

# **INTEGRATED PROJECT DELIVERY AGREEMENT**

## EXHIBITS

Exhibit		Status at Agreement Signing
Exhibit A	Definitions	Included
A-1	Town Standards	Included
Exhibit B	Project Objective	Included
B-1	Owner's Program Requirements	Included
B-1a	[Stage 1 Program Summary]	Included
B-1b	[Stage 2 Program Summary]	Included
B-2	Target Cost Breakdown	Included
B-2a	Risk and Innovations	Included
B-3	Added Value Incentive Items	By Amendment
B-4	Milestones Definition	Included
B-5	Implementation Document List	Included
Exhibit C	Contract Task Matrix	Included
C-1	RASCI Matrix Definitions	Included
Exhibit D	Intentionally Omitted	
Exhibit E	Prime Consultant's Chargeable Costs	Included
E-1	Billable Rates	Included
Exhibit F	General Contractor's Chargeable Costs	Included
F-1	Billable Rates	Included
F-2	Equipment Rates	By Amendment
Exhibit G	ICL Distribution Spreadsheet	Included
Exhibit H	Project Insurance Requirements	Included
Exhibit I	Key Employees	Included

Items shown as Included as of the signing of the Agreement are subject to amendment in accordance with the terms of the Agreement.

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. DEFINITIONS.....	1
1.1 Defined Terms .....	1
2. THE PROJECT .....	1
2.1 The Project .....	1
2.2 Project Objective.....	1
2.3 Project Phases and Stages .....	1
2.4 Collaboration.....	2
3. IPD TEAM .....	2
3.1 Forming the IPD Team.....	2
3.2 IPD Team Purpose and Intent.....	2
3.3 IPD Team Alignment.....	3
3.4 Trust.....	3
3.5 Relationship of the IPD Team Members.....	3
4. THE PARTIES.....	3
4.1 Relationship of the Parties .....	3
4.2 Key Employees .....	4
4.3 Owner .....	4
4.4 Prime Consultant .....	5
4.5 General Contractor .....	6
5. PROJECT MANAGEMENT .....	9
5.1 Project Management Team.....	9
5.2 Senior Management Team; Owner's Directive .....	11
5.3 Written Confirmation of Decisions .....	11
5.4 Personnel Management.....	12
6. SUBCONTRACTS AND CONSULTING AGREEMENTS.....	12
6.1 Written Agreements .....	12
6.2 Licensing Requirements.....	13
6.3 Required Pass Through Provisions .....	13
6.4 Separate Contractors.....	14
7. RESPONSIBILITIES BY PHASE .....	15
7.1 Validation Phase.....	15
7.2 Design/Preconstruction Phase .....	16
7.3 Construction Phase.....	19
7.4 Substantial Completion .....	19
7.5 Final Inspection and Acceptance .....	20

8.	COMPENSATION .....	20
8.1	General.....	20
8.2	General Contractor Self-Performed Work.....	21
8.3	Incentive Compensation Layer.....	22
9.	RISK/REWARD PROGRAM.....	22
9.1	General.....	22
9.2	General Contractor's ICL Pass-through .....	22
9.3	Prime Consultant's ICL Pass-through .....	22
9.4	ICL Distribution Schedule.....	22
9.5	Milestone ICL Payments .....	23
9.6	Milestone Estimate.....	23
9.7	Milestone Overpayment.....	23
9.8	Design/Preconstruction Phase ICL Adjustments .....	23
9.9	Construction Phase ICL Adjustments .....	24
10.	PAYMENT .....	24
10.1	Chargeable Costs .....	24
10.2	Periodic Payments .....	25
10.3	Final Payment.....	25
10.4	Materials and Equipment .....	25
10.5	Supporting Documents.....	25
10.6	Right to Withhold.....	26
10.7	No Right to Stop Work .....	26
10.8	Reliance.....	26
10.9	Warranty of Title.....	26
10.10	No Waiver.....	27
10.11	Payments to Subcontractors and Suppliers.....	27
10.12	Payment to Consultants.....	27
10.13	Records and Audits.....	27
11.	CONTRACT TIME .....	28
11.1	Contract Time .....	28
11.2	Commencement of the Construction Work .....	28
11.3	Project Staging. ....	28
11.4	Project Scheduling .....	28
11.5	Schedule Slippage .....	29
11.6	Acceleration .....	29
12.	CHANGES .....	29
12.1	Permitted Changes .....	29
12.2	Changes to Cost .....	29
12.3	Limitation on Changes to ICL.....	29
12.4	Change Order Procedure.....	29
12.5	Owner's Directive.....	30

13.	LIABILITY ALLOCATION.....	30
13.1	Waiver of Liability.....	30
13.2	Allowed Claims .....	31
13.3	Dispute Resolution/Specific Performance .....	31
13.4	Limitation .....	32
13.5	Indemnification .....	32
13.6	Site Safety .....	33
13.7	Joint Defense of Third-Party Claims.....	34
14.	PROJECT INSURANCE.....	35
14.1	General.....	35
14.2	Bonding or Subcontractor Default Insurance .....	35
15.	WARRANTY.....	35
15.1	Warranty and Correction of Work.....	35
15.2	Identification of Deficiencies.....	35
16.	DISPUTE RESOLUTION.....	36
16.1	Scope .....	36
16.2	Continued Performance .....	36
16.3	Permitted Disputes.....	36
16.4	Notice .....	36
16.5	Senior Management Team Meeting .....	36
16.6	Mediation .....	36
16.7	Litigation .....	37
17.	DEFAULT, SUSPENSION AND TERMINATION .....	37
17.1	Termination for Convenience .....	37
17.2	Suspension .....	37
17.3	Owner Termination for Cause .....	38
17.4	Prime Consultant/General Contractor Termination for Cause .....	39
18.	MISCELLANEOUS PROVISIONS .....	40
18.1	License .....	40
18.2	Confidentiality .....	40
18.3	Compliance With Anti-Corruption Laws .....	40
18.4	Notices.....	40
18.5	Governing Law.....	40
18.6	Commencement of Statute of Limitations.....	41
18.7	Assignment .....	41
18.8	Notice of Dissolution and Other Change of Business .....	41
18.9	Severability .....	41
18.10	No Third-Party Beneficiaries. ....	41
18.11	Rights and Remedies.....	41
18.12	Survival.....	41
18.13	Waiver .....	42
18.14	Execution .....	42
18.15	Counterparts .....	42
18.16	Exhibits .....	42
18.17	Entire Agreement.....	43

# INTEGRATED PROJECT DELIVERY AGREEMENT

This Integrated Project Delivery Agreement ("**Agreement**") is entered into on [Date] ("**Effective Date**") among:

**The Corporation of the Town of Oakville ("Owner"):**

**[PRIME CONSULTANT] ("Prime Consultant")**

**[GENERAL CONTRACTOR] ("General Contractor")**

## 1. DEFINITIONS

**1.1 Defined Terms.** Defined terms and titles of Exhibits will be capitalized throughout the Agreement. The definitions for this Agreement are set forth in alphabetical order in Exhibit A. The Owner, Prime Consultant, and General 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 "subconsultant" in lower case refer to all subcontractors and subconsultants of any tier, including the Risk/Reward subcontractors and Risk/Reward subconsultants. "Article" refers to the complete text under a first level heading, such as "2. The Project." "Section" refers to a specific numbered paragraph, such as "2.2 Project Objective."

## 2. THE PROJECT

**2.1 The Project.** The Project includes a new community centre and park to be built on the former hospital site. The program for the community centre includes a 25 metre lap pool, a warm water pool, a double gymnasium, a fitness centre with a running track, multi-purpose meeting rooms and space for intergenerational programming.

The Project must meet all applicable Town standards and all Applicable Laws.

**2.2 Project Objective.** The Parties will jointly develop the Project Objective based upon the Owner's requirements, goals, and constraints. The Project Objective is comprised of the Base Program, Target Cost, Added Value Incentive Items, 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 and approval of the Senior Management Team.

**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. 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, Prime Consultant, and General 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 4;

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 Validation Report;

2.4.5 fulfilling their obligations as IPD Team Members as described in Article 3; and

2.4.6 complying with all other obligations, terms, and conditions of the Contract Documents.

### **3. IPD TEAM**

**3.1 Forming the IPD Team.** Prime Consultant, Owner, and General Contractor agree to form an integrated team to facilitate the planning, designing, constructing, and commissioning of the Project. This IPD Team is comprised of (i) the Prime Consultant and the Prime Consultant's Subconsultants, (ii) General Contractor, Subcontractors, and Suppliers, and (iii) Owner and its Separate Contractors (collectively, the "Integrated Project Delivery Team" or "IPD Team"; and individually, each an "IPD Team Member"). The IPD Team Members will make reasonable commercial efforts to share relevant information in a timely manner and to cooperatively collaborate for the benefit of the Project. Each of the IPD Team Members will be required to sign a Joining Agreement that signifies its support for Lean and integrated project delivery principles and procedures.

**3.2 IPD Team Purpose and Intent.** The purpose of the IPD Team is to facilitate collaborative planning, design, construction, and commissioning of the Project. In order to permit the IPD Team Members to gain the benefit of an open and creative learning environment, each of the IPD Team Members shall make reasonable commercial efforts to:

3.2.1 share relevant ideas freely and in a timely manner and to establish an atmosphere of mutual respect and tolerance;

3.2.2 work together and individually to achieve transparent and cooperative exchange of relevant information relating to the Project, and to share ideas for improving Project delivery;

3.2.3 actively promote harmony, collaboration, and cooperation among all entities performing on the Project; and

3.2.4 provide both traditional and exceptionally collaborative reconstruction services throughout the Validation Phase and early in the Design/Preconstruction Phase to facilitate an integrated, collaborative design process.

**3.3 IPD Team Alignment.** The integrated project delivery approach recognizes that each IPD Team Member's success is tied directly to the success of all other members of the IPD Team and encourages and requires the IPD Team Members to organize and integrate their respective roles, responsibilities, and expertise, to identify and align their respective expectations and objectives, to commit to open communications, transparent decision-making, proactive interaction, problem-solving, the sharing of ideas, to continuously seek to improve the Project planning, design and construction processes, and, as it relates to Risk/Reward Team Members, to share both the risks and rewards associated with achieving the Project objectives.

**3.4 Trust.** The IPD Team Members accept the relationship of mutual trust and confidence established with each other by this Agreement, and promise to furnish their professional skill and judgment and to collaborate and cooperate with each other and with other IPD Team Members in actively pursuing an integrated project and furthering the interests of the Project. The IPD Team Members recognize that each of their opportunities to succeed on the Project is directly tied to the performance of other IPD Team Members. The IPD Team Members agree to work together in the spirit of cooperation, collaboration, and mutual respect for the benefit of the Project, and within the limits of their professional expertise, licensing, and abilities. Throughout the Project, the IPD Team Members shall use their best efforts to perform, or cause to be performed, the Work and the Design Services in an expeditious and economical manner consistent with the interests of the Project. To the extent directed by the PMT, the Parties will utilize Lean™ principles and techniques as developed or defined by the Lean Construction Institute™.

**3.5 Relationship of the IPD Team Members.** Notwithstanding the commitments in this Article 3 and elsewhere in this Agreement, no fiduciary relationship is intended and nothing in this Agreement shall create, or be deemed or implied to create, a fiduciary relationship between or among the Parties, the IPD Team, or any other IPD Team Members.

#### **4. THE PARTIES**

**4.1 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 IPD Team Members, it does not create an agency relationship, fiduciary relationship, partnership, or joint venture among or between the Parties. The Prime Consultant and General 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 4.4 through 4.5. 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, omissions, or breaches of this Agreement of any



other Party, except that (a) the General Contractor is responsible for the acts, errors, and omissions of its subcontractors, and the Prime Consultant is responsible for the acts, errors, and omissions of its subconsultants; and (b) the Incentive Compensation Layer may be eroded if errors or omissions of Prime Consultant, General Contractor, or those for whom they are responsible increase the incurred Chargeable Costs.

**4.2 Key Employees.** Prime Consultant and General Contractor acknowledge that in entering into this Agreement, Owner has relied upon each assigning to this Project the key employees listed in Exhibit I, 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 reasonably require replacement of any key employee. Replacement key employees, whether replacement is required by Owner or agreed to by Owner, are key employees that may not be replaced, reassigned or removed except as allowed in this Section 4.2.

**4.3 Owner.** The Owner will actively participate in the Target Value Design process and one or more representatives of the Owner serve as a member(s) of the Senior Management Team and the Project Management Team. The Owner is responsible for providing the Owner's requirements, goals, and limitations that must be accommodated in the Project and will actively participate in developing and documenting the Project Objective.

**4.3.1 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 may not rely upon the completeness and accuracy of the information provided by the Owner at the time of the RFP. The PMT may decide that further studies are required. The costs of such further studies will be Chargeable Costs.

**4.3.2 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. The General Contractor will apply for Permits (s. 4.5.4 h)).

**4.3.3 Testing and Inspections.** Owner will be responsible for all third party testing, inspections, or commissioning. General 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. However, subcontractors will bear all costs associated with re-inspection if the re-inspection is caused by the negligence of the subcontractor or because the subcontractor's Construction Work was not ready for inspection. Non-conforming Construction Work that was performed or installed by a subcontractor will be remedied at the subcontractor's own expense. Neither the Owner's failure to note non-conforming Construction Work prior to Project Final Completion, nor its Final Payment under this Agreement, will waive any claim by Owner for correction of non-conforming Construction Work.

**4.3.4 Legal and Insurance Services.** The parties shall secure appropriate insurance given the joint interests of the parties, the waivers of liability within the Agreement and the desire to be fully protected from major errors and omissions. The PMT will consider

and fairly apportion responsibility for all necessary insurance that covers matters not necessarily covered by the Project insurance.

4.3.5 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.

4.3.6 Pre-Existing Hazardous Materials. Except to the extent that remediation of existing Hazardous Materials is included in the General Contractor's or a subcontractor's scope of work, Owner is responsible for all Hazardous Materials existing at the Project site and, except to the extent included within the risk registry, will separately contract for the remediation of pre-existing Hazardous Materials. For clarity, General Contractor will be responsible for any Hazardous Materials that it or its subcontractors bring onto the Project Site.

4.3.7 Other 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.

**4.4 Prime Consultant.** The Prime Consultant 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 Prime Consultant and its subconsultants must be consistent with the Base Program and meet or exceed the standard of care in Section 4.4.1.

4.4.1 Standard of Care. The Prime Consultant and its subconsultants will perform the Design Services using that skill and care used by other competent licensed architects, engineers, and subconsultants skilled in designing projects in Ontario 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 relevant to Design Services conflict, the Prime Consultant will consult with the PMT on how the conflict should be resolved. Nothing in this Agreement requires the Prime Consultant or its design subconsultants to perform any services outside its license or contrary to laws, codes, or regulations. The Prime Consultant and its design subconsultants are not responsible for the means, methods, sequences or procedures, or safety precautions, or programs in connection with the Construction Work.

4.4.2 Consultants. The Prime Consultant may retain design subconsultants to perform portions of the Design Services in accordance with Article 6. All design subconsultants 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 services in accordance with the standard of care in Section 4.4.1, and in the case of engineering subconsultants, will be the Engineer of Record for their respective scopes of work. All subconsultants will be identified in the Project roster and incorporated into the Contract Task Matrix (Exhibit C). The Prime Consultant is responsible for managing its subconsultants and coordinating their respective services with services provided by Prime Consultant, other subconsultants, and any Design-Build Subcontractors.

4.4.3 Review and Integration of Design-Build Information. The PMT may

elect to have Design Services performed under design-build subcontracts through the General Contractor. The Prime Consultant and its subconsultants 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 Prime Consultant's design and for conformance with the Prime Consultant's design intent and Base Program. All Design-Build Subcontractors will be identified in the Project roster and will also be incorporated into the Contract Task Matrix.

4.4.4 PMT Participation and Deliverables. The Prime Consultant 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.

4.4.5 General Duties and Obligations. The Prime Consultant 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 Prime Consultant and arrange for its professional subconsultants to do the same for all documents prepared by subconsultant[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 Prime Consultant and its subconsultants;

(d) collaborate with the General Contractor to produce visualization aids such as renderings or computer generated video;

(e) utilize Target Value Design (Section 7.2.5);

(f) actively collaborate with General Contractor, cross-functional teams, and other IPD Team Members throughout the design process to develop a complete set of coordinated Implementation Documents that meet or exceed the Base Program;

(g) engage in "pull-based" planning for design production using the Last Planner™ or equivalent system;

(h) timely review and approve all Submittals for conformance with the Implementation Documents;

(i) provide the PMT with timely decisions necessary to support the Project Objective, make timely payments, and perform all other Prime Consultant-designated tasks as required by this Agreement;

(j) provide construction administration, problem solving and resolution of design issues during the Construction Phase in accordance with the Contract

Task Matrix (Exhibit C), as amended; and

(k) work with General Contractor to deliver a Record Model to Owner after Final Completion.

**4.5 General Contractor.** The General Contractor is responsible for providing preconstruction services and performing the Construction Work in accordance with the Implementation Documents and for supervising, directing, managing the Construction Work in a manner that meets the Project Objective. The General Contractor will be considered to be the "constructor" for purposes of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended. All Work provided by General Contractor must be consistent with the Project Objective and meet or exceed the standard of care in Section 4.5.1. General Contractor is responsible for implementing all collaboratively developed means, methods, sequences, and safety procedures related to the Construction Work.

4.5.1 Standard of Care. General 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 general contractors performing Construction Work on projects of similar size, scope, quality, and complexity in Ontario. To the extent that the General Contractor engages Design-Build Subcontractors, those subcontractors must comply with the standard of care in Section 4.4.1 for their respective Design Services except that Design-Build Subcontractors are also responsible for the means and methods, sequences, and procedures of their respective portion of the Construction Work. Nothing in this Agreement requires the General Contractor to perform any work or services outside its license or contrary to the laws, codes, or regulations of the Governmental Authorities.

4.5.2 Subcontractors. General Contractor will retain all subcontractors required for performance of its Work in accordance with Article 6, which includes Risk/Reward Subcontractors and Standard Subcontractors. Throughout this Agreement, references to subcontractors in lower case refer to all subcontractors, regardless of type. General 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 4.5.1 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 scope 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 Prime Consultant, its design subconsultants, 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 Ontario 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. The written subcontract for the Design-Build Subcontractor must expressly state that the

Owner and other Parties are intended beneficiaries of the subcontract and are entitled to enforce all obligations and obtain all benefits under the subcontract, including any ownership rights. Design-Build Subcontractors will remain liable and responsible for all design-build Submittals.

4.5.3 PMT Participation and Deliverables. The General 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.

4.5.4 General Duties and Obligations. The General 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 Prime Consultant 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 Prime Consultant, PITS, and other IPD Team Members throughout the design process to develop a complete set of coordinated Implementation Documents that meet or exceed the Base Program;

- (c) support and collaborate in Target Value Design (Section 7.2.5);

- (d) manage Project information by using a Building Information Model or Models linked 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 Prime Consultant to produce visualization aids such as renderings or computer generated video;

- (f) work with Prime Consultant to produce a Record Model to Owner after Final Completion of the Project;

- (g) work with the Prime Consultant to produce a Project manual that documents the management protocols, Co-location Plan, QA/QC plan, risk assessment/mitigation strategy, safety plan, work hours and work restrictions, communication protocols, specifications, Project terminology, forms and similar administrative and procedural requirements;

- (h) manage, perform, oversee, and direct all Construction Work in accordance with the Implementation Documents and Project Objective through Final Completion of the Project, including applying for Permits and maintaining the premises and surrounding area free from the accumulation of undue waste materials or rubbish and arranging for the clean up of the Project at the completion of Construction Work;

- (i) coordinate work with Owner's Separate Contractors, including integration of the Separate Contractors into project planning, scheduling, and coordination activities;

(j) install, commission, and test as required, including ancillary construction necessary for installation, of all Owner furnished materials and equipment;

(k) 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;

(l) timely prepare and submit Submittals that are in conformance with the Implementation Documents;

(m) provide the PMT with timely decisions necessary to support the Project Objective, make timely payments, and perform all other General Contractor-designated tasks as required by this Agreement;

(n) propose a Quality Assurance/Quality Control (“QA/QC”) plan for approval by the PMT, and implement the approved QA/QC plan;

(o) document risks that could jeopardize the Project success in a risk registry (to be reviewed and updated by PMT) that identifies the risks in priority order and documents strategies to avoid, mitigate and monitor these risks;

(p) maintain a daily log that summarizes the conditions and activities on the Project including, without limitation, a record of weather conditions, the number and types of workers on site, the subcontractors working, the areas where Construction Work is progressing and the Construction Work accomplished, problems encountered on the Project, significant visitors to the site, including inspectors and testing agencies, and other similar relevant information as the Owner may reasonably require;

(q) 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 Separate Contractors; and

(r) commission the Project with the assistance of the Prime Consultant, other IPD Team Members, and the independent commissioning agent, if any.

## **5. PROJECT MANAGEMENT**

**5.1 Project Management Team.** The Project Management Team includes representatives of the Owner, Prime Consultant, and General 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. The PMT will provide for appropriate representation of all of the interests of the ICL participants at the PMT level.

**5.1.1 Authority and Responsibility.** The PMT will manage and coordinate implementation of the Project Objective and provide direction to the Parties and to the PITS. The PMT is responsible for developing goals, strategies, protocols and tools for monitoring Project progress against schedule, budget and key performance indicators. These management tools will be used to track the status of the Project against achievement

of the Project Objective. If it appears that the Project Objective is not likely to be achieved, the PMT will develop a recovery plan to enable the Project to achieve the Project Objective. 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, Prime Consultant's, or General Contractor's employees and is not responsible for any failure of Owner, General Contractor or Prime Consultant 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.

5.1.2 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. The PMT will arrange for space for the Project Participants to physically work together on the Project and will develop a plan (eg. set up, stations, equipment, scheduling) for use of the co-location space.

5.1.3 Submittals and Shop Drawings. The PMT may establish any necessary procedures and protocols with respect to submission, review and archiving of Submittals and Shop Drawings. Such procedures and protocols are may establish timing and processes, but are not to restrict the Prime Consultant in the substance of the review of the submission.

5.1.4 Interpretation of Base Program and Implementation Documents. The PMT has the sole authority to interpret the Base Program and Implementation Documents. All Requests for Information ("RFI") or clarification will be processed in accordance with this Section 5.1.4. Questions, conflicts and issues regarding coordination and constructability should be resolved during design and before Implementation Documents are issues. RFIs should not be used as a substitute for collaboration. If the requesting and responding parties are able to resolve the issue through consultation, the responding party will produce the RFI documenting the solution before the date at which a delay will occur. If the requesting and responding parties cannot agree on a plan for resolving the issue before a delay will occur, the responding party must notify the PMT, who will promptly address the issue with the parties. All RFIs will be in writing to the General Contractor with a copy to the PMT and to the extent possible will be documented in BIM. If the RFI does not affect the Target Cost or the Milestones, the General Contractor will immediately post it on the web-based portal and notify all necessary parties for implementation in the field. 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 5.1.6 and 5.3. The PMT will resolve questions, discrepancies, ambiguities, and other clarifications regarding the requirements of the Base Program and Implementation Documents according to this Agreement, the Project Objective, and in the best interests of the Project. A PMT Bulletin will be issued documenting the PMT's resolution of the issue.

5.1.5 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 IPD Team Members, lead Regular and Special Meetings, prepare and distribute minutes of all PMT meetings, and prepare PMT Bulletins for execution by the PMT members.

(a) Regular Meetings. The PMT will establish appropriate regular meetings as PMT and SMT deem best. "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 Senior Management Team members, as well as any other necessary IPD Team Members whose attendance is required by the PMT.

(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 timeframe. 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 5.1.8.

5.1.6 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 5.1.7 and confirmed in writing in a PMT Bulletin.

5.1.7 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 12.4. If the PMT is unable to reach agreement, the PMT will refer the issue to the SMT under Section 5.2.

5.1.8 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.

**5.2 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 Section 16 and, upon request, to meet with the PMT at any Regular or Special Meetings. In addition, the SMT will periodically attend PMT Meetings to gain deeper familiarity with the Project and provide executive coaching and support to the PMT.

5.2.1 SMT Decisions. Any matters requiring SMT decisions or action will be decided by majority vote of the SMT, with Owner, Prime Consultant, and General Contractor each having only 1 vote. SMT Bulletins will be issued by SMT to reflect a decision by SMT. 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 12. Any dispute resulting from an SMT decision or an Owner's Directive will be resolved under the dispute resolution



provisions set forth in Section 16. 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.

**5.3 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

5.1.6 and will be issued directly to the General Contractor or Prime Consultant for distribution to the appropriate subcontractors and subconsultants. 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 person designated by the PMT pursuant to section 5.1.5. PMT decisions and meeting minutes will be circulated to the appropriate IPD Team Members and maintained on a collaborative web portal.

**5.4 Personnel Management.** The PMT will not supervise or control any person the Owner, Prime Consultant, or General 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 the PMT determines that the presence of that person is detrimental to achievement of the Project Objective. The Owner, Prime Consultant, and General 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.

## **6. SUBCONTRACTS AND CONSULTING AGREEMENTS**

**6.1 Written Agreements.** The Work performed under this Agreement will be executed by various Project team members, which will include subcontractors, suppliers, Vendors, and subconsultants. Consultants, subcontractors and Vendors may be Risk/Reward Team members or may be Standard Subcontractors or Standard Consultants. All subcontractors and subconsultants will be retained through subcontracts to the General Contractor or consulting agreements to the Prime Consultant. 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 General Contractor or Prime Consultant will be engaged through agreements approved by the Parties, the terms of which may not be modified without the PMT's written approval.

**6.1.1 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 object in a timely manner or recommend other potential subcontractors, suppliers, Vendors, or subconsultants will constitute the PMT's acceptance. Key subconsultants, subcontractors, Vendors, and suppliers will be procured early during the Validation Phase. Those subconsultants, 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.

6.1.2 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 subconsultants submitting detailed breakdowns of their bids or proposals. Subcontractors, Vendors, and subconsultants 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.

6.1.3 Contract Award. Upon completion of the selection process for each subcontractor or subconsultant, the General Contractor or Prime Consultant will make a written recommendation to the PMT for contract award. If a PMT member objects to a person or entity on one of the bases set forth in Section 6.1.1, 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 subconsultant previously selected and approved by the PMT will not be made without written PMT approval.

**6.2 Licensing Requirements.** All subcontractors and subconsultants will be properly licensed for their respective portion of the Work.

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

6.3.1 Risk/Reward Team Members

(a) Waiver of Liability and Claims. The General Contractor and Prime Consultant will incorporate clauses substantially similar to Sections 13.1, 13.2, 13.3 and 13.4 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 13.5 will be incorporated into Risk/Reward Team member subcontracts, Vendor agreements, and consulting agreements. The Owner, General Contractor, and Prime Consultant must be indemnified parties under all such provisions;

(c) Compensation and ICL. Those subcontractors, Vendors, and subconsultants that are Risk/Reward Team members will be subject to substantially similar compensation and ICL provisions, adjusted for their respective proportionate ICL amounts, as those set forth in Articles 8 and 9;

(d) Change Orders. Those subcontractors, Vendors, and subconsultants that are Risk/Reward Team members will be subject to similar provisions governing Contract Time under Article 11; and

- (e) Those provisions required by Section 6.3.2.

#### 6.3.2 All Subcontracts, Purchase Orders, and Consulting Agreements

(a) Contract Flow-through. By appropriate written agreement, the General Contractor and Prime Consultant will require each subcontractor, supplier, and subconsultant, to the extent of the Work to be performed by the subcontractor, supplier, or subconsultant, to be bound to the General Contractor or Prime Consultant by terms of the Contract Documents, and to assume toward the General Contractor or Prime Consultant all the obligations and responsibilities that the General Contractor or Prime Consultant 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 General Contractor and Prime Consultant will require each subcontractor, supplier, and subconsultant to enter into similar agreements with lower-tier subcontractors, suppliers, and subconsultants. In addition to this general flow-through requirement, General Contractor and Prime Consultant are specifically required to flow through the requirements in Section 6.3.2(b) through 6.3.2(g) 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 17.3 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 subconsultants' 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 General Contractor and Prime Consultant 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, Prime Consultant, General 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. The SMT may waive or modify this requirement on a case-by-case basis.

(e) Dispute Resolution Proceedings. General Contractor will require all subcontractors, Vendors, and suppliers, and Prime Consultant will require all subconsultants, to be subject to the dispute resolution proceedings in Article 16.

- (f) Records and Auditing. General Contractor will require all

subcontractors, Vendors and suppliers, and Prime Consultant will require that all subconsultants be bound by the records retention and auditing provisions in Section 10.13.

(g) Confidentiality and Non-Disclosure. General Contractor will require all subcontractors, Vendors and suppliers, and Prime Consultant will require all subconsultants, to be bound by the provisions of Section 18.2 prior to receiving any information regarding this Project.

**6.4 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 General Contractor and Prime Consultant will coordinate their Work with the work and services of the Separate Contractors to allow for smooth and efficient workflow and integrated work product. The Separate Contractors will coordinate their Work with the General Contractor and will conform to the General Contractor's Health and Safety policies. The General Contractor and subcontractors will cooperate with the Owner in resolution of any disputes or claims that may arise between the General Contractor and/or a subcontractor and Owner's Separate Contractor(s). All disputes will be resolved in accordance with Article 16 of this Agreement. To the extent that the General Contractor and/or subcontractor is unable to recover from Owner's Separate Contractor, Owner will be responsible.

## **7. RESPONSIBILITIES BY PHASE**

**7.1 Validation Phase.** During the Validation Phase, the IPD Team, under the direction of the PMT, will prepare a Validation Study that defines the Base Program, Target Cost, and a Milestone Schedule for approval and acceptance by the Owner. The Target Cost, as adjusted in accordance with this Agreement, is the design target during Target Value Design and is used to determine incentive adjustments to the ICL during the Design/Pre-Construction Phase. If the IPD Team cannot develop a design solution consistent with the Base Program and with a Target Cost that is at or below the Owner's Budget by the end of Validation, then this Agreement may be terminated pursuant to Section 17.1, except that the Risk/Reward Team Members will not be paid any profit for the work performed prior to the termination. Alternatively, the IPD Team may continue work through Target Value Design to attempt to establish a design solution with the Base Program and with a Target Cost that is at or below the Owner's Budget by [insert date]. If the IPD Team cannot develop such a solution by [insert date], then the Owner may terminate this Agreement pursuant to Section 17.1, except that the Risk/Reward Team Members will not be paid any profit for the work performed prior to the termination.

**7.1.1 Validation Study.** The Validation Study together with Target Value Design will define the Base Program, Target Cost, and the Milestone Schedule. It will also:

- include each item identified in the Validation Study;
- include a detailed breakdown of all projected Chargeable Costs sufficient to allow PMT to confirm that there is a reasonable probability of delivering the Base Program for the Target Cost within the Contract Time.

7.1.2 Joint Site Investigation. As part of the Validation Study, the Owner and Risk/Reward Team members will conduct the Joint Site Investigation at or concerning the Project site 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; location of all utilities; and the accuracy of existing surveys and other documentation provided by the Owner. If a Party has participated in the Joint Site Investigation, it 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 created or arising out of the Joint Site Investigation.

7.1.3 Base Program. The Owner and Risk/Reward Team members will jointly develop the Base Program, which will be part of the Project Objective and amended into the Agreement as Exhibit B-1. The Base Program should include large areas of needed work without detailing specific solutions. The Base Program 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 Base Program and those that are reasonably inferable from the Base Program. The Added Value Incentive Items will not be included in the Base Program.

#### 7.1.4 Risk Register.

(a) Risks that have been identified and priced pursuant to a risk analysis and included in the risk register, will be included in Target Cost. When a proposed method of dealing with the risk has been identified, the projected Chargeable Costs for the solution will replace the risk register for that risk in the Target Cost. If the projected Chargeable Cost for an item is less than what has been carried in the risk register, those remaining funds will be moved from the risk registry into the Cost Model and will be part of any surplus of funds available for shared savings. Once Construction begins, if a new risk is identified, it will be included in the risk register, however the Target Cost will not be adjusted.

7.1.5 Project Milestones. The Owner and Risk/Reward Team members will jointly develop and document the Project Milestones based on the Contract Time set forth in the Business Terms Sheet. The Project Milestones will project Milestones for design and construction, including anticipated completion of design and procurement of permit(s), procurement of long lead items, projections for key Construction Work, Owner's occupancy requirements and projections for Substantial Performance and Final Completion. The Project Milestones are part of the Project Objective and will be amended into the Agreement as Exhibit B-4.

7.1.6 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 6 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.

**7.2 Design/Preconstruction Phase.** During the Design/Preconstruction Phase, the PMT will oversee development of the Implementation Documents for the Project in

accordance with the Base Program and will complete the design and preconstruction activities as set forth below.

7.2.1 Procurement of Other Project Team Members. During the Design/Preconstruction Phase, the remaining key subcontractors, Vendors, suppliers, subconsultants and Separate Contractors will be contracted by the Owner, General Contractor and Prime Consultant pursuant to Article 6. The Project roster will be updated by the PMT to include all IPD Team Members.

(a) Update Contract Task Matrix. The PMT will update the Contract Task Matrix (Exhibit C) as required to include the necessary subcontractors, Vendors, suppliers, subconsultants 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 IPD Team Member.

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

7.2.2 Project Implementation Teams. The PMT will develop, guide, and direct Project Implementation Teams that are responsible for designing and implementing the Project consistent with the Base Program, Target Cost, and Added Value Incentive Items. 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, and Added Value Incentive Items. 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, Value Added Incentive items, 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 General 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 11.4 based on the design requirements and the Substantial Performance date set forth in the Milestone Schedule. 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 11.4.1 based on the initial pull-based schedule for submission and approval by the PMT. Under PMT direction, the applicable IPD Team Members will collaboratively create and update work plans for Design/Preconstruction Phase activities per Section 11.4.2. The Parties and applicable IPD Team Members will only perform Work that is approved on the

applicable work plan or has been identified as workable backlog.

7.2.3 Building Information Modeling Execution Plan. Early in the Design/Preconstruction Phase, the PMT and relevant IPD Team Members will participate in a BIM workshop to establish a BIM execution plan that addresses the uses identified in the Base Program. The PMT will meet and develop detailed protocols and procedures for the use of BIM on this Project, which will be documented in the BIM execution plan that is incorporated into the Project Manual. The PMT will select a Model Administrator, who is responsible for receiving modeling information from the Project Participants and incorporating the information into a master BIM. Each Party is responsible for maintaining any individual design or analysis models and providing their model information, at appropriate intervals, to the Model Administrator.

7.2.4 Building Information Modeling – Ownership/Licensing. The Design Materials, including all BIM files, will, upon completion of the Project, become the property of the Owner and the Parties agree to provide the Owner, as a deliverable before Final Completion, the most recent version of all BIM files. Notwithstanding the above, the design elements that were created by the Parties, before execution of the Agreement, as extensions to commercially available building information modeling software remain the property of the respective Party that created the extension, regardless of whether it was used in a Model for this Project. The Parties grant a non-exclusive, irrevocable, perpetual license to each other to use any BIM information solely for the purpose of designing, analyzing and constructing this Project and for its future maintenance and remodeling. Provided the Party has not been terminated for convenience or cause, Owner grants each Party a non-exclusive, irrevocable, perpetual license solely for use or display of the Project BIM information for educational or promotional purposes.

7.2.5 Target Value Design Process. The IPD Team, under the direction of the PMT, will use the Target Value Design process to optimize and coordinate the design in accordance with the Base Program 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. To the greatest extent practicable, the General Contractor and the relevant IPD Team Members 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 IPD Team Members, and the PMT, in making informed decisions about proposed design solutions.

7.2.6 Innovation and Added Value Incentive Program. Owner wants to encourage innovation and to increase Project value without exceeding either (i) the Owner's Budget or (ii) the Target Cost. If savings are generated during the Design/Preconstruction Phase by reducing the estimated cost of the Base Program below the Owner's Budget and the Target Cost, the PMT will recommend including Added Value Incentive Items to the Base Program and the ICL will be adjusted in accordance with Section 9.8. The initial list of Added Value Incentive Items will be included by Amendment as Exhibit B-3. Owner may update the list of potential Added Value Incentive Items that it would favorably consider, and the PMT may recommend other items or innovations that Owner, in its sole discretion, may choose to have added to the Base Program as Added Value Incentive

Items.

7.2.7 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 Prime Consultant, in conjunction with the General Contractor and any Design-Build Subcontractors, will assist the Owner with filing all required applications, drawings, specifications, calculations, or other documents required for permits.

7.2.8 Implementation Documents. The PMT will finalize design in accordance with Base Program 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.

7.2.9 Target Cost and Milestones for ICL Distribution. The PMT will establish the Target Cost based on Implementation Documents and incorporate the Target Cost breakdown into the Project Objective as Exhibit B-2 through Amendment to the Agreement. The Target Cost cannot exceed the Owner's Budget and must include any Added Value Incentive Items elected by Owner and incorporated by the PMT during the Design/Preconstruction Phase. All ICL Milestone distributions will be measured against the Target Cost.

(a) Update ICL Distribution Spreadsheet. The PMT will update the ICL Distribution Spreadsheet to include all Risk/Reward Team members' ICL and ICL Percentages, and will establish Milestone ICL distributions for the Construction Phase. The updated ICL Distribution Spreadsheet will be incorporated into the Agreement through Amendment as Exhibit G and will supersede all prior versions of Exhibit G.

(b) Update Cost Model. The PMT will update the cost model to incorporate the Target Cost.

(c) Update Milestone Schedule. The PMT will update the Milestone Schedule, if necessary, to incorporate all Construction Work reflected in the Implementation Documents.

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

7.3.1 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.

7.3.2 Commissioning. The General Contractor, in conjunction with Prime Consultant and other necessary IPD Team Members, 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 and its third party commissioning



agent, and required Governmental Authorities. During commissioning and before Final Completion, the General 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.

7.3.3 Close-Out. Before Final Completion of the Project, the General 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, General Contractor will provide Owner with an electronic copy in the document's native format. If the document exists in hard copy, General Contractor will provide Owner with a hard copy in addition to a native format electronic copy.

7.3.4 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 9.9.2.

**7.4 Substantial Completion.** When the General Contractor believes that the Project or a Project Stage has completed Substantial Completion, it will notify the PMT who will review the entire Project or the Work performed in the Project Stage, as applicable. If the applicable Government Authority approves occupancy of the Project, or partial occupancy for the Project Stage per Section 7.4.1, and the PMT finds that Substantial Completion has been achieved, the PMT will issue a certificate of Substantial Completion. If the Project or Project Stage (as applicable) has not achieved Substantial Completion, the PMT will provide the General Contractor with a list of items that must be completed, repaired or replaced ("Punch List") before Substantial Completion and the General Contractor, after the General Contractor and/or the subcontractors have completed those items, will notify the PMT that the Project or the Project Stage is ready for re-inspection. Unless otherwise agreed, the certificate of Substantial Completion establishes the date when responsibility for security, maintenance, heat, utilities, damage to the Construction Work and insurance transfers from the General Contractor to Owner.

7.4.1 Partial Use and Occupancy. Upon 3 Business Days' written notice to the PMT, and provided that the Governmental Authorities having jurisdiction over the Project have deemed the Project Stage fit for legal use and occupancy, the Owner may occupy or otherwise make use of all or any part of that Project Stage's space or equipment before Substantial Completion of the entire Project. The PMT will issue a certificate of beneficial occupancy describing those portions of the Project Stage deemed fit for legal occupancy by the Governmental Authorities and establishing the date for when the risk of damage to the Work in that area is transferred to the Owner.

## **7.5 Final Inspection and Acceptance.**

7.5.1 Final Inspection and Owner Occupancy of a Project Stage. Before the Owner uses and occupies a Project Stage, the PMT will review all Work contained within the Project Stage and prepare a list of items that need to be completed, repaired or replaced ("Stage Punch List"). Correction of all Stage Punch List items to the PMT's satisfaction is a condition precedent to Final Completion of the Project Stage.

7.5.2 Final Completion and Owner Occupancy of the Project. After the General Contractor notifies the PMT that it believes the Project has achieved Final

Completion, the PMT will review the entire Project and prepare a list of any items that require completion, repair or replacement ("Final Punch List"). Any Final Punch List items for previously completed and occupied Project Stages will be corrected under the warranty provisions of the Agreement. Correction of all Final Punch List items to the PMT's satisfaction is a condition precedent to Final Completion of the Project and Final Payment. When the PMT has determined that Project Final Completion has occurred, it will issue a certificate of Final Completion.

## **8. COMPENSATION**

**8.1 General.** The Prime Consultant's and General 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 8.1.1), 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 Prime Consultant or General Contractor, of any nature, other than payable as Chargeable Costs, and may not include any amount of profit.

### **8.1.1 Overhead**

Overhead for the Prime Consultant and Risk/Reward Subconsultants is part of their Chargeable Costs. The Prime Consultant's overhead is embedded in its agreed hourly rates (Exhibit E-1).

Overhead for the General Contractor and Risk/Reward Subcontractors is part of their Chargeable Costs. The General Contractor's overhead is paid as a fixed percentage on top of its other 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.

**8.1.2 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 Prime Consultant, General 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 Prime Consultant or General Contractor.

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

## **8.2 General Contractor Self-Performed Work**

### **8.2.1 Competitively Proposed Trade Work**

(a) If Owner consents, General Contractor may propose to self-perform trade work on the same basis as approved subcontractors submitting competing proposals. General 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 Prime Consultant, who will be responsible for reviewing the proposals, and the Owner will determine, in its sole discretion, whether to accept General 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 General Contractor per Section 8.2.2 or its subcontractor, or with a Separate Contractor. If the trade work is awarded to General Contractor on a competitive, lump sum basis, General 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, General Contractor will not apply its overhead percentage (Section 8.1) to its self-performed, competitively bid trade work nor will General Contractor's ICL be increased by adding self-performed, competitively bid trade work.

8.2.2 Negotiated Trade Work. Owner, at its sole discretion, may choose to directly negotiate the performance of trade work with General Contractor for a fixed profit for that portion of the Construction Work. The fixed profit amount will be added to the General 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 General Contractor for the self-performed trade work is General Contractor's sole compensation for this work, which will not be marked up for any additional overhead or profit.

**8.3 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 Construction Phase based on the Milestone distributions also set forth in Exhibit G and subject to the provisions set forth in Article 9. Prime Consultant and General Contractor will each be responsible for paying their own respective Risk/Reward Team members their respective portion of any distributed ICL.

8.3.1 Scope Swaps. The PMT may choose to reduce the work scope of a IPD Team Member and correspondingly increase the scope of work of another IPD Team Member 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 Percentages of each Risk/Reward Team member. All changes under this section will be documented in a Change Order.

## **9. RISK/REWARD PROGRAM**

**9.1 General.** The Risk/Reward Team members have agreed that 100% of their potential profit (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.

**9.2 General Contractor's ICL Pass-through.** General 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 as set out in Exhibit G.

General Contractor will distribute to its Risk/Reward Subcontractors their respective proportions of the General Contractor's ICL. The ICL of subcontractors that join the Risk/Reward Team after execution of this Agreement will be added to General Contractor's ICL and all ICL Percentages adjusted proportionately.

**9.3 Prime Consultant's ICL Pass-through.** Prime Consultant's ICL is the sum of the ICL attributable to its Work and the ICL attributable to the Work of its Risk/Reward Subconsultants as set out in Exhibit G. Prime Consultant will distribute to its Risk/Reward Subconsultants their respective proportions of the Prime Consultant's ICL. The ICL of subconsultants that join the Risk/Reward Team after execution of this Agreement will be added to Prime Consultant's ICL and all ICL Percentages will be adjusted proportionately.

**9.4 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. The ICL that may be distributed at a Milestone is based on the initial ICL amounts, and does not include any additional incentive compensation. The additional incentive compensation, if any, is distributed at Final Payment.

## **9.5 Milestone ICL Payments**

9.5.1 When a Milestone is Achieved. When a Milestone is achieved, as preconditions to Milestone ICL payments, the PMT will assess whether (1) the Project is estimated to achieve Project Final Completion within the Contract Time and (2) the Estimated Final Cost is less than or equal to 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 PMT will determine whether all or any portion of the scheduled Milestone payment of ICL 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.

(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.

**9.6 Milestone Estimate.** When a Milestone achievement is reached, the General Contractor and Prime Consultant 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 the next 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 subconsultant. If independent verification is requested, the PMT will meet with an independent cost subconsultant chosen by the Owner who will review the proposed Milestone estimate within the next 5 Business Days and either accept it, accept it with modification, or prepare an independent cost estimate. Any independent cost estimate prepared must follow the same structure as the proposed Milestone estimate and may not include any items not contained within Target Cost, increase any contingencies, or withhold any funds not previously agreed to by the PMT.

**9.7 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 Prime Consultant and General Contractor will reimburse the Owner their proportional share of any overpayment of ICL, including amounts of overpaid ICL that are paid to their subcontractors, Vendors, and subconsultants. 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 proportionally offset the applicable amounts of prior Milestone ICL payments against succeeding payments of Chargeable Costs to General Contractor and Prime Consultant respectively. Any such offset will be reversed after Project Final Completion if the actual Chargeable Costs do not exceed the Target Cost.

#### **9.8 Design/Preconstruction Phase ICL Adjustments**

9.8.1 General. Owner and the Risk/Reward Team intend to use Target Value Design processes to improve Project design, eliminate waste, and optimize Project value. The Design/Preconstruction Phase ICL adjustments are designed to promote innovation at the time when change is least disruptive to the Project and when savings can be most efficiently used by the Owner.

9.8.2 Added Value Incentive Items. Owner has developed a list of Added Value Incentive Items that it would like to include in the Project without increasing the Target Cost or Owner's Budget.

9.8.3 ICL Increase by Adding Value. If, through Target Value Design, the difference between the Estimated Final Cost and lower of (i) Owner's Budget and (ii) Target Cost is sufficient to cover 125% of the estimated Chargeable Costs of an Added Value Incentive Item and Owner chooses to add the Added Value Incentive Item, then the ICL will be increased by 25% of the estimated Chargeable Cost of the Added Value Incentive Item. Owner's election of any Added Value Incentive Item will be documented by Change Order

9.8.4 ICL Increase for Residual Design/Preconstruction Savings and Target Cost. When the PMT determines to establish the Target Cost, if the Estimated Final Cost (after including Target Value Design reductions and Added Value Incentive Item additions, if any) is less than the Owner's Budget, then the ICL will be increased by 50% of the difference. Target Cost will be set at the Estimated Final Cost.

9.8.5 Limit on Target Cost. The Target Cost cannot exceed the Owner's Budget, unless adjusted by Change Order.

## **9.9 Construction Phase ICL Adjustments**

9.9.1 General. Owner and the Risk/Reward Team want to reduce rework, improve subcontractor productivity, and generally execute the Construction Phase as efficiently as possible. Thus, design innovation is not incentivized during this phase to avoid change that could disrupt construction efficiency.

9.9.2 Final Completion of the Project. If, at Final Completion of the Project, the Final Actual Cost (including reconciliation of allowances) is less than the Target Cost, then the ICL is increased by 50% of the difference. If after reconciliation of allowances the Final Actual Cost exceeds the Target Cost, then the ICL will be reduced, dollar for dollar, by the amount of the difference. If, after this reduction, the amount of ICL that had previously been distributed at Milestones exceeds the reduced ICL, then the Prime Consultant and General Contractor will, within 15 days of Project Final Completion, repay Owner the amount of the overpayment, in proportion to their ICL Percentages.

## **10. PAYMENT**

**10.1 Chargeable Costs.** The Prime Consultant's and General Contractor's Chargeable Costs are chargeable to the Target Cost. The Prime Consultant's Chargeable Costs are set forth in Exhibit E. The General 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 Prime Consultant and General Contractor, respectively. No costs will be charged to the Project that are not actually incurred by the participants.

**10.2 Periodic Payments.** Payment applications will be prepared by the Prime Consultant and General Contractor in the format agreed by the PMT and submitted for approval no later than the 25th day of the month. The period covered by each payment application will be one calendar month. The payment application will include all Chargeable Costs incurred by the Prime Consultant and General Contractor for that calendar month. The PMT will approve all or part of the payment application within 5 Business Days of receipt. The Owner will make payment for all approved amounts within 30 Calendar Days of PMT approval. All payments will be subject to any applicable holdbacks required pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C. 30, as amended. Holdbacks under the *Construction Lien Act*, R.S.O. 1990, c. C. 30, as amended, will only be released in accordance with the provisions of the Act.

**10.3 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 9.9.2. 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 13.5. Payment will be subject to any applicable holdbacks required pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C. 30, as amended. Holdbacks under the *Construction Lien Act*, R.S.O. 1990, c. C. 30, as amended, will only be released in

accordance with the provisions of the Act.

**10.4 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. General Contractor will not make advance payments to subcontractors or suppliers for stored materials or equipment without PMT approval.

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

10.5.1 Sufficient documentation supporting the Chargeable Costs claimed in the payment application, including, without limitation, receipts, purchase orders, contracts, time reports, and other documentation reasonably required by the PMT or the Owner.

10.5.2 Duly executed conditional waiver and release forms complying with Applicable Law covering all Work performed during the billing period by the Prime Consultant, General Contractor, subcontractors, subconsultants, suppliers, or any other party entitled to record or serve a stop payment notice or *Construction Lien Act*, R.S.O. 1990, c. C 30, as amended.

10.5.3 Certification that Prime Consultant and General Contractor have no knowledge of any construction liens with respect to the Work performed by others and that all subcontractors, subconsultants, and suppliers have been paid to date or will be paid with the proceeds for Work covered under the payment application. If Prime Consultant or General Contractor has knowledge of any stop payment notices or construction liens, it will certify as to what it knows of the stop payment notices or liens and covenant to bond or otherwise discharge or expunge the stop payment notices or liens per Section 13.5.5.

10.5.4 In addition to the above, within 5 Business Days after receipt of Final Payment, the Prime Consultant and General Contractor will provide Owner a form duly complying with Applicable Law covering all services and work performed by them and by their subcontractors, subconsultants, suppliers, or any other party entitled to record or serve a stop payment notice under Ontario *Construction Lien Act*, R.S.O. 1990, c. C. 30, as amended, with respect to any labour, services, equipment, or material rendered or provided for the Project.

**10.6 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:

10.6.1 The Willful Default of the Party submitting the invoice;

10.6.2 Failure of General Contractor, or its subcontractors, to make timely

payments to their respective subcontractors and suppliers for labour, materials, or equipment, provided Owner has made payment as required by this Agreement;

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

10.6.4 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 to the reasonable satisfaction of the PMT or the SMT by majority vote, Owner will pay the withheld amount within 20 days the PMT or SMT decision. The right to withhold does not apply to undisputed portions of any payment application.

**10.7 No Right to Stop Work.** Subject to Article 17, if a Party disputes any determination with respect to any payment application, the Party will nevertheless expeditiously continue to prosecute the Work, if amounts approved by the PMT are timely paid. Owner will not be deemed to be in default or breach of this Agreement for withholding of any payment under Section 10.6. However, the Party claiming that payment has been withheld, in whole or in part, may submit the payment dispute for determination under Article 16.

**10.8 Reliance.** In taking action on payment applications, the PMT may rely on the accuracy and completeness of the information furnished by the Prime Consultant and General 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 Prime Consultant and General Contractor have used amounts previously paid.

**10.9 Warranty of Title.** General 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 General Contractor, subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labour, materials, or equipment relating to the Construction Work. General Contractor will defend, indemnify, and hold Owner harmless from any and all liens, claims, security interests, or encumbrances filed by General Contractor, or its subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labour, materials, and equipment relating to the Construction Work, provided General Contractor has received payment for the Construction work at issue pursuant to this Agreement. (See also, Section 13.3.5)

**10.10 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.

**10.11 Payments to Subcontractors and Suppliers.** The Owner and Prime Consultant 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.



**10.12 Payment to Consultants.** The Owner and General Contractor do not have any obligation to pay, or to see that payment is made to a Prime Consultant's subconsultant except as may otherwise be required by law.

**10.13 Records and Audits.**

10.13.1 Prime Consultant and General Contractor must keep full and detailed accounts and records related to the performance of Work under this Agreement for a period of at least 7 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.

10.13.2 At any time during the performance of the Work and through 7 years after Project Final Completion, Owner, at its expense, may, but is not under any obligation to, audit the records of Prime Consultant or General Contractor, and their subconsultants 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 subconsultant 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 Prime Consultant or General 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 Prime Consultant and General Contractor are responsible for the overcharge, each will reimburse the Owner in proportion of the amount of the overcharge.

10.13.3 These audit provisions survive the termination of this Agreement. By appropriate written agreement, Prime Consultant and General Contractor will require their respective subcontractors, Vendors, suppliers, and subconsultants to be bound by and fully comply with the provisions of this Section 10.13.

**11. CONTRACT TIME**

**11.1 Contract Time.** The Contract Time is the time allotted in the Milestone Schedule to achieve Project Final Completion. The Substantial Performance and Final Completion dates may only be extended by mutual agreement of the PMT in accordance with the Change Order process under Article 12.

**11.2 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.

**11.3 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.

**11.4 Project Scheduling.** All planning and scheduling performed on the Project will use “pull scheduling” techniques pursuant to the Last Planner System™, or an equivalent system. In order to be pull-based, the planning system must be based upon requests from a IPD Team Member to other IPD Team Members 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 Milestone Schedule, collaboratively created phase plans per Section 11.4.1, make-ready work plans per Section 11.4.2, and a method for measuring, recording, and improving planning reliability.

11.4.1 Phase Planning. Phase plans must be based on collaborative planning through direct communications by all IPD Team Members performing Work in a particular phase, who, working backwards from the most current approved Milestone Schedule, create collaborative phase schedules indicating when their portion of the Work will be completed. Direct communications among IPD Team Members 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.

11.4.2 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 labour 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.

**11.5 Schedule Slippage.** The General Contractor or Prime Consultant 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.

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

## **12. CHANGES**

**12.1 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:

12.1.1 Owner-Elected Changes;

12.1.2 Owner's Directive;

12.1.3 Unforeseen and Differing Site Conditions;

12.1.4 Post Permit Changes;

12.1.5 Owner's suspension of the Work per Section 17.2; and/or

12.1.6 Reconciliation of allowance items to actual cost.

**12.2 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 12.1.1 through 12.1.6 above.

**12.3 Limitation on Changes to ICL.** A permitted change under Section 12.1 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 % 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.

**12.4 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 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 5.1.7 and 5.3, and if unresolved, are subject to dispute resolution under Article 16.

**12.5 Owner's Directive.** When Owner issues an Owner's Directive, Prime Consultant and General 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.

### **13. LIABILITY ALLOCATION**

**13.1 Waiver of Liability.** Notwithstanding anything to the contrary that may

be contained in this Agreement, in no event shall any of the Risk/Reward Team members be individually liable to the Owner or any other entity affiliated with or related to the Owner for any damages, claims, demands, suits, causes of action, losses, costs, expenses and/or liabilities regardless of whether such liability, guarantee or warranty, tort (including negligence), product liability, indemnity, contribution, strict liability or any other legal theory, in excess of such Party's individual ICL amount plus the amount of ICL received by such party except for the Allowed Claims listed in Section 13.2 and except as provided in Section 13.3.

13.1.1 The preceding Waiver of Liability shall not apply:

(a) For the benefit or protection of any Risk/Reward Subcontractors, Risk/Reward Suppliers or Standard Subcontractors or suppliers to the extent that any acts, errors, omissions or breaches of contract by them would be covered under Subcontract Default Insurance procured for or covering subcontractors or suppliers on this Project.

(b) To Subcontractor and supplier liability including Risk/Reward Subcontractor's and Risk/Reward Supplier's extending to claims paid under the Project's Subcontractor Default Insurance due to such Subcontractor and/or Supplier default or Risk/Reward Subcontractor or Risk/Reward Supplier default. In which case full subrogation right still apply against such defaulting Subcontractor and Suppliers.

(c) To liabilities to the extent satisfied directly or indirectly from project-specific insurance proceeds actually received by or for the benefit of the Owner from Project Specific Insurance Policy, on the understanding that if any amount of such liabilities was paid for as a Chargeable Cost then such proceeds shall be added to the Target Cost and the amount allocated to and distributions from the Risk/Reward Team shall be re-calculated, regardless of whether the party directly paid by the insurer on the claim was the party that originally sustained the covered loss. In all cases, the deductible is considered a cost of work as outlined in Exhibit F.

(d) For the benefit of a Risk/Reward Team member who has abandoned the Project, prior to having completed its scope of Work or Services, but only to the extent of liabilities arising directly from its abandonment of the Project.

**13.2 Allowed Claims.** "Allowed Claims" are limited to the following circumstances.

13.2.1 Willful Default. Claims for damages caused by the Willful Default of Prime Consultant, General Contractor, Vendor, subcontractors, or subconsultants;

13.2.2 Warranty Claims. Subject to Section.13.1, claims against the General Contractor, subcontractors, or suppliers for any breach of warranty obligations under Article 15;

13.2.3 Project Performance. Claims for loss or damage first occurring after Project Final Completion arising from (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, provided that the liability for an Allowed Claim pursuant to this clause 13.2.3(iii) shall not exceed the Targeted ICL.

13.2.4 Third-Party Claims. Claims for contribution or indemnification from claims of third parties arising from any negligent acts or omissions of the Owner, Prime Consultant, General Contractor, subcontractors, suppliers, and subconsultants resulting from the performance of the Work.

13.2.5 Unresolved Change Order Requests. Claims for Change Orders that have not been resolved by the PMT or SMT pursuant to Article 12.

13.2.6 Non-Payment. Claims arising from the Owner's failure to pay amounts that the PMT or SMT has approved for payment or amounts withheld by Owner pursuant to Section 10.6.

13.2.7 Over-Payment. Claims for amounts overpaid by Owner, as determined by audit under Section 10.13.

13.2.8 Termination or Suspension. Claims for amounts due following termination or suspension to the extent permitted by Article 17.

13.2.9 Indemnity. Claims to enforce indemnification obligations in Section 13.5, 13.6 or elsewhere in this Agreement;

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

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

**13.3 Dispute Resolution/Specific Performance.** Nothing in Section 13.1 shall limit the rights of a party to enforce the dispute resolution provisions set forth in Article 16 and civil actions necessary to enforce construction liens of stop payment notice rights. Further Section 13.1 shall not limit a party from bringing an action for specific performance of this Agreement.

**13.4 Limitation.** If a claim is asserted against a party to this agreement who is not on the Risk/Reward Team or its insurer and that party or its insurer asserts a claim, cross-claim or third party claim alleging that the Risk/Reward Team member caused or contributed to the amount claimed from such party, the Owner agrees that the Owner will collect from such Risk/Reward Team member only those amounts that are (a) attributed to the fault, breach or liability of such Risk/Reward Team member and (b) not recoverable (by contribution, indemnity or other theory) by such party from the Risk/Reward Team member and that any costs incurred by the Risk/Reward Team member as a result of any such claim, cross-claim or third party claim by such IPD Team Member shall be a Chargeable Cost.

### **13.5 Indemnification.**

13.5.1 General Contractor's Indemnification. The General Contractor will (and General 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 General Contractor, its subcontractors, and suppliers or anyone directly or indirectly employed by any of them for whose acts the General Contractor may be liable.

13.5.2 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 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 Owner, its Separate Contractors, or anyone directly or indirectly employed by any of them for whose acts the Owner may be liable.

13.5.3 Prime Consultant's Indemnification. The Prime Consultant will (and Prime Consultant will cause its subconsultants 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 Prime Consultant or its subconsultants, or anyone directly or indirectly employed by any of them for whose acts Prime Consultant may be liable.

13.5.4 Patent and Copyright. General Contractor and Prime Consultant 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. General Contractor and Prime Consultant, 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, attorneys' fees attributable to patent, copyright, or trademark violations.

13.5.5 Lien-Free Obligation. If any subcontractor, supplier, or subconsultant records or files, or maintains any action regarding a construction lien, stop payment notice, or *lis pendens* relating to the Work or the property where the Project is situated, the General Contractor or Prime Consultant, as applicable, will immediately vacate, discharge, extinguish, or expunge the construction lien, stop payment notice, or *lis pendens*, provided the Owner has paid the General Contractor or Prime Consultant for the Work and the General Contractor or Prime Consultant failed to pay their respective subconsultants, subcontractors or suppliers. If Prime Consultant or General Contractor fails to make timely payments to their respective subconsultants, subcontractors, and suppliers as required, the Owner may reasonably settle or bond over those claims, or take other actions necessary to prevent a default under any other agreement affecting the Owner's property or the Project, and General Contractor or Prime Consultant, as applicable, will upon written demand reimburse Owner for any substantiated amounts that were necessary to satisfy Prime Consultant's or General Contractor's obligation to satisfy or discharge any claim for lien or stop payment notice. The Prime Consultant and General Contractor will each indemnify and hold the Owner harmless from any

claims filed by their respective subconsultants, subcontractors, or suppliers for enforcement of construction liens or stop payment notices, provided the Owner has made payment to the Prime Consultant and General Contractor for the Work that is subject to the claim. Nothing contained in this Section will be construed to require the General Contractor or Prime Consultant to vacate, discharge, extinguish, or expunge any valid construction lien, stop notice, *lis pendens*, or other claim arising from the Owner's non-payment or a valid dispute between the Parties or a dispute approved by PMT with a third party.

13.5.6 Party's Choice of Counsel. In all instances where there is an obligation to defend a Party or to pay the cost of another Party's defense, the defended Party 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 that Party.

**13.6 Site Safety.** The General Contractor is solely responsible for training, initiating, maintaining, and supervising safety precautions and programs, including making all necessary filings and providing all necessary notices under Applicable Laws, in connection with performance of the Construction Work and according to all Applicable Laws governing safety on construction sites. The General Contractor will maintain on-site all Material Safety Data Sheets ("MSDS") for material or products brought to the Project Site that are regulated under Occupational Health and Safety Act, R.S.O. 1990, c. O. 1, as amended, or any other Applicable Law regulating material or products. The General Contractor will defend, indemnify, and hold the Owner and Prime Consultant harmless from and against all demands, causes of action, and other claims for damage, loss, and expense, including but not limited to attorneys' 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. Except for fines or penalties resulting from violations arising from Owner's Separate Contractors' work, the General Contractor and each subcontractor is responsible for the payment of all fines levied against it or against Owner arising from or related to violation of Applicable Laws. These fines and penalties are not Chargeable Costs unless approved by the PMT.

Unless specifically required by the Contract Documents, or reasonably required by the construction process, the General Contractor and subcontractors may not use or introduce to the Project site, or incorporate into the Project, any Hazardous Materials. If Hazardous Materials are specifically required by the Contract Documents, the General Contractor or subcontractor will take all necessary precautions and comply with all Applicable Laws to protect workers and the public from deleterious exposure to the Hazardous Materials and will properly and lawfully dispose of any residual Hazardous Materials. If Hazardous Materials are released at or from the Project site, the observing General Contractor or subcontractor will immediately notify the PMT and the General Contractor will timely notify all Governmental Authorities having jurisdiction over the release.

Prior to the commencement of Construction Work, the General Contractor shall submit to the Owner:

13.6.1 a current Workplace Safety & Insurance Board Clearance Certificate;

13.6.2 copies of the General Contractor's insurance policies having application to the Project or certificates of insurance, at the option of the Owner;

13.6.3 documentation setting out the General Contractor's in-house safety programs; and

13.6.4 a copy of the Notice of Project filed with the Ontario Ministry of Labour naming itself as "constructor" under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O. 1, as amended.

The Owner and Prime Consultant and through them all subconsultants agree that their personnel will comply with the policies and procedures of and the directions and instructions from the General Contractor with respect to occupational health and safety and related matters. Prior to admission to the site of the Project, the General Contractor may, as a condition of admission, require any subcontractor or subconsultant to sign a written acknowledgement in the following form:

#### Acknowledgement

The undersigned acknowledges that the Work it will perform on behalf of the Owner requires it to enter a place of work which is under the total control of a General Contractor that has a contract with the Owner, pursuant to which the General Contractor has assumed overall responsibility for compliance with all aspects of the applicable health and safety legislation, including all the responsibilities of the "constructor" under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended, as well as responsibility to co-ordinate and schedule the activities of our Work with the Work of the General Contractor under its contract. The undersigned agrees to comply with the General Contractor's directions and instructions with respect to health, safety, co-ordination, and scheduling and acknowledges that its failure to do so will be cause for termination of employment or of the undersigned's contract with the owner, as the case may be. The undersigned also agrees to have the General Contractor named as an additional insured on any comprehensive liability insurance policy, where such insurance is required.

**13.7 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 subconsultant claims) under a joint defense agreement establishing the procedures and rights of the Parties. To the greatest 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.

## **14. PROJECT INSURANCE**

**14.1 General.** The Parties will carry the insurance required of them in Exhibit H and require their respective subcontractors, subconsultants, 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.

**14.2 Bonding or Subcontractor Default Insurance.** To the extent required by the PMT, the General Contractor will cause certain subcontractors to be covered under



subcontractor default insurance, or to 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.

## **15. WARRANTY**

**15.1 Warranty and Correction of Work.** General Contractor warrants that all Construction Work will be of good quality, free from defects, and conforming to the Implementation Documents and Applicable Law. Except as set forth in section 15.2, for a period of 1 year commencing from Substantial Completion of the Project and for longer periods specified in the Implementation Documents for certain equipment manufacturers or suppliers, General 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 such acceptance. General Contractor's warranty excludes improper or insufficient maintenance, improper operation, and normal wear and tear under normal usage. General 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 General Contractor's specific obligation to correct defective or non-conforming Construction Work, and is subject to the limits of liability set forth in Section 13.

**15.2 Identified Deficiencies.** If, prior to Substantial Completion, the Owner identifies that any portion of the Construction Work is deficient or defective, then the General Contractor's warranty with respect to that portion of the Construction Work shall commence on the later of (i) Substantial Completion of the Project and (ii) the date of completion of the repair or replacement of that portion of the Construction Work. The warranty for such portion of the Construction Work shall run for a one year period from such date; provided, however, that the one year period shall be extended and recommence if a further repair or replacement is necessary during the term of the warranty.

## **16. DISPUTE RESOLUTION**

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

**16.2 Continued Performance.** Subject to the conditions of Article 17, 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.

**16.3 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.

**16.4 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.

**16.5 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.

**16.6 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 construction attorney with at least 15 years of experience in resolving disputes for complex construction projects. 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 being retained by the Parties. 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 cost of mediation will not be a Chargeable Cost. The mediation proceeding will be confidential and not admissible in court. The mediation process must be completed within 40 Business Days of the mediator's being retained, 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.

**16.7 Litigation.** All disputes that are not either resolved through the informal process under Section 16.5 or by mediation under Section 16.6 after having undergone those processes will be subject to arbitration in accordance with the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended.

## **17. DEFAULT, SUSPENSION AND TERMINATION**

**17.1 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 17.1.2, the Prime Consultant and General Contractor each grant title to Owner for all Design Materials prepared prior to a termination under this Section 17.1 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 General Contractor and Prime Consultant from any liability arising from Owner's further use of these materials.

17.1.1 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 reasonably 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.

17.1.2 Payment Upon Termination for Convenience. If the Owner terminates this Agreement for convenience, the Owner will pay the Prime Consultant and General Contractor: (i) all Chargeable Costs incurred prior to the effective date of termination; (ii) reasonable expenses related to the termination, including demobilization, unavoidable subconsultant and subcontractor costs, and securing the Project site; and (iii) provided the Termination for Convenience is not pursuant to Section 7.1 whereby no ICL shall be payable, the lesser of a portion of the unadjusted ICL per Section 8.3 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 Prime Consultant and General Contractor, inclusive of ICL, exceed the Owner's Budget or Target Cost, as applicable. Any payment under this Section is subject to Owner's receipt of all documentation required for payment under Section 10.5, 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 16.

**17.2 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. 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, either the Target Cost (depending on the phase) 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 % 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 Prime Consultant, General Contractor, or any entity or persons working directly for either for which they are responsible. A suspension lasting 6 months will be deemed to be a Termination for Convenience.

### **17.3 Owner Termination for Cause.**

17.3.1 Notice. The Owner may terminate a Party to this Agreement, upon 10 Business Days prior written notice, and unless otherwise agreed, 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. For clarity, a Party that is not in default of this Section cannot be terminated hereunder because of the default of another Party of this Section.

(a) Failure of one or more Parties to this Agreement to provide adequate labour 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 Prime Consultant or General Contractor to properly pay its subcontractors, suppliers, and subconsultants;

(e) Bankruptcy or insolvency of a Party to this Agreement; or

(f) Acts of Willful Default by Prime Consultant or General Contractor.

17.3.2 Ownership of Design Materials in Termination for Cause. The Prime Consultant and General Contractor each grant title to Owner for all Design Materials prepared prior to a termination under this Section 17.3 for Owner's use, at its discretion, for future continuation of the Project and for its future maintenance and remodeling.

17.3.3 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. The terminated Party will forfeit any ICL not yet paid to it and shall be responsible for any damages resulting from the default leading to the Termination for Cause up to (i) a maximum of 100% of the Target Cost in the case of the General Contractor and (ii) a maximum of \$5,000,000 in the case of the Prime Consultant. 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, subject to its obligation to mitigate its damages.

17.3.4 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 17.1. Owner will pay the terminated Party the amount due as if the termination had

been for convenience, plus interest at 3 percent 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.

**17.4 Prime Consultant/General Contractor Termination for Cause.** The Prime Consultant or General Contractor may terminate this Agreement for cause upon 10 Business Days prior written notice, and unless otherwise agreed, an additional 10 Business Days to cure if any of the following occur: (i) Owner fails to pay amounts approved for payment by the PMT or SMT; (ii) after commencement of construction, Owner suspends the Project under Section 17.2 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, or bankruptcy or insolvency of Owner.

17.4.1 Effective Date. Termination is effective 20 Business Days from date of notification (or such longer time as is reasonable provided the party in breach of Section 17.3 is remedying the applicable default in good faith).

17.4.2 Payment. If the Agreement is terminated under Section 17.4, the Owner will pay the Prime Consultant and General Contractor the: (i) Chargeable Costs incurred by the Prime Consultant and General Contractor prior to the effective date of termination; (ii) reasonable expenses related to the termination, including demobilization and securing the Project site; and (iii) if the termination is occurring after the Construction Phase has commenced, the lesser of a portion of the unadjusted ICL per Section 8.3 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 Prime Consultant and General Contractor may not exceed either the Target Cost (depending on the phase). Any payment under this Section is subject to Owner's receipt of all requested statutory lien waiver and release forms, as well as other documentation required for payment under Section 10.5, 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 16.

## **18. MISCELLANEOUS PROVISIONS**

**18.1 License.** The Prime Consultant and General Contractor represent that they are properly licensed as required by the Province of Ontario to perform the Work required under this Agreement, and that each Party's business entity is in good standing and qualified to do business in the Province of Ontario.

### **18.2 Confidentiality**

18.2.1 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 return or 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.

18.2.2 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.

**18.3 Compliance With Anti-Corruption Laws.** Prime Consultant and General 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.

**18.4 Notices.** Any notice required to be given by this Agreement will be in writing and deemed effective upon: (a) the date of personal delivery if received by the addressee before 5:00 p.m. local time on a Business Day (if received after 5 pm 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. Notices will be addressed to the following respective Parties:

<b>Owner:</b> Director, Facilities & Construction Management 861 Redwood Square Oakville, ON L6J 5E3	<b>Prime Consultant:</b> [contact and information]	<b>General Contractor:</b> [contact and information]
--	---	---

**18.5 Governing Law.** This Agreement will be governed and construed under the laws of the Province of Ontario 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 in Province of Ontario.

**18.6 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.

**18.7 Assignment.** The Parties respectively bind themselves, and their respective successors, assigns, and legal representatives to the other Parties to this Agreement. The General Contractor and Prime Consultant may not assign this Agreement without the express written consent of the Owner, and any unconsented assignment will be void.

**18.8 Notice of Dissolution and Other Change of Business.** If at any time during the performance of the Work and for a period of two (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 Prime Consultant or General 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.

**18.9 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.

**18.10 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, Prime Consultant, or General Contractor. The Parties acknowledge and agree that the obligations of the Prime Consultant and General Contractor are solely for the benefit of the Owner and are not intended in any respect to benefit any third parties.

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

**18.12 Survival.** The following provisions will survive the termination or expiration

of this Agreement: (i) Article 8, (ii) Section 10.13; (iii) Article 13; (iv) Article 15; (v) Article 16; (vi) Article 17; and (vii) Article 18.

**18.13 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.

**18.14 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.

**18.15 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.

**18.16 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.

[remainder of page left intentionally blank]



**18.17 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.

**THE CORPORATION OF THE TOWN OF OAKVILLE:**

By: \_\_\_\_\_  
R.G. (Ray) Green, P. Eng., CAO

By: \_\_\_\_\_  
Vicki Tytanek, Town Clerk

**[PRIME CONSULTANT]**

By: \_\_\_\_\_  
[Name] [Title]  
I have authority to bind the corporation

**[GENERAL CONTRACTOR]**

By: \_\_\_\_\_  
[Name] [Title]  
I have authority to bind the corporation.

## **Integrated Project Delivery Agreement**

### **EXHIBIT A – Definitions**

1. **"Added Value Incentive Items"** are Project elements that are added to the Base Program during the Design/Preconstruction Phase per Sections 7.2.6 and 9.8 of the Agreement.
2. **"Adverse Weather"** is high winds or unusual precipitation that prevent or substantially impedes the General Contractor's ability to perform Construction Work resulting in a delay in the Contract Time beyond the number of lost days built into the Milestone Schedule for adverse weather, as shown in Exhibit B. Work is substantially impeded if the General Contractor loses more than half of a planned and otherwise available workday except to the extent the delay is also caused by any fault, neglect, act or omission of the Prime Consultant, General Contractor, or their respective employees, subconsultant subconsultants, subcontractors or suppliers.
3. **"Agreement"** means this Integrated Project Delivery Agreement executed by the Parties for this Project and all of the Exhibits referenced in the Agreement.
4. **"Allowed Claims"** are defined in Section 13.2 of the Agreement.
5. **"Amendment"** is a document executed by the signatories to the Agreement amending the terms and/or conditions of the Agreement.
6. **"Applicable Law"** includes all local, provincial and federal rules, regulations, ordinances, building code or other codes, statutes, or regulations of Governmental Authorities that are relevant to proper and safe performance of the Work, including those listed in Exhibit A-1, Town Standards.
7. **"Base Program"** is based on the conceptual design and further defines the final quality, quantity, functionality, aesthetics, sustainability, and other requirements for the Project that are confirmed by the PMT during the Validation Phase. The Project scope includes all elements explicitly included in the Base Program and those that are reasonably necessary to accomplish the Base Program.
8. **"Building Information Model" ("BIM") or "Model"** is a parametric, computable representation of the Project design developed by the Prime Consultant, its subconsultants, and any Design- Build Subcontractors, and will include construction details developed by the Parties and their respective subconsultants and subcontractors. As used in this Agreement, references to Building Information Model, BIM, or the Model, include the primary design model or models and all linked, related, affiliated or subsidiary models developed for design, estimating, detailing, fabrication, or construction of the Project, or any portion or element of the Project. The portions of the BIM prepared by the Prime Consultant, its subconsultants and the Design-Build Subcontractors, and those portions prepared by General Contractor or Design-Assist Subcontractors under the responsible control of a licensed design professional, are Implementation Documents.
9. **"Business Day"** is any calendar day other than Saturdays, Sundays, and Ontario provincial

holidays.

10. **"Business Terms Sheet"** are the page(s) under that heading after the cover page of the Agreement that sets forth the key business terms among the Parties.
11. **"Calendar Day"** or **"day"** is any day whether a Business Day or not.
12. **"Change Order Request" or "COR"** is a written request for Change Order, which sets forth the nature of the change, the reason for the change, and the effect, if any, on the Target Cost, the Contract Time, or ICL.
13. **"Change Order"** is a mutually agreed written order among Owner, Prime Consultant and General Contractor adjusting the Target Cost, ICL and/or Contract Time due to changes to the Base Program or Implementation Documents.
14. **"Chargeable Costs"** are cost categories that include the Prime Consultant and General Contractor costs incurred in the performance of the Work (excluding profit) as more specifically defined in Exhibits E and F and are chargeable against the Target Cost. Prime Consultant and General Contractor will require that profit and risk register be excluded from Chargeable Costs of their Risk/Reward Subcontractors and Risk/Reward Subconsultants.
15. **"Construction Phase"** is the third phase of the Project commencing on the effective date of the Notice to Proceed to construction and ending at Final Completion.
16. **"Construction Work"** includes all labour, materials, equipment, appurtenances and services necessary for proper construction and initial commissioning of the Project in accordance with the Contract Documents performed by General Contractor or subcontractors.
17. **"Contract Documents"** include this Agreement (inclusive of all Exhibits), the Building Information Model, the Implementation Documents, and all other documents issued by the Prime Consultant, its subconsultants, and Design-Build Subcontractors for construction of this Project, any PMT Bulletins, SMT Bulletins and/or Owner's Directives, and any subsequent Amendments or Change Orders. The Contract Documents include Submittals prepared by Design-Build Subcontractors and those Submittals incorporated into the Model. The documents included in the Contract Documents are complementary and what is required by one is required by all. If there are conflicting requirements within or between the various Contract Documents, the PMT will determine which requirements will better achieve the Project Objective.
18. **"Contract Tasks"** are those performance obligations of each Party described in the Contract Task Matrix set forth in Exhibit C.
19. **"Contract Time"** is the time allotted in the Milestone Schedule to achieve Final Completion of the Project.
20. **"Design Materials"** include the Model, Record Model, the subsidiary BIM models necessary for design and construction of the Project, all electronic design data for the Project, any related two dimensional drawings, calculations, schedules or specifications, and any other design materials, created for the Project.
21. **"Design Services"** are those professional architectural and engineering services rendered by the Prime Consultant, its subconsultants and any Design-Build Subcontractors necessary to develop and complete the Project design in accordance with the standard of care set forth in the Agreement and Applicable Law.

22. **"Design/Preconstruction Phase"** is the second phase of Project Work where the Owner and Risk/Reward Team engage in Target Value Design to develop Implementation Documents within the Target Cost and obtain approval of the Implementation Documents from applicable Governmental Authorities.

23. **"Design-Assist Subcontractors"** are subcontractors whose services include participation in the design effort but that are not Design-Build Subcontractors. That participation includes provision of comments and recommendations on design elements and materials, preparation of cost opinions to inform design decisions, reviewing for constructability, trade coordination, and, where appropriate, execution of drafting efforts. Nothing in this Agreement requires the Design-Assist Subcontractors to perform any Work outside their license or contrary to the laws, codes or regulations of the Governmental Authorities.

24. **"Design-Build Subcontractors"** are subcontractors that provide Design Services and Design Materials required for their respective Construction Work. Design-Build Subcontractors have full architecture and engineering responsibility for their portion of the Work and will have their drawings and calculations signed and sealed by architects and/or registered professional engineers licensed in the province of Ontario.

25. **"Estimated Final Cost"** is the sum of incurred Chargeable Costs that has been actually incurred at the time the estimate is being made plus the estimated Chargeable Costs that will be required to complete the Project.

26. **"Final Actual Cost"** is the sum of all incurred Chargeable Costs upon Final Completion of the Work.

27. **"Final Completion of the Project"** or **"Project Final Completion"** is the Final Completion of all Project Stages and completion of all requirements of the Agreement.

28. **"Final Completion"** occurs on the date when all of the following have occurred: General Contractor has completed the Construction Work in full compliance with the Implementation Documents; all Final Punch List items have been completed and accepted by the PMT; the Project has been commissioned; all close-out documentation required under the Contract Documents has been transmitted to Owner; a final certificate of occupancy has been issued by the Governmental Authority having jurisdiction over occupancy of the Project; and the PMT has issued a certificate of Final Completion. A Project Stage may have its own Final Completion date, but all Project Stages must be complete before Project Final Completion.

29. **"Final Payment"** is Owner's payment of all amounts due and owing to the Prime Consultant and General Contractor, including any ICL due after Final Completion of the Project, upon receipt of all required unconditional waivers and releases and close-out documents.

30. **"Final Punch List"** is the punch list prepared after Substantial Completion and final inspections documenting all Construction Work that needs to be corrected or completed to achieve Final Completion.

31. **"Force Majeure"** means natural disasters; named storms; labour strikes that cannot be resolved through a dual gate or other measures; disruptions in utility service and/or connections not caused by the General Contractor or those for which it is responsible; Governmental Authority actions other than permitting, design review or inspection of construction; civil disobedience, an act of terror, unavoidable casualties or catastrophic events; provided the above events are beyond the Prime Consultant's and/or General Contractor's control, and not due to any act or

omission of the Prime Consultant and/or General Contractor or anyone for which either is responsible.

32. **"General Contractor"** means [General Contractor].

33. **"Governmental Authority" or "Governmental Authorities"** includes all federal, provincial, regional, municipal, district or quasi-governmental boards, departments, courts, offices or agencies that have jurisdiction over the Project.

34. **"Hazardous Materials"** means any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substance or contaminant and all other materials governed by OSHA or other Applicable Law for environmental protection, or any substance or material that has been determined, or during the time of performance of the Contract Work is determined, to be capable of posing a risk of injury to health, safety, property or the environment by any Governmental Authority.

35. **"ICL Percentages"** are the percentage shares in the ICL of the individual members that make up the Risk/Reward Team and will be used for distribution of any ICL.

36. **"Implementation Documents"** consist of the Model; plans, sections and elevations extracted from the Model; and any ancillary drawings, specifications and construction details together with dimensions and layouts for civil, architectural, structural, mechanical, electrical, plumbing systems, and landscape design. The Implementation Documents will describe in detail the requirements for the Construction Work and provide information necessary and appropriate to obtain all necessary permits for construction of the Project.

37. **"Incentive Compensation Layer" ("ICL")** is an amount that is increased or decreased based on Project outcome during the Project and is distributed to the Risk/Reward Team in accordance with their ICL Percentages and the ICL Distribution Spreadsheet (Exhibit G). Payment of the ICL is contingent upon the Project phasing milestone disbursement conditions set forth in the Agreement.

38. **"Integrated Project Delivery Team" ("IPD Team") and "IPD Team Member"** are defined in Section 3.1.

39. **"Joint Site Investigation"** is a site investigation attended by the Risk/Reward Team during the Validation Phase for the purpose of reviewing existing information and investigating the Project site to identify deficiencies and discrepancies, and to determine the extent of any additional investigations or testing required for proper design and construction.

40. **"Milestone Schedule"** is a Project schedule submitted during the Validation Phase that projects Milestones for design and construction, including anticipated completion of design and procurement of permit(s), procurement of long lead items, projections for key Construction Work, Owner's occupancy requirements, and projections for Substantial Completion and Final Completion. The Milestone Schedule will be used as a management tool only, however the Contract Time will be tied to the milestone Project Final Completion date, subject to adjustment through approved Change Order.

41. **"Milestone" or "Milestones"** are events noted in the Milestone Schedule where the Project is evaluated and, if pre-conditions are met, a portion of ICL is distributed to the Prime Consultant and General Contractor.

42. **"Notice to Proceed"** is a written document issued by the Owner or the PMT to set the date of commencement of the Construction Phase of the Project or for various Project Stages.
43. **"Owner"** means The Corporation of the Town of Oakville.
44. **"Owner's Budget"** means the maximum amount which the Owner has budgeted for the payment of Chargeable Costs and ICL with respect to the Project. Subject to amendment by the Owner, the Owner's Budget is [insert amount].
45. **"Owner's Directive"** is a written directive from the Owner that overrides a decision by PMT or the SMT. An Owner's Directive may be construed as an Owner-Elected Change if it affects the Target Cost and/or Contract Time.
46. **"Owner-Elected Change"** is a change to the scope of the Work described in the Base Program or Implementation Documents that either impacts the Target Cost and is not reasonably inferred from the Base Program or Implementation Documents, or required as a result of either coordination of the Construction Work or design error or omission.
47. **"Party"** means the Owner, Prime Consultant, or General Contractor and **"Parties"** means all of them.
48. **"Phase"** is a functional segregation of Project Work into Validation, Design/Preconstruction and Construction. Each Project Stage may have its own Phases.
49. **"PMT Bulletin"** is a written directive from the Project Management Team derived from a unanimous vote that affects design, cost, schedule, or allocation of the Work. A PMT Bulletin may affect the Project Objective.
50. **"Post Permit Change"** is a substantive change in the permit by a Governmental Authority or as a result of changes to laws or regulations that impact the Construction Work subsequent to the issuance of permit provided that the changes are not due to coordination of the Construction Work or design errors and omissions and provided that the changes were not reasonably known or anticipated when the Target Cost was set.
51. **"Prime Consultant"** means [Prime Consultant].
52. **"Product Data"** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the General Contractor or a subcontractor, tier- subcontractor, manufacturer, supplier or distributor to illustrate materials or equipment for some portion of the Construction Work.
53. **"Project"** means the project described in Section 2.1 of the Agreement, and includes the Validation Phases, Design/Preconstruction Phases, and Construction Phases for all Project Stages.
54. **"Project Implementation Teams" ("PITS")** are interdisciplinary groups of Project Participants organized by the PMT. PITS are part of the collaboration process to develop the Implementation Documents and other deliverables, and may be formed temporarily or for the duration of the Project.
55. **"Project Management Team" ("PMT")** consists of representatives from the Owner, Prime Consultant, and General Contractor that will act in a collaborative manner to provide management level leadership during the design and construction process in a concerted effort to achieve the Project Objective.

56. **"Project Objective"** includes all Owner requirements, goals and limitations, is comprised of the Base Program, Added Value Incentives Items, and Implementation Documents, and includes the Target Cost and Contract Time. The Project Objective establishes all requirements for measuring the Project's success.
57. **"Project Participant"** is any person or entity that is providing material, equipment, work or services for the Project.
58. **"Project Stage"** is a portion of the Project that is geographically or otherwise distinct and may have separate Milestones and dates for Substantial and Final Completion.
59. **"Record Model"** is the version of the BIM that will be updated throughout construction to reflect the as-built condition of the Project and is turned over to the Owner upon Final Completion.
60. **"Regular Meeting"** is defined in Section 5.1.5(a).
61. **"Request for Information" ("RFI")** is defined in Section 5.1.4.
62. **"Risk/Reward Subconsultants"** are subconsultants engaged by the Prime Consultant to perform Design Services per the obligations stated in their respective consulting agreement and that have placed 100% of their profit at risk and are therefore eligible to share in the incentives provided and risk associated with the Project's success.
63. **"Risk/Reward Subcontractors"** are subcontractors and Vendors engaged by the General Contractor for performance of a portion of the Construction Work per the obligations stated in their respective subcontract agreement or purchase order and that have placed 100% of their profit at risk and are therefore eligible to share in the incentives provided and risk associated with the Project's success.
64. **"Risk/Reward Team"** consists of the Prime Consultant, General Contractor and all of their respective Risk/Reward Subconsultants and Risk/Reward Subcontractors, each of whom have placed their respective profit at risk, are eligible to share in the ICL per the Agreement, and are included in the mutual waiver of liability provisions set forth in the Agreement.
65. **"Samples"** are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Construction Work will be judged.
66. **"Senior Management Team" ("SMT")** includes a senior executive member from the Owner, Prime Consultant, and General Contractor that will act collaboratively to resolve any matters referred to it by the PMT by a majority vote, subject to an Owner's Directive.
67. **"Separate Contractors"** includes subconsultants, contractors and vendors procured directly by the Owner to perform work or services on the Project.
68. **"Set Based Design"** is a design strategy that advances in parallel alternative design solutions that meet Project criteria and constraints until a decision is made to select one solution over the alternatives.
69. **"Shop Drawings"** are drawings, diagrams, schedules and other data specially prepared for the Construction Work by the General Contractor or a subcontractor, tier-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

70. **"SMT Bulletin"** is a written directive from the SMT derived from a majority vote of the SMT and is binding on all Project Participants unless vetoed or modified by an Owner's Directive.

71. **"Special Meeting"** is defined in Section 5.1.5(b).

72. **"Staging Schedule"** is used if the Project will be performed in stages. At a minimum, the Staging Schedule defines the dates for commencement of construction, Substantial Completion, and Final Completion of each Project Stage.

73. **"Standard Consultant"** is a subconsultant engaged by the Prime Consultant that has not placed profit at risk and therefore is not eligible to share in the Agreement's financial incentives, ICL and mutual liability waivers. Standard Consultants are not a part of the Risk/Reward Team.

74. **"Standard Subcontractor"** is a subcontractor or supplier engaged by the General Contractor that has not placed profit at risk and therefore is not eligible to share in the Agreement's financial incentives, ICL and mutual liability waivers. Standard Subcontractors are not a part of the Risk/Reward Team.

75. **"Submittals"** include Shop Drawings, Product Data and Samples, but are not Contract Documents unless they are produced and stamped by a Design-Build Subcontractor. To the extent required by the Contract Documents, all Submittals that are not produced by a Design-Build Subcontractor only demonstrate how the General Contractor and subcontractors propose to execute the Construction Work shown by the Contract Documents.

76. **"Substantial Completion"** occurs on the date when the Project is sufficiently complete to allow the Owner to legally occupy or utilize the Project for its intended purpose, all systems are operational as designed or required, all inspections and tests required under the Contract Documents have been completed successfully, the Governmental Authority with jurisdiction over Project occupancy has issued approval for legal occupancy, and the PMT has issued a certificate of Substantial Completion. A Project Stage may have its own Substantial Completion date.

77. **"Target Cost"** is the initial cost of the Work established during the Validation Phase and Target Value Design by the Owner and Risk/Reward Team members which includes all Chargeable Costs to complete the Work described in the Base Program. The lower of (i) the Owner's Budget and (ii) the Target Cost will be used as the threshold for which the Added Value Incentive Items and Base Program are compared in order to determine whether ICL is increased during the Design/Preconstruction Phase.

78. **"Target Value Design"** is a design discipline that requires project values, cost, schedule, and constructability to be basic components of the design criteria, and uses cost targets to drive innovation in designing a project to provide optimum value to an owner. Target Value Design uses constructability and cost information from the Risk/Reward Team before design decisions are made to allow the design to progress within the Target Cost and Contract Time.

79. **"Unforeseen and Differing Site Conditions"** means discovery of an unknown, subsurface or otherwise concealed physical condition that differs materially from those indicated in the Implementation Documents or the information obtained from the Joint Site Investigation; an unknown physical condition of an unusual nature that differs materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character and nature provided for in the Implementation Documents; or an unknown, pre-existing hazardous substance or condition that requires removal or remediation.



80. **"Validation Phase"** is the first phase of the Project where the Owner and Risk/Reward Team members document the Base Program and establish the Target Cost and the Added Value Incentive Items.

81. **"Vendors"** are suppliers that are engaged directly by the General Contractor that have placed their profit at risk and are participating on the Risk/Reward Team.

82. **"Willful Default"** is one of the following events: (i) actual or constructive abandonment of the Project; (ii) persistent and repeated failure, after written notification, to correct Work that significantly and materially deviates from the Implementation Documents or applicable laws, codes or regulations; or (iii) fraud, reckless disregard or willful misconduct. Actual abandonment occurs if the Party, without justification, ceases performing Work for a period of 21 consecutive days or notifies one of the Parties that it will not be performing Work on the Project anymore. Constructive abandonment occurs if the Party, without justification, expends so little effort on the Project that there is no meaningful progress for 21 consecutive days. The good faith exercise of any contractual suspension rights granted the Risk/Reward Team member under this Agreement or an applicable subcontract or consulting agreement is not an intentional or constructive abandonment.

83. **"Work"** includes all labour, materials, equipment, appurtenances and services required to design, construct, and commission the Project in accordance with the Contract Documents.