DEFINITIONS

ADDITIONAL SERVICES
Additional services are those professional services which are not contemplated at the time of execution of the contract and therefore cannot be identified then as being included in the contract but which with the written consent of the client and *architect* are subsequently added to, or which adjust, the scheduled scope of services outlined in the schedule(s) listed in this contract.

ARCHITECT
The *architect* is the entity identified in this contract as such and who is the holder of a Certificate of Practice (C of P) issued by the Ontario Association of Architects.

CONSTRUCTION BUDGET
The *construction budget* is the client's combined estimate of the *construction cost*, construction contingencies and GST, or if there is no client's combined estimate, an amount agreed to by the client and the *architect.*

CONSTRUCTION COST
Construction cost is the contract price(s) of all project elements designed or specified by, or on behalf of, or as a result of, the coordination by the *architect*, including cash allowances, building permit fees, changes, construction management fees or other fees for the coordination and procurement of construction services, and all applicable taxes, including the full amount of value-added taxes, whether recoverable or not.

Where there is no contract price for all or part of the project, the *construction cost* shall be the estimate of cost of construction as determined by the *architect*, or as agreed by the *architect* if a cost *consultant* is engaged, at market rates at the anticipated time of construction. *Construction cost* excludes the following:

- the compensation of the *architect* and the *consultants*,
- other professional fees which are the responsibility of the client,
- the land cost, and land development charges.

In the event that the client furnishes labour or material below market cost, or recycled materials are used, the *construction cost* for purposes of establishing the *architect's* and *consultants'* fees includes the cost of all materials and labour necessary to complete the *work* as if all materials had been new and as if all labour had been paid for at market prices at the time of construction or, in the event that the construction does not proceed, at existing market prices at the anticipated time of construction.

CONSULTANT
The *consultant* is a person or an entity engaged by the client or the *architect* to provide services supplementary to those provided by the *architect.*

CONSULTANT COORDINATION
Consultant coordination consists of:

- managing the communications between *consultants* and with the client, and
- providing direction as necessary to give effect to any design decisions taken, and
- reviewing the product of the work to assist in identifying conflicts and to monitor compliance with directions.

CONSTRUCTION DOCUMENTS - *Construction documents* consist of drawings, specifications and other documents appropriate to the size and complexity of the *project*, to describe the size and character of the entire *project* including architectural, structural, mechanical, and electrical systems, materials and such other elements setting forth in detail the requirements for the construction, enlargement or alteration of the building or buildings of the *project.*

DIRECT PERSONNEL EXPENSE
Direct personnel expense means the salary of the a*rchitect's* or the *architect's consultant's* personnel engaged on the project plus the cost of such mandatory and customary contributions and employee benefits as employment taxes and other statutory benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

GENERAL REVIEW
General review means review during visits to the *place of the work* (and where applicable, at locations where building components are fabricated for use at the *project* site) at intervals appropriate to the stage of the construction that the *architect* in its professional discretion, considers necessary to become familiar with the progress and quality of the *work* and to determine that the *work* is in general conformity with the construction contract documents, and to report, in writing, to the client, contractor and chief building official.

INSTRUMENTS OF SERVICE
Instruments of service are the design, drawings, specifications and reports prepared by or on behalf of the *architect* or *consultant*, including but not limited to plans, sketches, drawings, graphic representations and specifications, computer-generated designs and materials.

PLACE OF THE WORK
The *place of the work* is the designated site or location of the *work* identified in the construction contract documents.

PROJECT
The *project* as described in this contract means the total enterprise or endeavour contemplated of which the *work* may be the whole or a part.

REIMBURSABLE EXPENSES
Reimbursable expenses include, but are not limited to, the following actual expenditures, supported by receipts or invoices, incurred by the *architect*, and the *architect's consultants* in the interest of the *project:*

.1 transportation in connection with the *project* for authorized travel, e.g. for transportation, lodging and meals;

.2 communication and shipping, e.g. for long distance telephone calls and facsimile messages, courier service, postage and electronic conveyances;

.3 reproduction of *instruments of service*, photographs, and other documents, including plotting of computer-generated drawings;

.4 renderings, models, and mock-ups and web-based project management services, specifically requested by the client;

.5 fees, levies, duties or taxes for permits, licences or approvals from authorities having jurisdiction;

.6 premiums for additional insurance coverage or limits, including that of professional liability insurance, requested by the client in excess of that normally carried by the *architect* and the *architect's consultants.*

SUBSTANTIAL PERFORMANCE OF THE WORK
Substantial performance of the work is as defined in the lien legislation applicable to the place of the *work*. In the absence of such legislation, it shall mean the date the *work* is ready for the purpose intended.

TOXIC OR HAZARDOUS SUBSTANCES OR MATERIALS
Toxic or hazardous substances or materials means any solid, liquid, gaseous, thermal or electromagnetic irritant or contaminant, and includes, without limitation, pollutants, moulds, asbestos, bio-contaminants, biohazards and nuclear, and hazardous and special wastes whether or not defined in any federal, provincial, territorial or municipal laws, statutes or regulations.

WORK
The *work* means the total construction and related services required by the construction contract documents.

GENERAL CONDITIONS

GC1 CLIENT'S RESPONSIBILITIES

.1 The client shall provide all information as outlined in the schedule(s) identified in this contract. The *architect* shall be entitled to rely upon such information. Contracts for the provision of information, whether arranged by the client or the *architect*, shall be considered direct contracts with the client unless explicitly provided otherwise.

.2 The client shall:

.1 authorize in writing a person to act on the client's behalf and define that person's scope of authority with respect to the *project* when necessary. In the absence of such naming of an authorized representative, the signatory to this contract is deemed to be the representative;

.2 review documents submitted by the *architect* and give the *architect* timely decisions for the orderly progress of the *architect's* services;

.3 obtain and pay for the building permit and all other permits and development costs;

.4 immediately notify the *architect* in writing if the client observes or otherwise becomes aware of any fault or defect in the *project* or any nonconformity with the requirements of the construction contract;

.5 engage specialist *consultants* to provide relevant information about existing conditions of the client's property, such as, geotechnical, topographical, toxic and hazardous material.

.6 engage *consultants* identified in article A-9 of this contract under terms and conditions of other contracts that are compatible with this contract;

.7 ensure that all *consultants* engaged by the client under other contracts carry professional liability insurance coverage,

.8 ensure that the client's *construction budget* includes a contingency for cost escalation, design issues in the *construction documents* and unforeseen circumstances that arise or become apparent during the course of the *project*.

.3 The client agrees that, should the construction contract include provision that any dispute between the client and the contractor may be finally resolved by arbitration, the construction contract shall include provisions satisfactory to the *architect* that:

.1 require the client and contractor to notify the *architect* in writing of any arbitration and of any matters in dispute that affect the *architect*;

.2 provide that, upon receipt of the notice in GC 1.3.1 above, the *architect* shall have the option to participate in the arbitration as a party;

.3 provide that, in the event that GC1.3.1 and GC 1.3.2 above are not complied with, the client and contractor agree to not pursue any claim against the *architect* arising from matters resolved by the arbitration.

GC2 ARCHITECT'S RESPONSIBILITIES

.1 The *architect* shall provide professional services as outlined in the schedule(s) identified in this contract.

.2 The *architect* shall maintain records of *reimbursable expenses*, and for any services for which the fee is computed as a multiple of *direct personnel expense*. These records shall be maintained to acceptable accounting standards and made available to the client at mutually convenient times.

GC 3 CONSTRUCTION BUDGET AND CONSTRUCTION COSTS

.1 ***Construction Budget* and *Construction Cost***
Neither the *architect* nor the client has control over the cost of labour, materials or equipment, over the contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions and therefore the *architect* cannot and does not warrant or represent that bids or negotiated prices will not vary from the estimate of *construction cost.*

.2 **Estimate of Construction Cost**
If the construction procurement phase has not commenced within three months after the *architect* submits the *construction documents* to the client, the agreed estimate of *construction cost* shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the *construction documents* to the client and the date on which bids or proposals are sought.

.3 If the lowest compliant bid or lowest negotiated proposal exceeds the latest agreed estimate of *construction cost* by more that 15%, the client shall provide:

.1 written approval of an increase in the estimate of *construction cost*, or

.2 authorization for re-bidding or re-negotiating of the proposal, or

.3 co-operation with the *architect* in revising the project scope or quality as necessary to reduce the *construction cost*, or

.4 termination of this contract in accordance with GC8 if the *project* is abandoned.

.4 If the client proceeds under GC3.3.3, and the extent to which the lowest compliant bid or lowest negotiated proposal exceeds the latest agreed estimate of *construction cost* by more than 15% and is not due to extraordinary market conditions or other factors not reasonably foreseeable by or under the control of the *architect*, then the client may require the architect to modify the *construction documents* or provide other services necessary to reduce the *construction cost* to within 15% of the latest agreed estimate of *construction cost* for no additional fee. Such modification of the *construction documents* to that extent shall be the limit of the *architect's* responsibility under GC3.3.3, and having done so, the *architect* shall be entitled to compensation in accordance with this contract, for all other such services performed, whether or not the construction phase is commenced.

GC4 CERTIFICATE FOR PAYMENT

.1 The issuance of a certificate for payment shall constitute a representation by the *architect* to the client, based on the *architect's general review* and on review of the contractor's schedule of values and application for payment, that the *work* has progressed to the value indicated; that to the best of the *architect's* knowledge, information and belief, the *work* observed during the course of *general review* is in general conformity with the contract documents; and that the contractor is entitled to payment in the amount certified. Such certification is subject to:

.1 review and evaluation of the *work* as it progresses for general conformity as provided in the services outlined in the schedule(s) described in this contract;

.2 the results of any subsequent tests required by or performed under the contract documents;

.3 minor deviations from the contract documents being corrected prior to completion; and

.4 any specific qualifications stated in the certificate for payment.

.2 The issuance of the certificate for payment shall not be a representation that the *architect* has made any examination to ascertain how and for what purpose the contractor has used the monies paid on account of the contract price, or that the contractor has discharged the obligations imposed on the contractor by law, or requirements of the Workplace Safety Insurance Board, or other applicable statute, non-compliance with which may render the client personally liable for the contractor's default.

GC5 COPYRIGHT AND USE OF DOCUMENTS

.1 Copyright for the *architect's instruments of service* belongs to the *architect.* The *architect's instruments of service* shall remain the property of the *architect* whether the *project* for which they are made is executed or not, and whether or not the *architect* has been paid for the services. Their alteration by the client or any other person is prohibited.

.2 Submissions or distribution of the *architect's instruments of service*, including all software and electronic media, to meet official regulatory requirements or for other purposes in connection with the *project* is not to be construed as publication in derogation of the a*rchitect's* reserved rights.

.3 The client may retain copies, including electronic or digital and other reproducible copies, of the *architect's instruments of service* for information and reference in connection with the client's use and occupancy of the *project.* Copies may only be used for the purposes intended and for a one-time use, on the same site, and for the same *project*, by this client only and may not be offered for sale or transfer without the express written consent of the *architect*. Except for reference purposes, the *architect's instruments of service*, including all electronic or digital files and information, shall not be used for renovations, additions or alterations to the *project* or on any other project without a written licence from the *architect* for the limited or repeat use of the documents.

.4 As a condition precedent to the use of the *architect's instruments of service* for the *project*, all fees and *reimbursable expenses*, including all fees and expenses of suspension or termination, due to the *architect*, are required to be paid in full.

.5 The client shall be entitled to keep original models or architectural renderings which the client specifically commissioned and paid for.

GC6 PROJECT IDENTIFICATION

.1 The *architect* shall be entitled to sign the building by inscription, or otherwise, on a permanent, suitable and reasonably visible part of the building.

.2 The *architect* shall be entitled to include as part of the contract documents a provision to erect a sign identifying the *architect* and the *architect's consultants* on the *project* site.

In some instances the client may also be represented on the sign. Graphics on the construction sign may also include a reproduction of a rendering of the *project.*

GC7 LIABILITY OF THE ARCHITECT

.1 The *architect* carries professional errors and omissions liability insurance coverage, and the policy is available for inspection by the client at all times, upon request.

.2 The client agrees that any and all claims, whether in contract or tort, which the client has or hereafter may have against the *architect* in any way arising out of or related to the *architect's* duties and responsibilities pursuant to this contract, shall be limited to coverage and amount of professional liability insurance carried and available to the *architect* for the payment of such claims at the time the claim is made. Prior to the date of execution of this contract, if the client wishes to increase the amount of the coverage of such policy or to obtain other special insurance coverage, then the *architect* shall cooperate with the client to obtain such increased or special insurance at the client's expense.

.3 The *architect* shall be entitled to rely upon product information published by manufacturers and shall not be held liable for relying on information or representation which it reasonably believes to be accurate.

.4 The *architect* shall not:

.1 be required to make exhaustive or continuous on-site reviews;

.2 be responsible for acts or omissions of the contractor, subcontractors, suppliers or any other persons performing any of the work, or for failure of any of them to carry out the work in accordance with the contract documents;

.3 have control, charge, or supervision, or responsibility for construction means, methods, techniques, schedules, sequences or procedures, or, for safety precautions and programs required in connection with the *work*, and

.4 be responsible for any and all matters arising from *toxic or hazardous substances or materials.*

.5 The client acknowledges that either the *architect* or the client may engage *consultants* on behalf of and for the benefit and convenience of the client; and agrees that the *architect* shall not be liable to the client, in contract or in tort, for the acts, omissions or errors of such *consultants* whether retained by the *architect* or the client. Nothing in this clause shall derogate from the *architect's* duty of coordination.

.6 The client shall not commence any claim or proceeding in contract, tort, breach of statutory duty or otherwise against any current or former employee, officer or director of the *architect* arising out of acts, omissions or errors of such person pursuant to this contract.

.7 The client agrees that the *architect* shall not be responsible in contract or in tort for any changes made to the *architect's* design or the *construction documents* without the *architect's* knowledge and approval.

GC8 SUSPENSION AND TERMINATION

SUSPENSION

.1 If the client lacks the financial ability or authority to proceed, the client may give seven days written notice to the *architect* that the client elects to suspend the *architect's* services.

.2 If any invoice submitted by the *architect* remains unpaid by the client for forty-five days or more from the date the invoice was submitted, then the *architect* may give seven days written notice to the client that the *architect* will suspend services.

.3 The *architect* may suspend services on the *project:*

.1 if within seven days of delivery of the notice in GC8.2, the client has not paid the *architect's* invoice, or the *architect* and the client have not agreed in writing on terms for payment of the invoice, or

.2 if construction of the *work* proceeds in the absence of a building permit and without the chief building official dispatching building officials to the site or, if the *architect* becomes aware of an action taken by the client which violates applicable building codes or regulations, then,

.4 In either of these events the client shall not have any claim whatsoever against the *architect* for any loss, cost, damage, or expense incurred or anticipated to be incurred by the client as a result of the suspended services.

.5 The rights of the *architect* given by GC8.3 are in addition to and not in substitution for any other rights the *architect* may have under this contract or otherwise for non-payment of the *architect's* invoices by the client.

.6 In the event of a suspension of services, the *architect* shall not be liable for delay or damage as a result of the suspension of services. Upon suspension, the *architect* shall submit an invoice for all services performed to the effective suspension date, together with *reimbursable expenses* and applicable taxes then due. Before resuming services, the *architect* shall be entitled to payment, within thirty days of the date that the invoice for suspension of services is submitted, for all suspension expenses as defined in GC8.6 and for all expenses for recommencement of services. The a*rchitect's* fees for the remaining services and time schedules shall be adjusted accordingly.

.7 Suspension expenses include expenses directly attributable to suspension of the *project* for which the *architect* is not otherwise compensated, including costs attributed to suspending the *architect's* contractual and employee commitments.

TERMINATION

.8 If the *project* results in construction, this contract is terminated on the earliest of;
.1 the date of receipt of letter of termination from the client, or
.2 seven days from the abandonment of the *project*; or
.3 one year from the date of certification of *substantial performance of the work*; or
.4 one year from the date of total completion.

.9 This contract may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

.10 This contract may be terminated by the client upon at least seven days written notice to the *architect* in the event that the *project* is abandoned.

.11 If the *project* is suspended or abandoned in whole or in part for more than a total of sixty days, it shall be deemed to be abandoned and treated in accordance with article 8.9.

.12 In the event of termination, the *architect* shall be paid, within thirty days of the date that an invoice is submitted, for all services performed to the effective termination date, together with *reimbursable expenses* and applicable taxes then due, and for all termination expenses as defined in GC8.13.

.13 Termination expenses are expenses directly attributable to abandonment of the *project* or termination of this contract for which the *architect* is not otherwise compensated, and in addition, an amount for anticipated loss of earnings computed as a percentage of the total fee earned to the time of termination for the *architect's* services and *additional services*, as follows;

.1 twenty percent if termination occurs during the schematic design phase; or

.2 ten percent if termination occurs during the design development phase; or

.3 five percent if termination occurs during a phase subsequent to the design development phase.

GC9 LAW GOVERNING THIS CONTRACT

.1 This contract shall be governed by the law of the Province of Ontario.

GC10 SUCCESSORS AND ASSIGNS

.1 The client and the *architect* respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this contract. Except as otherwise provided herein, neither the client nor the *architect* shall assign, sublet, or transfer an interest in this contract without the written consent of the other. Consent to such assignment or transference shall not be unreasonably withheld.

.2 The contract documents are for the purpose of construction of the *project* contemplated by this contract and shall not be used by the client for any other purpose.

GC11 EXTENT OF CONTRACT

.1 This contract represents the entire and integrated contract between the client and the *architect* and supersedes all prior negotiations, representations, or contracts, either written or oral. This contract may be amended only in writing signed by both the client and the *architect*.

GC12 PAYMENTS TO THE ARCHITECT

FEES

.1 An invoice submitted by the *architect* under this contract is due and payable when submitted to the client. Payments for the *architect's* services shall be made on account for invoices as described in article A14 of this contract and, where applicable, shall be in proportion to services performed within each phase of the service.

.2 No deductions shall be made by the client from amounts payable to the *architect* on account of penalty, liquidated damages, or other sums withheld from payments to contractors, or on account of the cost of changes in the *work* other than those for which the *architect* is proven to be legally responsible or has agreed to pay.

.3 Variance from the *construction budget* established under this contract shall not constitute grounds for the client to withhold fees due to the *architect.*

.4 When a percentage-based fee is used as the method for determining the *architect's* fee, the basis for calculating the applicable portion of the fee for each phase of the *architect's* services shall be based on article A10 of this contract..

.5 If the scope of the *projec*t or of the *architect's* services is changed, the fees shall be adjusted accordingly. For *additional services* or when revisions or additions are made to the program of requirements or previously approved documents prepared by the *architect* and such revisions or additions require services beyond those already provided, the fee for such *additional services* shall be based on the rates in article A10 of this contract, or as otherwise mutually agreed with the client.

.6 If and to the extent that the contract time initially established in the construction contract is exceeded or extended through no fault of the *architect*, fees for services required for such extended period of the contract administration shall be adjusted and computed as set forth in article A10 of this contract or as otherwise mutually agreed with the client.

.7 In the event that new or additional taxes in respect of the services included in this contract are required by federal, provincial, territorial, regional or municipal legislation after the contract is executed, the amount under this contract shall be adjusted to include such taxes.

.8 Fees and *reimbursable expenses* may be subject to such value-added taxes as the Federal Goods and Services Tax or Harmonized Sales Tax. The client shall pay to the *architect*, together with, and in addition to, any fees and *reimbursable expenses* that are, or become, payable as required by legislation, any value-added taxes that become payable in relation to the fees and *reimbursable expenses*.

REIMBURSABLE EXPENSES

.9 The client shall pay the *architect* for all *reimbursable expenses* as defined plus an administrative charge as identified in article A11 of this contract.

.10 All *reimbursable expenses* not defined shall be approved by the client prior to any expenditure by the *architect.*

GC13 SEVERABILITY

.1 If any provision of this contract is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this contract and the other provisions shall remain in full force and effect.