approximately 30,000 sq. ft. building, over three floors that will house Oil Country Engineering Offices along with providing a floor of office space for multiple tenants (incubator offices). The main floor will consist of a possible daycare, wellness/fitness area, and café. The Project team will target Net-Zero, Petal Challenge for the Living Building Challenge, and LEED Platinum.

2.2 Project Objective. The Parties will jointly develop the Project Objective based upon the Owner’s requirements, goals, and limitations. The Project Objective is comprised of the Owner’s Program Objective, Target Cost, Implementation Documents, and Contract Time, and any other objectives agreed by the Parties. The Project Objective establishes the Project requirements and standards for measuring the Project’s success. The various components of the Project Objective may be incorporated into the Agreement through Amendment upon recommendation of the Project Management Team (“PMT”) and approval of the Senior Management Team (“SMT”).

2.3 Project Phases and Stages. This Project has 3 phases of Work: Validation Phase, Design/Preconstruction Phase, and Construction Phase. The Project may also be divided into one or more Project Stages based on geographic or other relationships. At any point in time, Work in different Project Stages may be in different Project Phases. For example, Work may be in the Construction Phase for one Project Stage while in the Design/Preconstruction Phase of a different Project Stage.

2.4 Collaboration. The Owner, Architect, and Contractor will work together to achieve the Project Objective by:

2.4.1 Individually performing the Contract Tasks designated as their respective responsibilities in the Contract Task Matrix (Exhibit C);

2.4.2 Jointly managing the Project through the PMT pursuant to Article 3;

2.4.3 Cooperating with and assisting the PMT and the Project Implementation Teams (“PITS”), subject to the limits of their respective professional expertise, licensing, and abilities;

2.4.4 Executing the Work according to Lean principles as described in the General Conditions (Exhibit D); and



2.4.5 Complying with all other obligations, terms, and conditions of the Contract Documents.

3. THE PARTIES

3.1 Relationship of the Parties. Although this Agreement establishes a relationship of mutual trust and good faith among the Parties, who recognize that their individual success is directly tied to the performance of other Project Participants, it does not create an agency relationship, fiduciary relationship, partnership, or joint venture among or between the Parties. The Architect and Contractor are each independent contractors solely responsible for directing and managing their own forces and services within their respective area of responsibility as described in Sections 3.4 through 3.5. The Parties acknowledge that this Agreement is not a design-build agreement and that each Party, and each individual entity that is a Party, is responsible for its own errors, omissions, or construction defects to the extent provided in this Agreement. Likewise, nothing contained in this Agreement makes any Party jointly and severally liable for the negligent acts or omissions of any other Party, except that: (a) the Contractor is responsible for the acts, errors, and omissions of its subcontractors, and the Architect is responsible for the acts, errors, and omissions of its consultants; and (b) the Incentive Compensation Layer (“ICL”) may be eroded if errors or omissions of Architect, Contractor, or those for whom they are responsible increase the incurred Chargeable Costs.

3.2 Key Employees. Architect and Contractor acknowledge that in entering into this Agreement, Owner has relied upon each assigning to this Project the Key Employees listed in Exhibit J, each of which must perform their respective work or services throughout the term of this Agreement. No Key Employee may be replaced, reassigned, or removed without Owner’s written approval, which will not be unreasonably withheld. Owner may require replacement of any Key Employee. Employees who have replaced Key Employees, whether replacement was required by Owner or agreed to by Owner, may not be replaced, reassigned, or removed except as allowed in this Section 3.2.

3.3 Owner. The Owner will actively participate in the Target Value Design process and serve as a member of the SMT and PMT. The Owner is responsible for providing the Owner’s requirements, goals, and limitations that must be accommodated in the Project and actively participating in developing and documenting the Project Objective.

3.3.1 Owner Provided Information. Owner will provide a legal description of the property, access to all existing documentation, and all geotechnical or environmental impact reports, surveys, and other reports as may be required for proper performance of the Work and that are in Owner’s possession. Risk/Reward Team Members that participated in the Joint Site Investigation may rely upon the completeness and accuracy of the information provided by the Owner to the extent that it is not contradicted by the Joint Site Investigation or any additional documents and reports provided by Owner.

3.3.2 Permits and Fees. The Owner will pay for all entitlements, easements, assessments, and fees required for the development, use or occupancy of the Project. Permits and fees related to the Construction Work are a Chargeable Cost.

3.3.3 Testing and Inspections. Owner will be responsible for all third party testing, inspections, or commissioning. Contractor will be responsible for any other inspections



and reports required by law or by the Contract Documents. Test and inspection costs are Chargeable Costs.

3.3.4 Legal and Insurance Services. The Owner will provide legal and insurance services for the Project but all Parties are responsible for their own respective legal and insurance services.

3.3.5 PMT Participation and Deliverables. The Owner will actively participate with the PMT and PITS in further development of the Contract Task Matrix, a BIM execution plan, and other management protocols and tools, and will perform the Contract Tasks assigned to it in the Contract Task Matrix (Exhibit C), as amended.

3.3.6 Obligations. In addition to the above, the Owner will provide the PMT with timely decisions necessary to support the Project Objective, make timely payments, and perform all other Owner-designated tasks as required by this Agreement.

3.4 Architect. The Architect is the Architect of Record and is responsible for designing the Work except for those portions of the Work that are being designed through Design-Build Subcontractors. All Design Services provided by Architect and its consultants must be consistent with the Base Program and meet the standard of care in Section 3.4.1.

3.4.1 Standard of Care. The Architect and its consultants will perform the Design Services using that skill and care used by other competent licensed architects and engineers skilled in designing projects in Edmonton, Alberta that are similar in size, scope, quality, and complexity. Design Services performed in connection with this Agreement must also be in accord with all Applicable Laws. If any of the Applicable Laws conflict, the Architect will consult with the PMT on how the conflict should be resolved. Nothing in this Agreement requires the Architect or its consultants to perform any services outside its license or contrary to laws, codes, or regulations. The Architect and its consultants are not professionally responsible for the means, methods, sequences or procedures, or safety precautions, or programs in connection with the Construction Work.

3.4.2 Consultants. The Architect may retain consultants to perform portions of the Design Services in accordance with Article 5. All consultants will be appropriately licensed, will sign and seal all architectural or engineering documents prepared by them to the extent required by Governmental Authorities, will perform all Design Services in accordance with the standard of care in Section 3.4.1, and in the case of engineering consultants, will be the Engineer of Record for their respective scopes of work. All consultants will be identified in the Project roster and incorporated into the Contract Task Matrix. The Architect is responsible for managing its consultants and coordinating their respective Design Services with services provided by Architect, other consultants, and any Design-Build Subcontractors.

3.4.3 Review and Integration of Design-Build Information. The PMT may elect to have Design Services performed under design-build subcontracts through the Contractor. The Architect and its consultants will provide all applicable performance specifications and design criteria for design-build Work and will review the design documents prepared by the Design-Build Subcontractors for integration into the Architect's design and for conformance with the Architect's design intent and Owner's Program Objective. All Design-Build Subcontractors will be identified in the Project roster and will also be incorporated into the Contract Task Matrix.



3.4.4 PMT Participation and Deliverables. The Architect will actively participate with the PMT in further development of the Contract Task Matrix, a BIM execution plan and other management protocols and tools.

3.4.5 General Duties and Obligations. The Architect will perform all of its obligations under the Contract Task Matrix (Exhibit C), as amended, and the Agreement including, but not limited, to the following:

- (a) Manage and coordinate all design submissions, questions, and responses to all applicable Governmental Authorities and all other reviewing and permitting agencies;
- (b) Sign and affix its professional seal on all documents prepared by Architect and arrange for its professional consultants to do the same for all documents prepared by consultant[s], to the extent required by Governmental Authorities;
- (c) Perform all Design Services required by the Project Objective and in accordance with Applicable Law and furnish all reports, affidavits, certificates, and other documents required by Governmental Authorities relating to those portions of the Project designed by the Architect and its consultants;
- (d) Utilize Target Value Design (Section 6.2.4);
- (e) Actively collaborate with Contractor, cross-functional teams, and other Project Participants throughout the design process to develop a complete set of coordinated Implementation Documents that meet or exceed the Owner's Program Objective;
- (f) Engage in "pull-based" planning for design production using Lean project delivery methods to avoid advancing the design beyond what is called for in the work plan or identified as workable back-log (See Article 13 of the General Conditions (Exhibit D)) ;
- (g) Timely review and approve all Submittals in accordance with the requirements set forth in the General Conditions (Exhibit D) for conformance with the Implementation Documents;
- (h) Provide the PMT with timely decisions necessary to support the Project Objective, make timely payments, and perform all other Architect-designated tasks as required by this Agreement;
- (i) Provide construction administration, problem solving, and resolution of design issues during the Construction Phase in accordance with the Contract Task Matrix (Exhibit C); and
- (j) Work with Contractor to deliver a "Record Model" to Owner after Final Completion.

3.5 Contractor. The Contractor is responsible for providing preconstruction services and performing the Construction Work in accordance with the Implementation Documents and for supervising, directing, and managing the Construction Work in a manner that meets the Project Objective. All Work provided by Contractor must be consistent with the Project



Objective and meet or exceed the standard of care in Section 3.5.1. Contractor is responsible for all means, methods, sequences, and safety procedures related to the Construction Work.

3.5.1 Standard of Care. Contractor will perform all Construction Work using its best skill and attention and in a timely, workman-like manner consistent with the degree of care and skill customarily exercised by prudent licensed general contractors performing Construction Work on projects of similar size, scope, quality, and complexity in Edmonton, Alberta. To the extent that the Contractor engages Design-Build Subcontractors, those subcontractors must comply with the standard of care in Section 3.4.1 for their respective Design Services except that Design-Build Subcontractors are also responsible for the means and methods of their respective portion of the Construction Work. Nothing in this Agreement requires the Contractor to perform any work or services outside its license or contrary to the laws, codes, or regulations of the Governmental Authorities.

3.5.2 Subcontractors. Contractor will retain all subcontractors required for performance of its Work in accordance with Article 5, which includes Risk/Reward Subcontractors and Standard Subcontractors. References to subcontractors in lower case refer to all subcontractors, regardless of type. Contractor is responsible for, and will review, supervise, coordinate, and manage, the subcontracted Work. All subcontracted Work must be performed in accordance with the standard of care in Section 3.5.1 and the Implementation Documents.

(a) Design-Assist Subcontractors will actively engage in Target Value Design services (including set based design, alternatives, cost and constructability analyses) and will construct their respective portions of the Project.

(b) Design-Build Subcontractors will provide Design Services for their respective scopes of the Work through appropriately licensed design professionals who are responsible for the design documents prepared by the Design-Build Subcontractor. Design-Build Subcontractors will coordinate their Design Services with those of the Architect, its design consultants, and other Design-Build Subcontractors. All design-build documents will be stamped and signed by a registered professional engineer or architect who is licensed in the Province of Alberta in the appropriate discipline. The Design-Build Subcontractors will furnish all reports, affidavits, certificates, and other documents required by any Governmental Authority that are required by the applicable building codes, laws, and regulations governing those portions of the Project.

3.5.3 PMT Participation and Deliverables. The Contractor will actively participate with the PMT and PITS in further development of the Contract Task Matrix, a BIM execution plan, and other management protocols and tools.

3.5.4 General Duties and Obligations. The Contractor will perform all of its obligations under the Contract Task Matrix (Exhibit C), as amended, and the Agreement including, but not limited, to the following:

(a) Assist the Architect during all phases of design by providing Target Value Design services (including set based design, alternatives, constructability and cost analyses) and by coordinating design information between Design-Build Subcontractors and the PITS;



- (b) Actively collaborate with Architect, cross-functional teams, and other Project Participants throughout the design process to develop a complete set of coordinated Implementation Documents that meet or exceed the Owner's Program Objective;
- (c) Support and collaborate in Target Value Design (Section 6.2.4);
- (d) Manage Project information by using a Building Information Model or Models related to Project cost and schedule databases and provide Model checking and validation, including clash detection and integration of subcontractor models and integration with Project schedules (4D);
- (e) Collaborate with Architect to produce visualization aids such as renderings or computer generated video;
- (f) Work with Architect to deliver a "Record Model" to Owner after Final Completion;
- (g) Manage, perform, oversee, and direct all Construction Work in accordance with the Implementation Documents and Project Objective through Final Completion of the Project;
- (h) Coordinate work with Owner's Separate Contractors, including integration of the Separate Contractors into project planning, scheduling, and coordination activities;
- (i) Install, commission, and test as required, including ancillary construction necessary for installation, all Owner furnished materials and equipment;
- (j) Engage in "pull-based" scheduling for Construction Work using Lean project delivery methods to avoid advancing the construction beyond what is called for in the work plan or identified as workable back-log (See Article 13 of the General Conditions (Exhibit D));
- (k) Timely prepare and submit Submittals that are in conformance with the Implementation Documents in accordance with the requirements set forth in the General Conditions (Exhibit D);
- (l) Provide the PMT with timely decisions necessary to support the Project Objective, make timely payments, and perform all other Contractor-designated tasks as required by this Agreement;
- (m) Propose a Quality Assurance/Quality Control ("QA/QC") plan for approval by the PMT, and implement the approved QA/QC plan;
- (n) Construct the Project in accordance with the Implementation Documents, including installation of Owner-provided materials and equipment and, to the extent required, through use of Owner's Separate Contractors; and
- (o) Commission the Project with the assistance of the Architect, other Project Participants, and the independent commissioning agent, if any.



4. PROJECT MANAGEMENT

4.1 Project Management Team. The PMT includes representatives of the Owner, Architect, and Contractor. The PMT provides management-level guidance for collaborative planning, design, and construction of the Project to achieve the Project Objective. The PMT is responsible for all Project progress and for developing benchmarks, metrics, or standards for progress evaluation.

4.1.1 Authority and Responsibility. The PMT will manage and coordinate implementation of the Project Objective and provide direction to the Parties and to the PITS. Subject to the requirement that its decisions be unanimous, it is authorized to manage and direct the Project. The PMT is not, however, authorized to direct the actions of Owner's, Architect's, or Contractor's employees and is not responsible for any failure of Contractor or Architect to perform their respective obligations. PMT decisions are final and not subject to review or modification except by subsequent PMT action or Owner's Directive.

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

4.1.3 Interpretation of Owner's Program Objective and Implementation Documents. The PMT has the sole authority to interpret the Owner's Program Objective and Implementation Documents. All Requests for Information ("RFI") or clarification must be processed through the PMIS. Work related to a RFI or clarification that impacts the Target Cost or Contract Time may not proceed until it is discussed with the PMT and documented in a PMT Bulletin pursuant to Sections 4.1.6 and 4.3 issued through the PMIS. The PMT will resolve questions, discrepancies, ambiguities, and other clarifications regarding the requirements of the Owner's Program Objective and Implementation Documents according to this Agreement, the Project Objective, and in the best interests of the Project.

4.1.4 Project Meetings. The PMT will hold Regular Meetings and Special Meetings as set forth below. The PMT will designate a person to schedule Regular Meetings, facilitate communications between the Project Participants, lead Regular and Special Meetings, prepare minutes of all PMT meetings, and prepare PMT Bulletins for execution by the PMT members.

(a) Regular Meetings. The PMT will establish a regular meeting schedule, which in general should occur weekly. "Regular Meetings" will be held to review, discuss, and evaluate the current status of the Project with respect to design issues, cost, and schedule, and implement programs to improve overall Project performance. The Regular Meetings will be held separately from other meetings to assure proper management of the Project and encourage candor among the Parties. The Regular Meetings may include the SMT from each of the Parties, as well as any other necessary Project Participants that may be required to attend based on the meeting agenda.

(b) Special Meetings. "Special Meetings" may be requested by any PMT member to allow the PMT to address a matter of urgency. The Party requesting the Special Meeting will provide at least 1 Business Day's written notice, unless all PMT members



agree to a shorter time frame. Notice of a Special Meeting will identify the issues to be addressed. If a PMT member is not able to attend either a Regular Meeting or Special Meeting because of a scheduling conflict, an alternate member of the Party may be designated pursuant to Section 4.1.7.

4.1.5 Direct Communications. The PMT members and the Parties' employees are encouraged to communicate directly as necessary to efficiently manage the Project and to execute each individual PMT member's responsibilities. All decisions affecting design, cost, or Contract Time must be made by the PMT jointly according to Section 4.1.6 and confirmed in writing in a PMT Bulletin.

4.1.6 Decision Making. PMT decisions must be by unanimous agreement. All PMT decisions that change the Target Cost, Contract Time, or ICL will be documented through a Change Order per Section 11.5. If the PMT is unable to reach agreement, the PMT will refer the issue to the SMT under Section 4.2.

4.1.7 Parties' Representatives. The PMT will include representatives from each Party as identified in the Business Terms Sheet. Each Party will assure that its PMT representative attends all PMT meetings, has authority to act on behalf of the Party, and fulfills his or her responsibilities as a PMT member. The PMT may approve any member's designation of an alternate member, but any proposed replacement of a PMT member will be subject to the SMT's approval, which will not be unreasonably withheld.

4.2 Senior Management Team; Owner's Directive. Each Party will be represented by SMT members who will act on its behalf with respect to the Dispute Resolution procedures set forth in Article 15 and, upon request, to meet with the PMT at any Regular or Special Meetings. In addition, the SMT will periodically attend Regular Meetings to gain deeper familiarity with the Project and provide executive coaching and support to the PMT.

4.2.1 SMT Decisions. Any matters requiring SMT decisions or action will be decided by majority vote of the SMT, with Owner, Architect, and Contractor each having only 1 vote. Despite the above, the Owner will have the right to override the majority decision of the SMT by issuing a written "Owner's Directive." If an Owner's Directive causes the cost or duration of the Project to be increased, the Target Cost, Contract Time, and ICL, as applicable, will be adjusted pursuant to Article 11. Any dispute resulting from an Owner's Directive will be resolved under the dispute resolution provisions set forth in Article 15. Each of the Parties' SMT representatives is set forth in the Business Terms Sheet. A Party may appoint a replacement SMT member by providing written notice to the other Parties. SMT meetings will coordinate and facilitate PMT meetings, but will not vote in any SMT decisions.

4.3 Written Confirmation of Decisions. All decisions affecting design, cost, schedule, or reallocation of the Work will be recorded in writing by a PMT Bulletin per Section 4.1.5 and will be issued directly to the Contractor or Architect for distribution to the appropriate subcontractors and consultants. PMT Bulletins must be signed by all PMT representatives to signify their concurrence with the decision. A Change Order that adjusts the Target Cost, ICL, or Contract Time must be counter-signed by all PMT representatives and will be deemed a PMT Bulletin as well. All other decisions will be recorded through written meeting minutes that will be prepared by the Contractor. PMT decisions and meeting minutes will be circulated to the Project Participants and maintained in the Project Management Information System.



4.4 Personnel Management. The PMT will not supervise or control any person the Owner, Architect, or Contractor employs or contracts with in connection with the Project. The PMT may, however, require any Party to remove from the Project any person employed in connection with the Project, or personnel of companies that any Party contracted with, if it determines that the presence of that person is detrimental to achievement of the Project Objective. The Owner, Architect, and Contractor will provide personnel according to staffing plans approved by the PMT. The Parties will not remove or reduce involvement of any personnel set forth in an approved staffing plan without the PMT's written consent, which will not be unreasonably withheld. Staffing plans may be prepared and approved in phases, as directed by the PMT.

5. SUBCONTRACTS AND CONSULTING AGREEMENTS

5.1 Written Agreements. The Work performed under this Agreement will be executed by various Project team members, which will include subcontractors, suppliers, Vendors, and consultants. Consultants, subcontractors, and Vendors may be Risk/Reward Team Members or may be Standard Subcontractors or Standard Consultants. All subcontractors and consultants will be retained through subcontracts to the Contractor or consulting agreements to the Architect. Risk/Reward Team Members will be engaged through subcontracts, purchase orders (for Vendors), or consulting agreements that incorporate the risk/reward and liability allocation provisions of this Agreement. All Risk/Reward Team Members retained by Contractor or Architect will be engaged through agreements approved by the Parties, the terms of which may not be modified without the PMT's written approval.

5.1.1 Selection. Each Party will provide the PMT, in writing, with the names of persons or entities proposed to perform any portion of the Work. Within 5 Business Days of receipt, the PMT will provide a written response if it objects to the proposed person or entity because of the proposed person's or entity's qualifications, educational history, work history, or other reasonable basis. Failure of the PMT to timely object or recommend other potential subcontractors, suppliers, Vendors, or consultants will constitute the PMT's acceptance. Key consultants, subcontractors, Vendors, and suppliers will be procured early during the Validation Phase. Those consultants, subcontractors, Vendors, and suppliers that were not procured during the Validation Phase will be procured sometime during the Design/Preconstruction Phase or, in some cases, early during the Construction Phase.

5.1.2 Transparency in Negotiating or Bidding. Standard Subcontractors and suppliers will be selected on an open bid or negotiated basis as determined by the PMT. The process will be open and transparent with subcontractors and consultants submitting detailed breakdowns of their bids or proposals. Subcontractors, Vendors, and consultants that are Risk/Reward Team Members will provide detailed information concerning their respective Chargeable Costs, profit included in the ICL, and the profit percentage cap for Change Orders. The ICL Distribution Spreadsheet (Exhibit G) will be amended to incorporate the Risk/Reward Team Members' ICL and ICL Percentages. Standard Subcontractors and suppliers will provide detailed information about their respective bids or proposals including costs associated with the Work and overhead and profit for Change Orders.

5.1.3 Contract Award. Upon completion of the selection process for each subcontractor or consultant, the Contractor or Architect will make a written recommendation to the PMT for contract award. If the PMT members object to a person or entity on one of the bases set forth in Section 5.1.1, the objecting PMT member will propose another person or



entity to which the PMT has no reasonable objection. A Party will not contract with a proposed person or entity reasonably and timely objected to by the PMT. Substitutions of a subcontractor or consultant previously selected and approved by the PMT will not be made without PMT approval.

5.2 Licensing Requirements. All subcontractors and consultants will be properly licensed for their respective portion of the Work.

5.3 Required Pass Through Provisions. The Parties must pass the following provisions through to subcontractors, suppliers, Vendors, and consultants in their respective agreements as set forth below:

5.3.1 Risk/Reward Team Members.

(a) Waiver of Liability and Claims. The Contractor and Architect will incorporate clauses substantially similar to Sections 12.1 and 12.2 regarding waiver of liability and claims against the Parties and other Risk/Reward Team Members;

(b) Indemnification. Substantially similar indemnity provisions to those set forth in Section 12.3 will be incorporated into Risk/Reward Team Member subcontracts, Vendor agreements, and consulting agreements. The Owner, Contractor, and Architect must be indemnified parties under all such provisions;

(c) Compensation and ICL. Those subcontractors, Vendors, and consultants that are Risk/Reward Team Members will be subject to substantially similar compensation and ICL provisions set forth in Articles 7 and 8;

(d) Change Orders and Permitted Delays. Those subcontractors, Vendors, and consultants that are Risk/Reward Team Members will be tied to similar provisions governing Contract Time under Article 10 and changes under Article 11; and

(e) Those provisions required by Section 5.3.2.

5.3.2 All Subcontracts, Purchase Orders, and Consulting Agreements.

(a) Contract Flow-through. By appropriate written agreement, the Contractor and Architect will require each subcontractor, supplier, and consultant, to the extent of the Work to be performed by the subcontractor, supplier, or consultant, to be bound to the Contractor or Architect by terms of the Contract Documents, and to assume toward the Contractor or Architect all the obligations and responsibilities that the Contractor or Architect assumes toward the Owner through those documents. Each subcontract, purchase order, and consulting agreement will preserve and protect the rights of the Parties under this Agreement with respect to the Work to be performed by others so that subcontracting will not prejudice the Parties' rights. Where appropriate, the Contractor and Architect will require each subcontractor, supplier, and consultant to enter into similar agreements with lower-tier subcontractors, suppliers, and consultants. In addition to this general flow-through requirement, Contractor and Architect are specifically required to flow through the requirements in Section 5.3.2(b) through 5.3.2(f) as specified;



(b) Assignment. All subcontracts, purchase orders, and consulting agreements will include assignment provisions allowing assignment by the Party to Owner after termination of this Agreement by Owner for cause pursuant to Section 16.3 and provided that Owner chooses to accept the assignment of the subcontract, purchase order, or consulting agreement. If the subcontract, purchase order, or consulting agreement is assigned to Owner as a result of a termination for cause, and the Work has been suspended for more than 30 Days, the subcontractors', suppliers', or consultants' compensation will be equitably adjusted for increases in cost resulting from the suspension;

(c) Insurance. Insurance provisions equivalent to those applicable in Exhibit H will be included in the subcontracts and consulting agreements;

(d) Indemnification. The Contractor and Architect will each include indemnification provisions into the subcontracts and consulting agreements of each Standard Subcontractor and Standard Consultant that require the Standard Subcontractor and Standard Consultant to defend and indemnify the Owner, Architect, Contractor, and all Risk/Reward Team Members from all claims, damages, and liability arising out of or related to their respective work or services, including breach of contract, bodily injury, personal injury, and property damage, but only to the extent caused by the breach of contract or negligent acts or omissions of the Standard Subcontractor or Standard Consultant, or anyone directly or indirectly employed by any of them and for whose acts they may be liable;

(e) Dispute Resolution Proceedings. Contractor will require all subcontractors, Vendors, and suppliers, and Architect will require all consultants, to be subject to the dispute resolution proceedings in Article 15;

(f) Records and Auditing. Contractor will require all subcontractors, Vendors, and suppliers, and Architect will require all consultants, to be bound by the records retention and auditing provisions in Section 9.13; and

(g) Confidentiality and Non-Disclosure. Contractor will require all subcontractors, Vendors, and suppliers, and Architect will require all consultants, to be bound by the provisions of Section 17.2 prior to receiving any information regarding this Project.

5.4 Separate Contractors.

5.4.1 Non-Risk/Reward Separate Contractors. The Owner may retain Separate Contractors to perform work or services related to the Work under this Agreement. The Owner is responsible for the timeliness and quality of the work and services of its Separate Contractors. The Contractor and Architect will coordinate their Work with the work and services of the Separate Contractors to allow for smooth and efficient workflow and integrated work product.

5.4.2 Owner's Risk/Reward Subcontractors, Vendors, and Consultants. The Owner may retain vendors, contractors, or consultants that are Risk/Reward Team Members although paid directly by Owner. These vendors, subcontractors, and consultants will be retained under agreements that are substantially similar to the IPD Subcontract Agreement or the IPD Consultant Agreement used by Architect or Contractor, as appropriate. Owner's Risk/Reward vendors, contractors, and consultants will be compensated on the same basis as a Risk/Reward Subcontractor or Risk/Reward Consultant using Exhibits E or F as appropriate, will



be subject to direction from the PMT and SMT, and will benefit by and be obligated by the waivers, limitations, and other terms applicable to other Risk/Reward Team Members. The work scope of Owner's Risk/Rewards Subcontractors, Vendors, and Consultants will be within the Project Objective and their Chargeable Costs will be included in all calculations of Final Actual Cost and Estimated Final Cost, and their ICL will be subjected to the adjustments in Article 8.

6. RESPONSIBILITIES BY PHASE

6.1 Validation Phase. As determined by the PMT, the Architect and Contractor will procure certain key subcontractors and consultants to assist in the required design and construction services of the Validation Phase.

6.1.1 Joint Site Investigation. The Owner and Risk/Reward Team Members will conduct investigations at or concerning the Project site ("Joint Site Investigation") to review all existing site information; perform investigations and surveys; document all site-related information needed to design and construct the Project; verify existing conditions within the Project site, including all points of connection; and the accuracy of existing surveys and other documentation provided by the Owner.

6.1.2 Owner's Program Objective. The Owner and Risk/Reward Team Members will jointly develop the Owner's Program Objective, which will be part of the Project Objective and amended into the Agreement as Exhibit B-1. The Owner's Program Objective will be based on the Owner's Project requirements and will further define the final quality, quantity, functionality, aesthetics, sustainability, and other Project requirements approved by the PMT. The Project scope will include all elements explicitly included in the Owner's Program Objective and those that are reasonably inferable from the Owner's Program Objective.

6.1.3 Target Cost. The Owner and Risk/Reward Team Members will jointly and collaboratively develop a Target Cost that incorporates all Chargeable Costs, to design and construct the Project based on the Owner's Program Objective. Any ICL Milestone distributions will be measured against the Target Cost. The Target Cost is part of the Project Objective and will be amended into the Agreement as Exhibit B-2.

(a) Project Contingency. In developing the Target Cost, the PMT will include an appropriate amount for Project contingency to cover costs for issues such as minor revisions to design layout due to errors or omissions, coverage for Contractor's scope gaps during procurement of subcontractors, unanticipated field conditions that do not constitute an Unforeseen and Differing Site Condition, or re-sequencing of the Work and/or acceleration of the Project schedule for improvement in the Project outcome. The Project contingency is not a separate fund, but will be tracked as a separate line item and used as a cost management tool. The PMT will determine when and how the Project contingency will be used or allocated among cost model line items. The Project contingency will be taken into consideration as part of the shared cost savings after Final Completion of the Project. However, the Owner may not require the Project contingency to be used for any of the conditions set forth in Section 11.1.

(b) Allowances. In developing the Target Cost, the PMT may include appropriate Allowances. Included Allowance items will be specifically listed in the Target Cost Breakdown (Exhibit B-2). Prior to each ICL distribution Milestone, the Allowance items that have become fixed will be reconciled by Change Order, increasing the Target Cost if the fixed



amount exceeds the Allowance amount or decreasing the Target Cost if the fixed amount is less than the Allowance amount. Unspent Allowances accrue to the Owner through Change Order upon reconciliation.

(c) Termination for Failure to Agree on a Target Cost and Milestones. If the Parties are unable to agree on a Target Cost and Milestones to complete the program described in Exhibits B-1 and B-4, the Owner may terminate this Agreement and must pay the Architect, and Contractor for all Chargeable Costs incurred prior to termination but has no obligation to pay for any ICL that might be due had the termination not occurred. The Parties will provide Owner with all designs, specifications, models or other materials developed by the Parties for the Project, which are the property of Owner, and Owner agrees to defend, indemnify and hold harmless Architect, and Contractor from any and all liability or damages proximately caused by Owner's use of these documents for the Project or any other Project.

6.1.4 Milestones. The Owner and Risk/Reward Team Members will jointly develop and document Milestones based on the Contract Time set forth in the Business Terms Sheet. The Milestones exhibit part of the Project Objective and will be amended into the Agreement as Exhibit B-4. The Milestones will be used as a management tool.

6.1.5 ICL Distribution Spreadsheet. The PMT will develop the ICL Distribution Spreadsheet and update it to include those Risk/Reward Team Members procured during the Validation Phase per Article 5 and indicate the respective ICL and ICL Percentages of the Risk/Reward Team. The ICL Distribution Spreadsheet (and its updates) will be amended into the Agreement as Exhibit G.

6.2 Design/Preconstruction Phase. During the Design/Preconstruction Phase, the PMT will oversee development of the Implementation Documents for the Project in accordance with the Owner's Program Objective and will complete the following design and preconstruction activities.

6.2.1 Procurement of Other Project Team Members. During the Design/Preconstruction Phase, the remaining key subcontractors, Vendors, suppliers, consultants, and Separate Contractors will be contracted by the Owner, Contractor, and Architect pursuant to Article 5. The Project roster will be updated by the PMT to include all Project Participants.

(a) Update Contract Task Matrix. The PMT will update the Contract Task Matrix (Exhibit C) as required to include the necessary subcontractors, Vendors, suppliers, consultants, and Separate Contractors procured during the Validation Phase that will be performing certain tasks. The Contract Task Matrix will be updated from time to time as the PMT deems necessary to reflect the status of the Project and assign necessary tasks to the most qualified Project Participant.

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

6.2.2 Project Implementation Teams. The PMT will develop, guide, and direct Project Implementation Teams ("PITS") that are responsible for designing and implementing the Project consistent with the Owner's Program Objective, and Target Cost. The PITS will be organized into interdisciplinary, cross-functional teams that will vary depending upon the stage



of the Project. These cross-functional teams may be temporary for certain issues or may be formed for the duration of the Project. The cross-functional teams will collaborate regarding Project elements, including site use and improvements, selection of materials, building systems, and equipment. The PITS will meet regularly with the PMT throughout the Target Value Design process to evaluate functionality, constructability, sustainability, life cycle cost analysis. The PITS will not have decision making authority, but the PMT will actively seek and consider input and counsel of the PITS.

(a) Cost Model. With the assistance of the PITS, the PMT will develop a detailed cost model based on the Target Cost breakdown and the profit of each Risk/Reward Team Member. The cost model will track paid Chargeable Costs, incurred but unpaid Chargeable Costs, current estimate of future Chargeable Costs, the percentage of the Work completed, any ICL distributions, the predicted variance of each line item, and the projected variance from the Target Cost. The cost model will be updated by the Contractor based on a schedule developed by the PMT and will be reviewed and approved by the PMT.

(b) Project Scheduling. The PMT and PITS will jointly develop an initial pull-based schedule per Section 10.4 based on the design requirements and the Substantial Performance date set forth in the Milestones. The pull-based schedule will define the flow of developing the Implementation Documents, avoiding bottlenecks, or advancing aspects of the design beyond what has been anticipated and approved for any given time period. The PMT and PITS will jointly develop phase plans per Section 10.4.1 based on the initial pull-based schedule for submission and approval by the PMT. Under PMT direction, the applicable Project Participants will collaboratively create and update work plans for Design/Preconstruction Phase activities per Section 10.4.2. The Parties and applicable Project Participants will only perform Work that is approved on the applicable work plan or has been identified as workable backlog.

6.2.3 Building Information Modeling Execution Plan. Early in the Design/Preconstruction Phase, the PMT and other relevant consultants, Vendors, suppliers, and subcontractors will participate in a BIM workshop to establish a BIM execution plan that addresses the uses specified in the General Conditions or identified in the Owner's Program Objective. The BIM execution plan will be approved by the PMT.

6.2.4 Target Value Design Process. The PMT and PITS will utilize the Target Value Design process to optimize and coordinate the design in accordance with the Owner's Program Objective and endeavor to create additional value by identifying alternative systems, means, and methods to reduce capital expenditures and life-cycle costs, analyze and improve work-flow, improve constructability and functionality, provide more operational flexibility, and endeavor to reduce the actual Chargeable Costs while maintaining or increasing the quality and overall function of the Project.

(a) The agreed Target Cost is a design criteria.

(b) To the greatest extent practicable, the Contractor and its subcontractors will provide continuous cost projections and rapid cost evaluation of proposed design alternatives to the PITS and PMT throughout the Target Value Design process to assist the Risk/Reward Team Members, and the PMT, in making informed decisions about proposed design solutions.



6.2.5 Government Regulations. The PMT in collaboration with the PITS will identify and determine the meaning and effect of all applicable building code provisions and other building restrictions and requirements of Governmental Authorities. The Architect, in conjunction with the Contractor and any Design-Build Subcontractors, will assist the Owner with filing all required applications, drawings, specifications, calculations, or other documents required for permits.

6.2.6 Implementation Documents. The PMT will finalize design in accordance with Owner's Program Objective and within Target Cost and obtain a permit for the Construction Work. The Implementation Documents list will be incorporated into the Project Objective as Exhibit B-5 through Amendment to the Agreement.

6.3 Construction Phase. During the Construction Phase, the remainder of the consultants, subcontractors, suppliers, and Separate Contractors will be procured and the Construction Work will be performed in accordance with the permitted Implementation Documents.

6.3.1 Building Information Model. The BIM will be continually updated throughout the Construction Phase in accordance with the BIM agreement so that the Model is current with the actual "as-built" condition and when completed will be the Record Model.

6.3.2 Commissioning. The Contractor, in conjunction with Architect and other necessary Project Participants, and Owner's maintenance personnel, will schedule and oversee the final testing and start-up of utilities, operational systems, and equipment, and assist the Owner with the building commissioning. All inspections and testing will be conducted by the Owner, any third-party commissioning agent, and required Governmental Authorities. During commissioning and before Final Completion, the Contractor and other necessary participants will oversee the subcontractor operation, adjustment, and balancing of all equipment, and training of Owner's employees in the correct operation and maintenance of equipment.

6.3.3 Close-Out. Before Final Completion of the Project, the Contractor will provide Owner with all required as-built drawings, the Record Model, operation and maintenance manuals, references, warranties, attic stock, and keying schedules as required by the Contract Documents. If a document exists digitally, Contractor will provide Owner with an electronic copy in the document's native format. If the document exists in hard copy, Contractor will provide Owner with a hard copy in addition to a native format electronic copy.

6.3.4 Final Payment and Determination of ICL and Shared Savings. After Final Completion of the Project, the PMT will determine final ICL distribution and any shared savings for the Risk/Reward Team Members per Section 8.8.

7. COMPENSATION

7.1 General. The Architect's and Contractor's compensation for the Work is the sum of their respective Chargeable Costs incurred for the Project to the extent allowed in Exhibit E and Exhibit F (including overhead on the basis set forth in Section 7.1.1), and subject to Project success, their respective percentage of the adjusted and available ICL. Overhead is based on rates agreed with Owner and covers all costs incurred by the Architect or the Contractor, of any nature, other than payable as Chargeable Costs, and may not include any amount of profit. Affiliates of a Party, if employed as a subcontractor or consultant, will be paid on the same basis



as the parent company. An affiliate is any organization that is owned directly or indirectly, in whole or in part, by the parent of a party, or which is owned in whole or in part by a Party, or a Party's owners.

7.1.1 Overhead. Overhead for the Architect is paid as an agreed multiplier on its hourly salary rates in Exhibit E. The Contractor's overhead is paid as a fixed percentage applied to its Chargeable Costs, at the fixed rate shown in the Business Terms Sheet. With PMT approval, certain overhead costs may be included in the agreed billable rates outside the overhead mark-up, provided that an expense category may not be charged in both a rate burden and the overhead mark-up.

7.1.2 Owner's Costs. The Owner's costs will be tracked separately by the Owner and are not included in the Target Cost. However, the following costs incurred by the Owner may be counted towards the Target Cost:

(a) The Owner's costs resulting from damage to the Work itself prior to Substantial Performance caused by Architect, Contractor, or anyone for whom either is responsible, but only to the extent such costs are not paid by an insurer. This provision captures those Owner's costs resulting from damage to the Work other than the Chargeable Costs of Architect or Contractor; and

(b) The Owner's costs to third parties necessary for the completion of the Work, such as permitting agencies, inspectors, testing labs, or geotechnical consultants, to the extent those costs result from an error, omission, or delay caused by Architect, Contractor, or anyone for whom either is responsible.

7.2 Contractor Self-Performed Work.

7.2.1 Competitively Proposed Trade Work.

(a) If Owner consents, Contractor may propose to self-perform trade work on the same basis as approved subcontractors submitting competing proposals. Contractor's proposal must specify, in addition to any other Owner required information, the proposed fixed profit and the proposed overhead percentage associated with the self-performed trade work. Owner will confer with the Architect, who will be responsible for reviewing the proposals, and Owner will determine, in its sole discretion, whether to accept Contractor's proposal to self-perform the trade work or the proposal of a subcontractor and may seek confirmation of the proposed overhead rate through independent audit.

(b) Owner reserves the right to reject all proposals and seek new proposals, or to reject all proposals and negotiate a contract for the trade work with Contractor per Section 7.2.2 or its subcontractor, or with a Separate Contractor. If the trade work is awarded to Contractor on a competitive, lump sum basis, Contractor will separately invoice for the trade work on a percentage of completion basis as if the trade work was being performed by an independent subcontractor. However, Contractor will not apply its overhead percentage (Section 7.1) to its self-performed, competitively bid trade work nor will Contractor's ICL be increased by adding self-performed, competitively bid trade work.



7.2.2 **Negotiated Trade Work.** Owner, at its sole discretion, may choose to directly negotiate the performance of trade work with Contractor for a fixed profit plus overhead allowed under Section 7.1.1. The fixed profit amount will be added to the Contractor's ICL and the respective ICL percentages of the Risk/Reward Team Members will be proportionately adjusted. This amount of overhead and profit awarded to Contractor for the self-performed trade work is Contractor's sole compensation for this work, which will not be marked up for any additional overhead or profit.

7.3 Incentive Compensation Layer. The ICL and the ICL Percentages of the Risk/Reward Team Members will be set forth in Exhibit G, as amended. The ICL can be modified by Change Order and may be disbursed, if earned, during the Design/Preconstruction Phase and Construction Phase based on the Milestone distributions also set forth in Exhibit G and subject to the provisions set forth in Article 8. Architect and Contractor will each be responsible for paying their own respective Risk/Reward Team Members their respective portion of any distributed ICL.

7.3.1 **Scope Swaps.** The PMT may choose to reduce the work scope of a Project Participant and correspondingly increase the scope of work of another Project Participant to capture the benefits, without limitation, of innovative designs, processes, or technologies. If the PMT determines that the increased scope for a Risk/Reward Team Member creates a significant financial inequity, it may use a portion of any savings from the innovative design, process, or technology to equitably increase the ICL of that Risk/Reward Team Member, and then recalculate the ICL and the ICL Percentage of each Risk/Reward Team Member. All changes under this Section will be documented in a Change Order.

8. RISK/REWARD PROGRAM

8.1 General. The Risk/Reward Team Members have agreed that 100% of their potential ICL will be increased or decreased based on overall Project performance, as described in this Article. Although a portion of ICL may be paid at a Project Milestone, ICL is not earned until Final Completion of the Project and all adjustments to ICL have been made. No ICL increase for shared savings will be paid prior to Final Completion of the Project.

8.2 Contractor's ICL Pass-through. Contractor's ICL is the sum of the ICL attributable to its Work and the ICL attributable to the Work of its Risk/Reward Subcontractors. Contractor will distribute to its Risk/Reward Subcontractors their respective proportions of the Contractor's ICL. The ICL of subcontractors that join the Risk/Reward Team after execution of this Agreement will be added to Contractor's ICL and all ICL Percentages for the Risk/Reward Team Members will be adjusted proportionately.

8.3 Architect's ICL Pass-through. Architect's ICL is the sum of the ICL attributable to its Work and the ICL attributable to the Work of its Risk/Reward Consultants. Architect will distribute to its Risk/Reward Consultants their respective proportions of the Architect's ICL. The ICL of consultants that join the Risk/Reward Team after execution of this Agreement will be added to Architect's ICL and all ICL Percentages for the Risk/Reward Team Members will be adjusted proportionately.

8.4 ICL Distribution Schedule. For each Project Stage, Exhibit G lists the Milestones and the percentage of a Risk/Reward Team Member's ICL that is payable, subject to payment pre-conditions, at each Milestone.



8.5 Milestone ICL Payments.

8.5.1 When a Milestone is Achieved. When a Milestone is achieved, the PMT will assess whether: (1) the Project is estimated to achieve Project Final Completion within the Contract Time; and (2) whether the Estimated Final Cost is less than or equal to 5% below the Target Cost.

(a) If both pre-conditions are true, the ICL Milestone payment scheduled in Exhibit G will be paid along with the Chargeable Costs for that period.

(b) If either or both of the payment pre-conditions are not met, then the scheduled Milestone payment will be deferred, and not paid. If at a later Milestone, both pre-conditions are met, the Milestone payment will include the scheduled Milestone payment plus the deferred Milestone payment or payments. The only exception is ICL distributions pursuant to Final Completion Milestone, which will be made pursuant to Sections 8.8 and 9.3.

(c) Increases to the ICL due to Project performance are not included in Milestone ICL payments, but are only paid at Final Completion of the Project.

8.6 Milestone Estimate. When a Milestone is achieved, the Contractor and Architect will prepare a proposed estimate that: (i) is current as of date of Milestone achievement; (ii) contains all elements and costs that are included within the Target Cost; and (iii) is based on the actual incurred Chargeable Costs plus the estimated cost to complete the Work. Within 5 Business Days after receipt of the proposed Milestone estimate, the PMT will either accept the proposed Milestone estimate or request verification from an independent cost consultant. If independent verification is requested, the PMT will meet with an independent cost consultant chosen by the Owner who will review the proposed Milestone estimate within 5 Business Days and either accept it, accept it with modification, or prepare an independent cost estimate. The independent cost estimate must follow the same structure as the proposed Milestone estimate and may not include any items not contained within the Target Cost, increase any contingencies, or withhold any funds not previously agreed to by the PMT.

8.7 Milestone Overpayment. If, at any time during the Design/Preconstruction Phase or Construction Phase, the amount of the distributed Milestone ICL payments exceed the ICL, as adjusted, then Architect and Contractor will reimburse the Owner for any overpayment of ICL, including amounts of overpaid ICL that are paid to their subcontractors, Vendors, and consultants. Reimbursement will be made within 10 Business Days of receiving written demand from Owner. Also, if at any time after 50% completion of the Construction Phase the Owner reasonably determines that the aggregate Chargeable Costs are likely to exceed the Target Cost, the Owner may offset the applicable amounts of prior Milestone ICL payments against succeeding payments of Chargeable Costs to Contractor and Architect, respectively. Any offset under the prior sentence will be reversed after Project Final Completion if the actual Chargeable Costs do not exceed the Target Cost.

8.8 ICL Adjustments.

8.8.1 Risk/Reward Model. The risk/reward model is based on setting an At-Risk Threshold (ART), a Target Cost, and a Shared Savings Percentage. Both the ART and the Target Cost will be set by amendment.



(a) If at Final Completion the Final Project Cost is less than the Target Cost, then a percentage of the savings (determined by the Shared Savings Percentage) is added to the ICL for distribution to the Risk/Reward Team. The Shared Savings Percentage is 60% to the Risk/Reward Team and 40% to the Owner.

(b) If at Final Completion, after reconciliation of Allowances, the Final Project Cost exceeds the ART, the ICL, is reduced dollar for dollar. If, after this reduction, the amount of ICL that had previously been distributed at Milestones exceeds the reduced ICL, then the Architect and Contractor will, within 15 days of Project Final Completion, repay Owner the amount of the overpayment, in proportion to their individual ICL Percentages plus their respective ICL Pass-throughs (Sections 8.2 and 8.3).

(c) If at Final Completion, Final Actual Cost stays in the neutral zone between the Target Cost and the ART, the ICL is neither reduced nor increased.

8.8.2 ICL Adjustment Based On Schedule. As an incentive for the Parties to work efficiently and complete the Project ahead of schedule in order to reduce the Owner's exposure to on-going rental payments, the Parties have agreed to an ICL adjustment based on schedule. The adjustment is based on the number of whole rental months avoided or increased because of early or delayed completion of the Project. If the Project is completed before the Substantial Performance date, including Change Order adjustments, then for each month that the Owner avoids paying rent and other expenses at \$50,000, the ICL will be increased by \$30,000. If the project is completed after the Substantial Performance date, then the ICL will be decreased by \$50,000 for each additional month of rental and other additional expenses incurred by Owner at \$50,000.

9. PAYMENT

9.1 Chargeable Costs. The Architect's and Contractor's Chargeable Costs are chargeable to the Target Cost. The Architect's Chargeable Costs are set forth in Exhibit E. The Contractor's Chargeable Costs are set forth in Exhibit F. Consultants and subcontractors who are Risk/Reward Team Members will use the same Chargeable Cost standards applied to Architect and Contractor, respectively. No costs will be charged to the Project that are not actually incurred by the Project Participants.

9.2 Periodic Payments. Payment applications will be prepared by the Architect and Contractor as required by Exhibit K and Owner will make payments accordingly.

9.3 Final Payment. The Owner will make Final Payment 30 Calendar Days after Final Completion of the Project and determination of the ICL adjustments per Section 8.8. Final Payment will include all unpaid Chargeable Costs, plus the Risk/Reward Team Members' respective ICL amount, if any. The PMT must approve the payment application for Final Payment. Final Payment does not waive Owner's right to later object to defective design, materials, or workmanship; waive any warranty rights the Owner may have; or release any Party from its indemnification obligations in Section 12.3.

9.4 Materials and Equipment. Periodic payment applications may include materials and equipment delivered and suitably stored on-site for subsequent incorporation into the Construction Work or, with PMT's prior approval, suitably stored off-site at an insured warehouse that is approved by the PMT. Payment for stored materials and equipment will be



conditioned upon compliance with Owner's procedures for protecting the Owner's interest and establishing Owner's title to the materials and equipment. Contractor will not make advance payments to subcontractors or suppliers for stored materials or equipment without PMT approval.

9.5 Supporting Documents. Each payment application will be accompanied by the following:

9.5.1 Sufficient documentation supporting the Chargeable Costs as described in the Payment Protocol (Exhibit K), and other documentation reasonably required by the PMT or the Owner;

9.5.2 Duly executed conditional waiver and release forms complying with Applicable Law covering all Work performed during the billing period by the Architect, Contractor, subcontractors, consultants, suppliers, or any other party entitled to register a construction lien;

9.5.3 Certification that Architect and Contractor have no knowledge of any recorded stop payment notices or construction liens with respect to the Work performed by others and that all subcontractors, consultants, and suppliers have been paid to date or will be paid with the proceeds for Work covered under the payment application. If Architect or Contractor has knowledge of any construction liens, it will certify as to what it knows of the r liens and covenant to bond or otherwise discharge the liens per Section 12.3.5; and

9.5.4 In addition to the above, within 5 Business Days after receipt of Final Payment, the Architect and Contractor will provide Owner a duly executed unconditional waiver and release form complying with Applicable Law covering all services and work performed by them and by their subcontractors, consultants, suppliers, or any other party entitled to register a construction lien with respect to any labor, services, equipment, or material rendered or provided for the Project.

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

9.6.1 The Willful Default of the Party submitting the invoice;

9.6.2 Failure of Contractor, or its subcontractors, to make timely payments to their respective subcontractors and suppliers for labor, materials, or equipment, provided Owner has made payment as required by this Agreement;

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

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



If the reason for withholding payment is cured, Owner will pay the withheld amount within 7 days of receiving reasonable documentation evidencing that the reason for the withholding has been cured. The right to withhold does not apply to undisputed portions of any payment application.

9.7 No Right to Stop Work. If a Party disputes any determination with respect to any payment application, the Party will nevertheless expeditiously continue to prosecute the Work, if undisputed amounts are timely paid. Owner will not be deemed to be in default or breach of this Agreement for withholding of any payment under Section 9.6. However, the Party claiming that payment has been withheld, in whole or in part, may submit the payment dispute for determination under Article 15.

9.8 Reliance. In taking action on payment applications, the PMT may rely on the accuracy and completeness of the information furnished by the Architect and Contractor, and will not be deemed to represent that the PMT has made: (i) a detailed examination, audit, or arithmetic verification of the documentation or supporting data; (ii) exhaustive or continuous on-site inspections; or (iii) examinations to ascertain how or for what purposes the Architect and Contractor have used amounts previously paid.

9.9 Warranty of Title. Contractor warrants that title to all Construction Work, materials, and equipment covered by a payment application, whether incorporated in the Project or not, will pass to Owner at the time of payment by Owner, free and clear of all liens, claims, security interests, or encumbrances in favor of Contractor, subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials, or equipment relating to the Construction Work. Contractor will defend, indemnify, and hold Owner harmless from any and all liens, claims, security interests, or encumbrances filed by Contractor, or its subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials, and equipment relating to the Construction Work, provided Contractor has received payment for the Construction Work at issue pursuant to this Agreement.

9.10 No Waiver. Payment by Owner will not constitute approval or acceptance of any item of cost in the payment application or final acceptance or approval of that portion of the Work to which the partial payment relates.

9.11 Payments to Subcontractors and Suppliers. The Owner and Architect do not have any obligation to pay, or to see that payment is made to a subcontractor or supplier except as may otherwise be required by law.

9.12 Payment to Consultants. The Owner and Contractor do not have any obligation to pay, or to see that payment is made to an Architect's consultant except as may otherwise be required by law.

9.13 Records and Audits.

9.13.1 Architect and Contractor must keep full and detailed accounts and records related to the performance of Work under this Agreement for a period of at least 4 years after Final Completion of the Project. The detailed accounts and records will be created and maintained in accordance with good accounting practices and control systems satisfactory to Owner. The records maintained must include, without limitation, job cost reports, general ledgers, time records, receipts, subcontracts, purchase orders, evidence of payment, written



and electronic communications, estimates, bids, change order logs and files, change order request logs and files, and records related to any Chargeable Costs charged to the Project.

9.13.2 At any time during the performance of the Work and through 4 years after Project Final Completion, Owner, at its expense, may, but is not under any obligation to, audit the records of Architect or Contractor, and their consultants and subcontractors of any tier, related to: (i) direct costs provided in establishing the Target Cost; (ii) any payment application or calculation of amounts the Owner owes or is alleged to owe; and (iii) subcontractor or consultant costs submitted as Chargeable Costs. The person or organization being audited will reasonably cooperate and make its records available for inspection, copying, and audit. If an audit discovers undisputed overcharges that the Architect or Contractor knew or reasonably should have known and that exceeds 10% of any invoice, the Party responsible for the overcharge will reimburse Owner for the cost of that audit and if both the Architect and Contractor are responsible for the overcharge, each will reimburse the Owner in proportion of the amount of the overcharge.

9.13.3 These audit provisions survive the termination of this Agreement. By appropriate written agreement, Architect and Contractor will require their respective subcontractors, Vendors, suppliers, and consultants to be bound by and fully comply with the provisions of this Section 9.13.

10. CONTRACT TIME

10.1 Contract Time. The Contract Time is the time allotted in the Milestones to achieve Project Final Completion. The Substantial Performance and Final Completion dates may only be extended by mutual agreement of the PMT for a Permitted Delay per Section 10.5 and in accordance with the Change Order process under Article 11.

10.2 Commencement of the Construction Work. The date of commencement of the Construction Phase will be documented by the Notice to Proceed issued by the PMT.

10.3 Project Staging. Portions of the Project may be segregated into separate Project Stages with individual Milestones, Substantial Performance, and Final Completion dates. If the Project is staged, all Project Stages must be completed prior to the date for Final Completion of the Project. The PMT will prepare a Staging Schedule for approval by the SMT that, at a minimum, specifies the dates of construction commencement, Substantial Performance and Final Completion for each Project Stage.

10.4 Project Scheduling. Planning and scheduling performed on the Project will use “pull scheduling” techniques pursuant to the Last Planner System™, or an equivalent system as appropriate. In order to be pull-based, the planning system must be based upon requests from a Project Participant to other Project Participants upon whom the requester’s work is dependent, and receipt of reliable promises made by the upstream performer about when it will finish the work agreed upon per the hand-off criteria, in order to enable the downstream performers to begin their respective portion of the Work. At a minimum, the system must include the Milestones, collaboratively created phase plans per Section 10.4.1, make-ready work plans per Section 10.4.2, and a method for measuring, recording, and improving planning reliability.

10.4.1 Phase Planning. Phase plans must be based on collaborative planning through direct communications by all Project Participants performing Work in a particular phase,



who, working backwards from the most current approved Milestones, create collaborative phase schedules indicating when their portion of the Work will be completed. Direct communications among Project Participants allows the various parties to make reliable promises to each other, and specifically discuss and negotiate the hand-off criteria or other conditions of satisfaction that are mutually understood and agreed upon.

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

10.5 Permitted Delays. If the Architect or Contractor is delayed in the commencement, prosecution, or completion of the Work by: (i) material acts or omissions of the Owner, its affiliates, or the Owner's Separate Contractors; (ii) Owner-Elected Changes; (iii) Owner's Directive; (iv) a Post Permit Change; (v) a Force Majeure event; (vi) Unforeseen and Differing Site Conditions; and/or (vii) Owner's Suspension of the Work per Section 16.2, and if the delay lengthens the Project's critical path, then the Contract Time will be extended for the duration of the delay less the extent that the delay was also caused by any fault, neglect, act or omission of the Architect, Contractor, or their respective employees, consultants, subcontractors or suppliers.

10.6 Notice. The Architect and Contractor will not be entitled to a Permitted Delay unless the PMT is notified no later than 5 Business Days after the event causing the delay was first observed and provided Architect and/or Contractor demonstrates that it could not have anticipated or avoided the delay, obstruction, hindrance, or interference and has used available means to minimize the consequences of the delay.

10.7 Schedule Slippage. The Contractor or Architect will notify the PMT promptly of any delay in the most current approved Project schedule as a result of its Work and must submit a detailed recovery plan for the PMT to evaluate and approve.

10.8 Acceleration. The PMT may determine that it is in the best interest of the Project to direct certain Project Participants to work overtime in an attempt to recapture any delays to the Project schedule. Overtime directed by a PMT Bulletin is a Chargeable Cost.

11. CHANGES

11.1 Permitted Changes. There will be no changes to the Project Objective, including the Target Cost, Contract Time, or the ICL unless one of the following conditions occur:

11.1.1 Owner-Elected Changes;

11.1.2 Owner's Directive;



- 11.1.3 Unforeseen and Differing Site Conditions;
- 11.1.4 Post Permit Changes;
- 11.1.5 Owner's suspension of the Work per Section 16.2;
- 11.1.6 Reconciliation of Allowance items to actual cost; or
- 11.1.7 Permitted Delays per Section 10.5, except Force Majeure.

11.2 Changes to Cost. Subject to PMT approval, the Target Cost may be adjusted by the estimated increase in Chargeable Costs caused by one of the conditions set forth in Sections 11.1.1 through 11.1.7 above. Additional costs resulting from a Permitted Delay under Section 10.5 will not adjust the Target Cost or ICL unless and only to the extent that the delay was caused by one of the conditions set forth in Sections 11.1.1 through 11.1.7 above.

11.3 Changes to the Contract Time. The Contract Time may only be extended for a Permitted Delay under Section 10.5.

11.4 Limitation on Changes to ICL. A permitted change under Section 11.1 does not necessarily result in an adjustment to the ICL, which will be made only with the PMT's agreement and as set forth in a Change Order. However, if the ICL is adjusted, the ICL adjustment cannot exceed the product of: (a) the ICL Change Order percentage applicable to a Risk/Reward Team Member whose portion of the Work has increased; and (b) the anticipated increase in Chargeable Costs of the Risk/Reward Team Member.

11.5 Change Order Procedure. Change Orders will be used to document changes to the Project Objective and will include approved adjustment to the Target Cost, Contract Time, or ICL. Adjustments to the ICL must be tracked in accordance with the distribution chart set forth in Exhibit G for each approved Change Order. Any Party may request a Change Order to this Agreement for a permitted change by providing the PMT with a written Change Order Request ("COR") setting forth the nature of the change, the reason for the change, and the effect, if any, on the Target Cost, the Contract Time, if any, or ICL. All CORs must be submitted to the PMT within 10 Business Days of discovering the condition or circumstance necessitating the change. Failure to timely submit the COR waives and releases any claim for a Change Order related to the facts or circumstances allegedly supporting the COR. The PMT will promptly review the COR and: (i) accept the request; (ii) accept the request in part or with modification; (iii) request additional information or perform its own investigation; or (iv) deny the COR. If a COR is accepted by the PMT, then the PMT will recommend the Change Order to the Parties for execution. If the PMT does not act on a COR within 10 Business Days of its submission, it will be referred directly to the SMT. The SMT must act on the COR within 10 Business Days of referral from the PMT, and if it does not act, the Change Order is deemed denied by Owner's Directive. Any disagreements with regard to a COR will be determined according to the decision procedures in Sections 4.1.6 and 4.3, and if unresolved, are subject to dispute resolution under Article 15.

11.6 Owner's Directive. When Owner issues an Owner's Directive, Architect and Contractor must separately track their Chargeable Costs incurred in complying with the Owner's Directive and indicate on the applicable payment application(s) which Chargeable Costs are for a particular Owner's Directive.



12. LIABILITY ALLOCATION

12.1 Waiver of Liability. The Owner and Risk/Reward Team Members waive and release all claims and liability between and among each other related to the performance of this Agreement except for the Allowed Claims listed in Section 12.2. However, this liability waiver is void as to the Willful Default of Owner or any Risk/Reward Team Member, but only as to the entity in Willful Default.

12.2 Allowed Claims. “Allowed Claims” are limited to the following circumstances:

12.2.1 Willful Default. Claims for damages caused by the Willful Default of Architect, Contractor, Vendor, subcontractors, suppliers or consultants;

12.2.2 Warranty Claims. Claims against the Contractor, subcontractors, or suppliers for any breach of warranty obligations under Article 14;

12.2.3 Project Performance. Claims for loss or damage first occurring after Project Final Completion for: (i) bodily injury or property damage caused by the failure of the Construction Work to be executed in conformance with the Implementation Documents; (ii) bodily injury or property damages caused by negligent acts, errors, or omissions in the design of the Project or its component systems; and (iii) the repair, modification, or replacement of components or systems that do not meet the functional and performance requirements of the Implementation Documents;

12.2.4 Third-Party Claims. Claims for contribution or indemnification from claims of third parties arising from any acts or omissions of the Owner, Architect, Contractor, subcontractors, suppliers, and consultants resulting from the performance of the Work;

12.2.5 Unresolved Change Order Requests. Claims for Change Orders that have not been resolved by the PMT or SMT pursuant to Article 11;

12.2.6 Non-Payment. Claims arising from the Owner’s failure to pay undisputed amounts due under this Agreement or amounts withheld by Owner pursuant to Section 9.6;

12.2.7 Over-Payment. Claims for amounts overpaid by Owner, as determined by audit under Section 9.13;

12.2.8 Termination or Suspension. Claims for amounts due following termination or suspension to the extent permitted by Article 16;

12.2.9 Indemnity. Claims to enforce indemnification obligations in Section 12.3, 12.4 or elsewhere in this Agreement;

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

12.2.11 Intellectual Property. Claims to enforce intellectual property rights under this Agreement;



12.2.12 Dispute Resolution. Claims to enforce the dispute resolution provisions set forth in Article 15 and civil actions necessary to enforce construction liens; and

12.2.13 Specific Performance. Actions for specific performance of this Agreement.

12.3 Indemnification.

12.3.1 Contractor's Indemnification. The Contractor will (and Contractor will require its subcontractors and suppliers to) defend, indemnify, and hold the Owner and Risk/Reward Team Members harmless from and against any and all claims, losses, damages, liabilities, and expenses (including legal, expert witness, and consulting fees and costs) alleged by any third parties (including any of their respective employees), arising out of, or resulting from, bodily injury (including death) or damage to tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, its subcontractors, and suppliers or anyone directly or indirectly employed by any of them for whose acts the Contractor may be liable.

12.3.2 Owner's Indemnification. The Owner will defend, indemnify, and hold the Risk/Reward Team Members harmless from and against any and all claims, losses, damages, liabilities, and expenses (including legal, expert witness, and consulting fees and costs) alleged by Owner's employees arising out of, or resulting from, bodily injury (including death) or damage to tangible property damage (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Owner, its Separate Contractors, or anyone directly or indirectly employed by any of them for whose acts the Owner may be liable.

12.3.3 Architect's Indemnification. The Architect will (and Architect will cause its consultants to) defend, indemnify, and hold the Owner and Risk/Reward Team Members harmless from and against any and all claims, losses, damages, liabilities, and expenses (including legal, expert witness, and consulting fees and costs) alleged by any third parties (including their respective employees) arising out of, or resulting from, bodily injury (including death) or damage to tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Architect or its consultants, or anyone directly or indirectly employed by any of them for whose acts Architect may be liable.

12.3.4 Patent and Copyright. Contractor and Architect each represent and warrant that designs, processes, methods, or materials used by each for the Project do not and will not violate any patents, copyrights, or trademarks. Contractor and Architect, but only for its own breach of the prior sentence, will defend and indemnify Owner from and against claims, damages, losses, royalties and expenses, including, without limitation, legal fees attributable to patent, copyright, or trademark violations.

12.3.5 Lien-Free Obligation. If any subcontractor, supplier, or consultant records or files, or maintains any action regarding a construction lien, or *lis pendens* relating to the Work or the property where the Project is situated, the Contractor or Architect, as applicable, will immediately have the construction lien, or *lis pendens* vacated and any action against the Owner dismissed, provided the Owner has paid the Contractor or Architect for the Work and the Contractor or Architect failed to pay their respective consultants, subcontractors, or suppliers. If Architect or Contractor fails to make timely payments to their respective consultants, subcontractors, and suppliers as required, the Owner may settle or vacate any claims, or take



other actions necessary to prevent a default under any other agreement affecting the Owner's property or the Project, and Contractor or Architect, as applicable, will upon written demand reimburse Owner for any substantiated amounts that were necessary to satisfy Architect's or Contractor's obligation to satisfy, discharge, or defend against any claim of lien, including but not limited to all legal fees and applicable interest. The Architect and Contractor will each indemnify and hold the Owner harmless from any claims filed by their respective consultants, subcontractors, or suppliers for enforcement of construction liens, provided the Owner has made payment to the Architect and Contractor for the Work that is subject to the claim. Nothing contained in this Section will be construed to require the Contractor or Architect to file bonds for any valid construction lien, *lis pendens*, or other claim due to the Owner's non-payment or a valid dispute between the Parties.

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

12.4 Site Safety. The Contractor is solely responsible for training, initiating, maintaining, and supervising safety precautions and programs in connection with performance of the Construction Work and according to all Applicable Laws governing safety on construction sites and the provisions of Article 8 of Exhibit D, and the Contractor will be the "prime contractor" for the purpose of all applicable occupational and health legislation. The Contractor will defend, indemnify, and hold the Owner and Architect harmless from and against all demands, causes of action, and other claims for damage, loss, and expense, including but not limited to legal fees, resulting from bodily injury, sickness, disease, death, injury, or tangible property damage (other than to the Work itself) to the extent caused by its failure to train, initiate, maintain, or supervise safety precautions and programs in connection with performance of the Construction Work.

12.5 Joint Defense of Third-Party Claims. Because the Parties have a similar interest in the outcome of the Project, the Parties will endeavor to resolve any third-party claims (including subcontractor, supplier, and consultant claims) under a joint defense agreement establishing the procedures and rights of the Parties. To the extent possible, the Parties will jointly address, investigate, manage, defend, settle, or otherwise resolve all third-party claims arising from or related to the Project or this Agreement, subject to applicable legal and ethical considerations, including the need for independent legal counsel. Subject to PMT approval, a Party defending a claim on behalf of the Project may submit its reasonable expenses of defense as a Chargeable Cost.

13. PROJECT INSURANCE

13.1 General. The Parties will carry the insurance required of them in Exhibit H and require their respective subcontractors, consultants, and suppliers to carry the insurance coverages indicated in Exhibit H. The availability of insurance does not limit the indemnification responsibility of any Party or Risk/Reward Team Member, nor limit any other remedy available to a Party Risk/Reward Team Member.

13.2 Bonding or Subcontractor Default Insurance. To the extent required by the PMT, the Contractor will cause certain subcontractors to be covered under subcontractor default insurance, or Contractor will furnish payment and performance bonds in full compliance with



Applicable Law for the full subcontract amount, with the additional costs adjusting the Target Cost through executed Change Order. To the extent required, the actual cost of the required bonds or subcontractor default insurance will be paid by Owner as a Chargeable Cost.

14. WARRANTY

14.1 Warranty and Correction of Work. Contractor warrants that all Construction Work will be of good quality, free from defects, and conforming to the Implementation Documents and Applicable law. For a period of 1 year commencing from Owner's acceptance of Substantial Performance of the Project or the date of repair of the defective component, whichever is later, and for longer periods specified in the Implementation Documents for certain equipment manufacturers or suppliers, Contractor will repair or replace at its expense any and all deficient or defective Construction Work together with any other work that is damaged during repair or replacement. If a portion of the Construction Work is completed and accepted by Owner, then the warranty will commence from the date of acceptance or the date of repair of the defective component, whichever is later. Contractor's warranty excludes improper or insufficient maintenance, improper operation, and normal wear and tear under normal usage. Contractor will procure all subcontractor and manufacturer express warranties required under the Implementation Documents on the Owner's behalf and will transmit the warranties to Owner before Final Completion and Project close-out. Establishment of the 1 year express warranty period for correction of Construction Work relates only to the Contractor's specific obligation to correct defective or non-conforming Construction Work, and has no relationship to statute of limitations periods for legal claims arising from this Agreement.

15. DISPUTE RESOLUTION

15.1 Scope. All disputes between the Parties and their respective Separate Contractors, subcontractors, suppliers, and consultants arising from or in connection with this Agreement will be resolved as provided in this Section.

15.2 Continued Performance. At all times during the pendency of a dispute or a dispute resolution proceeding, Work will continue. If the Owner continues to comply with its obligations under this Agreement, the parties to the dispute resolution proceeding will continue to comply with any Owner's Directives.

15.3 Permitted Disputes. No Party may bring any action, suit, or other proceeding against any other Party to this Agreement relating to or arising from this Agreement, except for: (i) Allowed Claims; (ii) proceedings to seek an interpretation of the terms of this Agreement; (iii) proceedings to determine the Contract Time; or (iv) proceedings to determine Change Order disputes, ICL, or shared savings distributions.

15.4 Notice. A Party may initiate the dispute resolution procedures stated in this Section by providing all PMT members with written notice of a potential dispute which specifies, in reasonable detail, the basis of the dispute and the remedy sought. Notice of a dispute must be given within 10 Business Days following the occurrence of the event or condition or circumstance giving rise to the dispute or the claim is waived. Under no circumstances will a claim be made if it is barred by applicable statutes of limitation or repose.

15.5 Senior Management Team Meeting. If the PMT is unable to resolve the dispute, any party to the dispute may request the SMT members to meet with the PMT and



attempt in good faith to resolve the dispute. The SMT will then review the claim in detail and meet face-to-face to discuss and resolve the matter in a “SMT Meeting.” The SMT Meeting will occur no later than 10 Business Days after the PMT has declared an impasse in its efforts to resolve the dispute, unless the parties to the dispute agree upon a longer period of time. The SMT Meeting will be for the express purposes of: (i) exchanging and reviewing all pertinent non-privileged documents and information relating to the matters and issues in dispute; (ii) freely and candidly discussing each party’s position; and (iii) reaching agreement upon a reasonable, compromise resolution of the dispute. If a negotiated settlement is reached, the terms of the settlement will be recorded in a written Amendment or Change Order signed by the parties to the dispute.

15.6 Mediation. If the dispute is not resolved by the conclusion of the SMT Meeting, any party to the dispute may request mediation of the dispute in writing. If the Parties agree to mediate, they will jointly select a mediator acceptable to all SMT members and who is a lawyer with construction experience. Each Party to the dispute will give the mediator a written statement regarding the asserted claims, and the mediator may inspect the Project site, Project Objective, Implementation Documents, and other information reasonably required to understand the factual and legal basis of the dispute. The mediator will schedule a mediation session within 20 Business Days of the PMT’s agreement to mediate or such other time as the Parties may agree. Representatives from each party who have authority to resolve the dispute, together with any other party who has an interest in the dispute, will attend the mediation. The parties involved in the dispute will bear the cost of mediation equally. The mediation proceeding will be confidential and not admissible in court. The mediation process must be completed within 40 Business Days of the PMT’s agreement to mediate, unless all parties involved in the dispute extend the mediation period. If, as a result of the mediation, a negotiated settlement is reached, the parties will enter into a written settlement agreement that will be enforceable in a court of competent jurisdiction. [Parties may opt out of arbitration provided all agree.](#)

15.7 Arbitration. All disputes that are not either resolved through the informal process under Section 15.5 or by mediation under Section 15.6 will be subject to binding arbitration. Any party to the dispute may serve the other Parties a written demand for arbitration within 30 Calendar Days after conclusion of either the informal process under Section 15.5 or mediation required under Section 15.6 or within the applicable statute of limitations, whichever is sooner. Disputes involving claims of \$500,000 or less will be subject to arbitration before a single arbitrator. Those involving claims in excess of \$500,000 will be subject to arbitration before a panel of 3 arbitrators. Within 15 Calendar Days after service of a demand for arbitration, the Parties or their legal counsel will meet and confer in an attempt to select an arbitrator or arbitrators. If the Parties fail to reach agreement, the Party who served the demand for arbitration will apply for the appointment of an arbitrator by the Court of Queen's Bench of Alberta pursuant to the Arbitration Act (Alberta). The Parties further agree that this arbitration may include, by consolidation or joinder, any Party’s consultants, subcontractors or suppliers. The arbitrator(s) must base its decisions strictly on the requirements of the Contract Documents. Subject to the previous sentence, the award rendered by the arbitrator or arbitrators will be final, and judgment may be entered upon it according to applicable law in any court having jurisdiction. Nothing contained within this paragraph prevents timely construction lien foreclosure actions.



16. DEFAULT, SUSPENSION AND TERMINATION

16.1 Termination for Convenience. The Owner may terminate this Agreement for convenience upon 10 Business Days' prior written notice at any time. Subject to receiving the payment required by Section 16.1.2, the Architect and Contractor each grant title to Owner for all Design Materials prepared prior to a termination under this Section 16.1 for Owner's use, at its discretion, for future continuation of the Project and for its future maintenance and remodeling. If the Project is terminated for convenience before commencement of the Construction Phase and the Owner uses the Design Materials for continuation of the Project following the termination, Owner will release, indemnify, defend, and hold harmless Contractor and Architect from any liability arising from Owner's further use of these materials.

16.1.1 Notice. The notice will state the extent and effective date of the termination, and, on the effective date, the terminated Party will: (i) to the extent directed, stop Work under this Agreement; (ii) terminate or assign all subcontracts, purchase orders, and consulting agreements to Owner unless otherwise directed; and (iii) take other actions as may be necessary or requested by Owner to protect and preserve the Work and any other property in the terminated Party's possession in which Owner has or may acquire an interest.

16.1.2 Payment Upon Termination for Convenience. If the Owner terminates this Agreement for convenience, the Owner will pay the terminated Party: (i) all Chargeable Costs incurred by the terminated Party prior to the effective date of termination; (ii) reasonable expenses related to the termination, including demobilization and securing the Project site; and (iii) the lesser of a portion of the unadjusted ICL per Section 7.3 based on the percentage of the Work completed prior to termination or the amount of ICL payable at the next nearest Milestone ICL distribution as determined by an independent assessor prior to termination. In no event will the total amount paid to the Architect and Contractor, exclusive of ICL, exceed the Target Cost, as applicable. Any payment under this Section is subject to Owner's receipt of all requested lien waiver and release forms, as well as other documentation required for payment under Section 9.5, subject to withholding by Owner for reasons and in the manner provided in connection with Final Payment. Any dispute over the amount to be paid upon termination will be resolved under the dispute resolution procedures in Article 15. This Section 16.1.2 is not applicable to a termination due to failure to agree on a Target Cost and Milestones, which is governed by Section 6.1.3(c).

16.2 Suspension. The Owner may, without cause, order the PMT to suspend, delay, or interrupt the Project for as long as the Owner may determine. If the Project is suspended pursuant to this Section, the Contract Time will be extended per Section 11.3. If the Project is suspended after issuance of the Notice to Proceed with the Work and the suspension results in an increase in the Chargeable Costs for the Work, the Target Cost will be increased by the increase in Chargeable Costs reasonably caused by the suspension, and each Party's ICL, which will be increased by the product of its Change Order percentage multiplied by the increase in its Chargeable Costs due to the suspension. No adjustment will be made to the extent that performance was suspended, delayed, or interrupted by acts or omissions of the Architect, Contractor, or any entity or persons working directly for either for which they are responsible.



16.3 Owner Termination for Cause.

16.3.1 Notice. The Owner may terminate a Party to this Agreement, upon 10 Business Days' prior written notice, and an additional 10 Business Days to cure, if any of the following conditions occur. The effective date of termination will be 20 Business Days from the date of the notice:

- (a) Failure of one or more Parties to this Agreement to provide adequate labor and resources to achieve the Project Objective;
- (b) Refusal by a Party to rectify Work that is not in accordance with this Agreement, the Project Objective, or Implementation Documents;
- (c) Failure of a Party to collaborate with the PMT for the benefit of the Project;
- (d) Failure of the Architect or Contractor to properly pay its subcontractors, suppliers, and consultants;
- (e) Bankruptcy or insolvency of a Party to this Agreement; or
- (f) Acts of Willful Default by Architect or Contractor.

16.3.2 Ownership of Design Materials in Termination for Cause. The Architect and Contractor each grant title to Owner for all Design Materials prepared prior to a termination under this Section 16.3 for Owner's use, at its discretion, for future continuation of the Project and for its future maintenance and remodeling.

16.3.3 Owner Remedies. If Owner terminates a Party for cause, the terminated Party will not be entitled to any further payments until after Final Completion of the Project. In addition, Owner may, without prejudice to any other rights or remedies, and after giving the Party and its surety (if any) prior written notice:

- (a) Take possession of the site and of all materials and equipment procured for the Project;
- (b) Accept assignment of any purchase orders, subcontracts, and consulting agreements, as well as rental agreements for construction equipment and machinery at the site; and
- (c) Finish the Work by whatever reasonable method Owner may deem expedient.

16.3.4 Conversion to Termination for Convenience. If a court of competent jurisdiction deems that termination of the Party was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 16.1. Owner will pay the terminated Party the amount due as if the termination had been for convenience, plus interest at 3 % simple interest per annum, on the difference between the amount that was paid at termination and the amount that should have been paid for a termination for convenience, if any, from the date the payment would have been due to the date payment is actually made.



16.4 Architect/Contractor Termination for Cause. The Architect or Contractor may terminate this Agreement for cause upon 10 Business Days' prior written notice and an additional 10 Business Days to cure if any of the following occur: (i) Owner fails to pay undisputed amounts due pursuant to this Agreement; (ii) after commencement of construction, Owner suspends the Project under Section 16.2 for more than 90 consecutive Calendar Days; or (iii) Owner has repeatedly failed to fulfill its obligations under the Agreement constituting an abandonment of the Project.

16.4.1 Effective Date. Termination is effective upon further notice to Owner after expiration of the period to cure.

16.4.2 Payment. If the Agreement is terminated under Section 16.4, the Owner will pay the Architect and Contractor the: (i) Chargeable Costs incurred by the Architect and Contractor prior to the effective date of termination; (ii) reasonable expenses related to the termination, including demobilization and securing the Project site; and (iii) the lesser of a portion of the unadjusted ICL per Section 7.3 based on the percentage of the Work completed prior to termination or the amount of ICL payable at the next nearest Milestone ICL distribution as determined by an independent assessor prior to termination. The total amount paid to the Architect and Contractor may not exceed the Target Cost. Any payment under this Section is subject to Owner's receipt of all requested lien waiver and release forms, as well as other documentation required for payment under Section 9.5, subject to withholding by Owner for reasons and in the manner provided in connection with Final Payment. Any dispute over the amount to be paid upon termination will be resolved under the dispute resolution procedures in Article 15.

17. MISCELLANEOUS PROVISIONS

17.1 License. The Architect and Contractor represent that they are properly licensed as required by the Province of Alberta, and more specifically, Edmonton, if applicable, to perform the Work required under this Agreement, and that each Party's business entity is in good standing, qualified to do business, and has any necessary licenses or permits.

17.2 Confidentiality.

17.2.1 Parties' Financial Information. The Owner and Risk/Reward Team Members will be disclosing information concerning their methods of accounting, pricing of products and services, and other confidential information. Each Party agrees that it will keep such information confidential and will only provide it to other persons or entities as reasonably necessary for the design or construction of the Project. If a Party makes a written demand for return of confidential information, the other Parties will make reasonable attempts to destroy any copies of the confidential information in their possession. Each Party will place similar confidentiality restrictions in any agreements with its Risk/Reward Team Members of any tier.

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

17.3 Compliance With Anti-Corruption Laws. Architect and Contractor (including their respective subsidiaries and affiliates and any directors, officers, and employees of each



such entity) each represent and warrant that they have each complied, and will continue to comply, with all applicable anti-corruption laws in connection with their respective Work under this Agreement.

17.4 Notices. Any notice required to be given by this Agreement will be in writing and deemed effective upon: (a) the date of personal delivery or email delivery if received by the addressee before 5:00 p.m. local time on a Business Day (if received after 5:00 p.m. it will be deemed to have arrived on the next Business Day); (b) 3 Business Days after being sent via registered or certified mail with a return receipt requested; or (c) 1 Business Day after being sent by overnight commercial courier providing next-business-day delivery. Delivery by email is not deemed effective if the sender receives an automated reply indicating that the email was not delivered to the intended recipient or that the intended recipient was out of the office. Notices will be addressed to the following respective Parties:

<p>Owner:</p> <p>Cuku's Nest Enterprises #208, 2520 Ellwood Drive SW Edmonton AB T6X 0A9 Attention: Dennis Cuku dcuku@oceng.ca</p>	<p>Architect:</p> <p>Manasc Isaac 10225 100 Avenue Edmonton AB T5J 0A1 Attention: Shafraaz Kaba shafraaz@manascisaac.com</p>
<p>Contractor:</p> <p>Chandos Construction Ltd. 6720 104 Street Edmonton AB T6H 2L4 Attention: Jennifer Hancock jhancock@chandos.com</p>	

17.5 Governing Law. This Agreement will be governed and construed under the laws of the Province of Alberta, Canada without giving effect to any choice of law or rule of conflict that would cause the application of the laws of any other jurisdiction. Venue for any action will be Edmonton, Alberta.

17.6 Commencement of Statute of Limitations. Causes of action between the Parties to this Agreement pertaining to acts or failures to act will be deemed to have accrued and the applicable statutes of limitations will commence to run not later than either the date of Project Final Completion or, if applicable, the date of a recorded notice of completion, whichever is later.

17.7 Assignment. The Parties respectively bind themselves, and their respective successors, assigns, and legal representatives to the other Parties to this Agreement. The Contractor and Architect may not assign this Agreement without the express written consent of the Owner, and any unconsented assignment will be void. The Owner may assign this Agreement to any lending institution for the purpose of obtaining financing for the Project and the Architect and Contractor will cooperate with the Owner and execute all required assignment

and subordination agreements that do not materially change their rights and responsibilities under this Agreement.

17.8 Notice of Dissolution and Other Change of Business. If at any time during the performance of the Work and for a period of 2 years following the completion of the Work: (i) Dissolution of any Party occurs; or (ii) any Party experiences or anticipates a material change in business, including a reorganization, refinancing, restructuring or leveraged buyout; or (iii) any Party has notice of any of the matters referred to in (i) or (ii), then that Party must furnish the other Parties with written notice of the same within 5 days and, in the case of Architect or Contractor, take all necessary and proper safeguards to allow Owner the opportunity to retrieve its property, the Work, and anything relating to the Work from their then-current location. For the purposes of this provision, "Dissolution" means, in respect of any Party, the making of an assignment for the benefit of creditors or admitting in writing its inability to pay its debts as they mature, bankruptcy, insolvency, liquidation, winding-up, administration and dissolution and the appointment in respect of it or any of its assets of a receiver, administrator, manager or similar officer and any proceeding or event which is equivalent or analogous to any of the same by whatever name known and in whatever jurisdiction and any step taken for or with a view to any of the foregoing.

17.9 Severability. The terms and conditions of this Agreement will be interpreted according to their plain meaning, and not strictly for or against any Party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this Agreement. If a court of competent jurisdiction finds any term or provision of this Agreement to be void or unenforceable for any reason, the term or provision will be deemed severed, and the remainder of the Agreement will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.

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

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

17.12 Survival. The following provisions will survive the termination or expiration of this Agreement: (i) Article 7, (ii) Section 9.13; (iii) Article 12; (iv) Article 14; (v) Article 15; (vi) Article 16; (vii) Article 17; and (viii) Section 4.3 and Article 11 of the General Conditions.

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

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

17.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original. When proving this Agreement, it will only be necessary to



produce or account for the counterpart signed by the Party against whom enforcement is sought. Electronic copies or photocopies of this Agreement showing the true signatures of the Parties may be used for all purposes as originals.

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

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

This Agreement is entered into as of the Effective Date first written above.

Owner: Cuku's Nest Enterprises

By: _____
Name Dennis Cuku
Title: Principal

Architect: Manasc Isaac

By: _____
Name Shafraaz Kaba
Title: Partner
License
Number: Permit to Practice # 0016

Contractor: Chandos Construction Ltd.

By: _____
Name Denis Desmarais
Title: Managing Director
License
Number: Business License 7249685-001