Guide to the

Canadian Standard Form of Contract between Architect and Consultant

DOCUMENT NINE

2018 Edition

The Royal
Architectural Institute
of Canada

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The RAIC Practice Support Committee appreciates the input received from owner representatives, insurers, provincial associations of architects, and other stakeholders for the development of the Canadian Standard Form of Contract for Architectural Services, Document Six, 2017 upon which the Canadian Standard Form of Contract between Architects and Consultants 2018 is based:

- Alberta Association of Architects
- Architects' Association of New Brunswick
- Architectural Institute of British Columbia
- Association of Consulting Engineering Companies
- Brookfield Properties
- Cadillac Fairview
- Canadian Association of University Business Officers
- Canadian Construction Documents Committee
- Community and Government Services, Government of Nunavut
- Consulting Architects of Alberta
- Defence Construction Canada
- Encon Group Ltd
- Fonds des Architectes
- Highways and Public Works, Government of Yukon
- Immobilière Industrielle-Alliance
- Magil-Laurentienne
- Manitoba Association of Architects
- Nova Scotia Architectes Association
- Ontario Association of Architects
- Ordre des architects du Quebéc
- Prince Edward Island Association of Architects
- ProDemnity Insurance Company
- Public Works and Services, Government of Northwest Territories
- Regional Municipality of Durham
- Saskatchewan Association of Architects
- Shared Services, BC
- Stantec Professional Services
- Transportation and Infrastructure, Province of New Brunswick
- University of British Columbia
- University of Toronto
- XLCaitlin Insurance Company SE

2018 English Edition – ISBN Book: 978-0-919424-67-8

2018 English Edition – ISBN Electronic Book: 978-0-919424-68-5

2018 Édition française – ISBN Book: 978-0-919424-69-2

2018 Édition française – ISBN Electronic Book: 978-0-919424-70-8

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Purpose

This standard form of contract is intended for use between the Architect and a Consultant engaged by the Architect, where the Architect has been engaged by the Client under an RAIC Document Six - 2017, Canadian Standard Form of Contract for Architectural Services contract.

Document Nine is not a stand-alone contract. It cannot be used without a Prime Contract (between Client and Architect). Furthermore, unlike the previous edition of Document Nine, this third edition of Document Nine cannot be used in conjunction with any Prime Contract other than RAIC Document Six, 2017 Edition. That Prime Contract must be attached to this contract as Appendix 1.

Guidance notes to this contract are intended to assist the Architect and Consultants engaged by the Architect in understanding Document Nine and in completing the Agreement Form and Schedules.

Document Nine is primarily intended for use when engaging Consultants who are design professionals, with structural, mechanical, and electrical engineers being the most common Consultants on building projects. Consultants may also include interior designers, civil engineers, acoustic engineers, landscape architects, other architects, and many other types of specialist Consultants. This contract may also be used for Consultants who are not necessarily design professionals. Written contracts are recommended for all Consultants engaged by the Architect.

Format

This edition of Document Nine is formatted to parallel Document Six as closely as possible. Provisions of Document Six are deemed to "flow down" to this contract where applicable or are explicitly restated to suit the context of this contract.

The Agreement form portion of this contract contains the basic information and the variables that must be completed for each contract. It is provided in a format that facilitates editing. Blank lines indicate where information needs to be inserted. The lines may be deleted or revised as necessary to accommodate inserted text, but do not delete articles or insert additional articles in a way that alters the existing article numbering. The article numbering should remain as is, because the General Conditions reference some Agreement articles by article number.

Unlike the previous edition of Document Nine, this contract does not provide for "Other Conditions" to be added to the Agreement. It is intended that the Agreement be used in substantially the form provided (fill in the blanks only). The Definitions and General Conditions for this contract are intended for use as is, without alteration. If alteration is required, it must be done by means of separate "Supplementary Conditions" to Document Nine that clearly identify any required additions, deletions, or modifications to the standard text. Supplementary Conditions, if any, should be kept to a minimum, recognizing that this standard form contract reflects industry recommended best practices. The parties are advised to seek legal and insurance advice when considering alterations to the Definitions or General Conditions.

Other project specific provisions of the Services to be provided under this contract should be addressed in Schedule A – Consulting Services. Unlike the previous edition of Document Nine, use of a Schedule A is essential with this edition.

This standard form contract includes four different Schedules intended for Structural, Mechanical, Electrical, and Other Consultant Services respectively. Select the appropriate Schedule and edit it to describe the Services to whatever level of detail is considered appropriate. All four Schedules are labeled as "Schedule A" on the assumption that in most cases only one Schedule will be attached to a given Document Nine contract, and would therefore be labeled "A" in each case. However, in the event that more than one type of Consultant Services (e.g. both Mechanical and Electrical) are provided by the same Consultant under a single Document Nine contract, use of the separate Schedules is still recommended, but the second and any additional Schedules should be relabeled as Schedule B, C, etc.

The Services provided by the Consultant during all phases must be compatible with the services the Architect and the Client have agreed are necessary under the Prime Contract. The Schedule A's for this contract are based on and contain similar provisions to those included in Schedule A for Document Six. When editing a Schedule A for this contract, ensure that it includes provisions similar to those in Schedule A for the Prime Contract for each phase of the Services. The Architect and the Consultant should ensure that they have a common understanding of the extent of Services to be provided by the Consultant. This is particularly important for the Construction Phase, as the Services required of the Consultant during this phase may include more professional services than implied by the term "Field Review" as defined by the Association of Consulting Engineering Companies – Canada.

Copyright

The RAIC holds the copyright for this document and for all of the national standard contract documents for the architectural profession in Canada. Users may freely download Document Nine from the RAIC website at: www.raic.org. However, to be permitted to use Document Nine for a contract, users must affix an authorization seal to the cover of each copy of the contract containing an original signature. Typically each contract will require two authorization seals – one for the original executed contract copy retained by the Client and one for the original executed contract copy retained by the Architect. Additional file record copies may be photocopied.

Authorization seals may be ordered on-line through the RAIC website, by telephone or by mail. Revenue generated by the RAIC through the sale of authorization seals is used to maintain and publish this document and other standard form contract documents.

Agreement

Article A1

A1	This agreement is made on:	_____ (Date)

Insert the date that represents when an agreement was reached. This could be the date an oral agreement was reached, the date the contract was submitted to the Consultant, the date the Architect first authorized action, or the date the contract is formally signed by one or both parties. This date will also be the date of commencement of the Services for the purposes of the contract.

Article A2 and A3

A2	between the *Architect*	_____ (Name) _____ (Address) _____ _____ (E-mail) (Fax no.)
A3	and the *Consultant*	_____ (Name) _____ (Address) _____ _____ (E-mail) (Fax no.)

Insert the full legal name and address of the Architect and Consultant. The addresses provided here will be the addresses for official notices under this Agreement.

Article A4

A4	for consulting *Services* for *This Part of the Project*:	_____

"This Part of the Project" is the defined term used in this contract to refer to those elements, systems, or components of the Project to which the Consultant's discipline or qualifications apply and for which the Services are provided. Identify the applicable element, system, or component of the Project in general terms here, e.g. structural, mechanical, electrical, etc. Use Schedule A to describe "This Part of the Project" and the scope of the Services in more detail.

Article A5

A5	The *Architect* has made a contract with the *Client:*	_____ (Name) _____ (Address) _____

Insert the name and address of the Architect's Client for the Project.

Article A6

A6	for the following *Project*:	_____

Insert the name of the Project.

Article A7

A7	The contract with the *Client* identified in Article A5, for the *Project* identified in Article A6, is hereinafter referred to as the *Prime Contract*.

Article A8

A8	A copy of the *Prime Contract*, including applicable Schedules, is attached to and made part of this contract as Appendix 1. Fee related provisions may be redacted.

A copy of the Prime Contract must always be attached this contract. Financial or other confidential provisions may be redacted.

Article A9

A9 Except as expressly otherwise provided in this contract, and to the extent that the provisions of the *Prime Contract* apply to *This Part of the Project*:

.1 the *Architect* shall assume toward the *Consultant* all obligations that the *Client* assumes toward the *Architect* under the *Prime Contract*,

.2 the *Consultant* shall assume toward the *Architect* all obligations that the *Architect* assumes toward the *Client* under the *Prime Contract*,

.3 the *Architect* shall have the benefit of all rights that the *Owner* has under the *Prime Contract*, and

.4 the *Consultant* shall have the benefit of all rights that the *Architect* has under the *Prime Contract*.

The Services provided by the Consultant to the Architect are part of the services that the Architect has undertaken to provide to the Client under the Prime Contract. Therefore, this article provides that provisions of the Prime Contract "flow down" to this contract.

Article A10

A10	The *Consultant* shall provide the *Services* described in Schedule A – Consulting Services.

Schedule A – Consulting Services must always be attached to and form part of this contract. Use Schedule A to describe the Services to be provided by the Consultant in as much detail as necessary.

Article A11

A11 The following *sub-consultants* have been or will be engaged by the *Consultant*:

_____ _____

_____ _____

Insert here the names of any sub-consultants to be engaged by the Consultant and known at the time this Agreement is signed. It is important for both the Architect and the Consultant to ensure that the terms of any agreements with sub-consultants are compatible with the terms of this contract and that sub-consultants maintain appropriate professional liability insurance.

Article A12

A12 The fee for the *Services*, excluding any *Value Added Taxes*, shall be comprised of one or more of the following as indicated in Schedule A – Services.

.1 A fixed fee of $_____.

.2 A percentage-based fee calculated as _____% of the *Construction Budget*, the *Construction Cost Estimate,* and the *Construction Cost* for *This Part of the Project,* as described in GC 13 – Percentage-Based Fee.

.3 A fee based on time-based rates for personnel employed by the *Consultant* or the *Consultant's sub-consultants* as stated in Schedule C – Time Based Rates.

.4 Other:

This article provides for the three most common methods of compensation for a Consultant's Services. Insert here the required information as applicable and strike out the inapplicable clauses. The method of fee determination will usually be the same as that for the Architect under the Prime Contract but must not necessarily always be the same. If some combination of the three basic methods of fee determination, or perhaps some other method, is contemplated, describe in detail under A12.4 Other.

Article A13

A13 Payment of a fixed or percentage fee shall be apportioned to the phases of the *Services* as follows:

.1	Pre-design phase:	_____%
.2	Schematic design phase:	_____%
.3	Design development phase:	_____%
.4	Construction documents phase:	_____%
.5	Bidding or negotiation phase:	_____%
.6	Construction phase:	_____%
.7	Post-construction phase:	_____%
	Total:	100 %

This article provides for the distribution of the Consultant's fixed fee or percentage fee over the traditional phases of a project. The distribution will usually be the same as that for the Architect under the Prime Contract but must not necessarily always be the same. Insert percentages as agreed by the parties. Delete any phases that do not apply to the Services.

Article A14

A14 *Reimbursable Expenses* shall be payable on the basis stated in Schedule B – Reimbursable Expenses.

If any Reimbursable Expenses are anticipated, attach a completed Schedule B. Provisions for Reimbursable Expenses will usually be the same as those for the Architect under the Prime Contract but must not necessarily always be the same.

Article A15

A15 The *Architect* shall pay the *Consultant*, upon execution of this contract, a retaining fee in the amount of $_____, which shall be applied to the *Consultant's* last invoice.

If a retaining fee is required, insert amount here. If not applicable, insert "n/a", "zero", or "$0.00".

Article A16

A16 The *Consultant* shall issue invoices for the *Consultant's* fee and *Reimbursable Expenses*, plus *Value Added Taxes*, in accordance with GC 12.1. Invoices shall be issued monthly, unless the *Architect* and the *Consultant* agree otherwise.

Insert a reasonable amount of interest to be paid on unpaid invoices. For long duration projects, the Architect and Client may wish to alter this article to specify a percentage above the prime lending rate of a specified financial institution, in effect at the time the payment was due.

Article A17

A17 The *Architect* shall invoice the *Client* under the *Prime Contract* on the *Consultant*'s behalf and shall pay the *Consultant*'s invoice within such time as is prescribed by the law of the *Place of the Work* or within ____ days after the *Architect* receives payment from the *Client*, whichever is earlier.

This contract recognizes that payment originates with the Architect's Client and therefore provides for a "pay when paid" approach. The Architect and the Consultant should agree on payment within a reasonable number of days after the Architect receives payment from the Client. In some jurisdictions this may be dictated by prompt payment legislation that would supersede this contract. Insert the number of days agreed by the parties here.

Articles A18

A18 The addresses for official notices in writing between the *Consultant* and the *Architect* shall be as stated in Articles A2 and A3.

Article A19

A19 If, at any time during provision of the *Services*, the *Construction Cost Estimate* or the lowest compliant bid or the lowest negotiated proposal exceeds the *Construction Budget* for *This Part of the Project*, and the excess is more than ___ %, the provisions of GC 4.2 shall apply.

This article, when read together with GC 4.2, is intended to "flow down" to the Consultant part of the Architect's obligation to redesign at no additional fee if the Construction Budget is exceeded by more than the specified percentage. The percentage will usually be the same as that for the Architect under the Prime Contract but must not necessarily always be the same. Insert the percentage agreed by the parties here.

Article A20 and A21

A20 The professional liability insurance to be carried by the *Consultant* pursuant to GC 10.1 shall be a claims made policy with limits of not less than $ _____ per claim, with an aggregate limit of not less than $ _____ within any policy year. This policy shall be maintained continuously from the commencement of the *Services* and, subject to commercial availability, for a minimum of three years after the *Ready-for-Takeover* date. The *Architect* acknowledges that the actual amount of insurance available at any given time under a claims made policy will be dependent on the aggregate amount of all claims made during a policy year.

[OR]

A21 The *Client* will arrange and pay for project specific professional liability insurance as described in the *Prime Contract*.

[Strike either A20 or A21, as applicable.]

The professional liability insurance provisions under this contract will usually be the same as those for the Architect under the Prime Contract but must not necessarily always be the same. Insert the required insurance limits in A20 and strike A21, or strike A20, as applicable.

Article 22

A22 The *Consultant's* liability pursuant to GC 9.1.2 shall be limited to: $_____.

The Consultant's limitation of liability under this contract will usually be the same as that of the Architect under the Prime Contract but must not necessarily always be the same. Insert the limitation amount agreed by the parties here.

Article 23

A23 The general liability insurance to be carried by the *Consultant* pursuant to GC 10.2 shall have limits of not less than $ _____ per occurrence. Certificates of insurance certifying the *Consultant's* compliance with the provisions of A20 and A23 are attached to this contract as Appendix 2.

The general liability insurance provisions under this contract will usually be the same as those for the Architect under the Prime Contract but must not necessarily always be the same. Insert the general liability insurance limit agreed by the parties here.

Article A24

A24 This contract shall be governed by the same laws that govern the *Prime Contract*.

Article A25

A25 This contract represents the entire and integrated contract between the *Architect* and the *Consultant* and supersedes all prior negotiations, representations, agreements, or contracts, either written or oral. This contract may be amended only in writing signed by the *Architect* and the *Consultant*.

Signature Page

Architect

_____
(Name of *Architect*)

_____
(Signature)

_____
(Name and title of person signing)

_____
(Signature)

_____
(Name and title of person signing)

Witness

_____
(Signature)

_____
(Name and title of person signing)

Consultant

_____
(Name of *Consultant*)

_____
(Signature)

_____
(Name and title of person signing)

_____
(Signature)

_____
(Name and title of person signing)

Witness

_____
(Signature)

_____
(Name and title of person signing)

Insert the legal names of the Architect and Consultant (same as under article A2 and A3) and the name(s) and title(s) of the authorized signing representative(s). The authorized persons should review the entire contract, with attachments, all within the official cover before signing in the presence of a witness. The witness need not be the same person for the signature(s) of both parties and the signatures need not be made on the same date. Those signing may include a date with their signature, but the date of the contract is determined solely by the date stated in article A1.

Ensure that the RAIC authorization seal is affixed to the original signed copies. The parties may also affix their corporate or business seal (not the Architect's or Engineer's professional seal) if applicable. Where applicable, attach a copy of the resolution authorizing an individual to act on behalf of a firm or other entity.

Proper contract execution is essential to formalize the agreement reached between the parties. This should be done before commencement of any Services.

Definitions

Terms in this contract shall be as defined in the *Prime Contract*, except for the following Definitions that apply to this contract. References to the singular shall be considered to include the plural as the context requires.

Defined terms have specific meanings for the purpose of Document Nine. Most of the terms that are defined in Document Six "flow down" to this contract. However, some terms are defined differently in this contract than in Document Six or do not appear in Document Six. Those terms are defined here. For uniformity and clarity, all terms that are defined in either Document Six or Document Nine are capitalized and italicized wherever they appear elsewhere in Document Nine. When editing the Schedules, as well as when Supplementary Conditions to Document Six are prepared, the defined terms should be used consistently and should also be capitalized and italicized.

For guidance information on terms that appear in this contract but are defined in the Prime Contract, refer to the RAIC Guide to Document Six.

Additional Services

Additional Services are the services that are not included as *Services* to be provided by the *Consultant* in Schedule A – Consulting Services at the time this contract is made but which, with the written agreement of the *Architect* and *Consultant,* are subsequently added to the *Services* identified in Schedule A – Consulting Services.

If and when the need for Additional Services is identified, and whether or not they are the result of additional services to the Prime Contract, a document identifying and describing the change(s) in the scope of Services, and corresponding additional fees, should be prepared for signature by the parties. This is similar in principle to a Change Order to a Construction Contract. This document should reference this contract to bind the parties to the terms and conditions of the contract with respect to the Additional Service. Alternatively, if the Additional Services are extensive, it may be appropriate to prepare a separate contract for the Additional Services or terminate the original contract and prepare a new contract.

Consultant

The *Consultant* is the person or entity identified in Article A3 of the agreement.

Other Consultants

Other Consultants are persons or entities, other than the *Consultant* identified in Article A3 of the agreement, engaged by the *Client* or the *Architect* to provide specialized services or services supplementary to those provided by the *Architect* and the *Consultant*.

Prime Contract

The *Prime Contract* means the contract between the *Architect* and the *Client,* as identified in Article A5 of the agreement.

Services

The *Services* means the services identified in Schedule A – Consulting Services, including those performed by the *Consultant*, the *Consultant's* employees, and any *sub-consultants* engaged by the *Consultant.*

This Part of the Project

This Part of the Project means those elements, systems, or components of the *Project* to which the *Consultant's* discipline or qualifications apply and for which the *Services* are provided, as identified in Article A4 of the agreement.

General Conditions

GC0 Preamble - Refer to Prime Contract

Article A9 of the agreement provides for the "flow down" of applicable provisions of the Prime Contract to this contract. To facilitate this, these GCs follow the same name and numbering format as those in the Prime Contract. Wherever the General Conditions of this contract indicate "Refer to Prime Contract" for a particular GC (GC0, GC6, GC7, GC11, GC14, and GC15) the provisions of those GCs in the Prime Contract are deemed to "flow down" and apply to this contract, with the proviso stated here that the names of the parties must be read differently than in the Prime Contract, to reflect the context of this contract. However, provisions of Prime Contract GCs that have no applicability when read in the context of this contract are not deemed to flow down.

0.1 Throughout these General Conditions, "Refer to Prime Contract" means a reference to the corresponding GC of the Prime Contract, but amended to substitute "*Consultant*" for "*Architect*" and "*Architect*" for "*Client*" where each such term is used.

GC 1 Consultant's Responsibilities and Scope of Services

GCs, like this one, contain specific provisions that are intended to supersede similar provisions that would otherwise be deemed to "flow down" from the Prime Contract. This GC, and others like it, deal with exceptions to the "flow down" from the Prime Contract or restate provisions that would otherwise be deemed to "flow down". Provisions that are considered particularly important, or those that would benefit from the greater clarity of being restated in the proper context of this contract, are generally restated instead of relying on the deemed "flow down".

1.1 The *Consultant* shall:

.1 perform those *Services* identified as the *Consultant's* responsibilities in Schedule A – Consultant Services for *This Part of the Project*, which form part of the responsibilities of the *Architect* to the *Client* under the *Prime Contract*,

.2 authorize, in writing, a person to act on the *Consultant's* behalf (in the absence of such authorization, the signatory on the agreement is deemed to be the *Consultant's* authorized representative),

.3 engage those *sub-consultants*, if any, identified in Article A11 of the agreement under contracts that incorporate applicable terms and conditions of this contract,

.4 perform the *Services* in manner, sequence, and timing so that they will be coordinated with those of the *Architect* and *Other Consultants* for the *Project*,

.5 provide progress copies of the *Instruments of Service* and other information for which the *Consultant* is responsible to the *Architect* and *Other Consultants* for review and coordination,

.6 coordinate all aspects of *This Part of the Project* and become familiar with aspects of the *Project* designed by the *Architect* and *Other Consultants* as necessary for the proper coordination of *This Part of the Project*,

.7 cooperate with the *Architect* in determining the proper share of the *Construction Cost Estimate* to be allocated to *This Part of the Project,*

.8 ensure that the *Architect* is included in all communications between the *Consultant* and the *Client*, the *Constructor*, and *Other Consultants*, except as otherwise authorized by the *Architect* in writing, and

.9 be an independent contractor for *This Part of the Project*, responsible for methods and means used in performing the *Services* under this contract and shall not be an employee, agent, or partner of, nor be in joint venture with, the *Architect*.

GC 2 Additional Services

Additional Services to performed by the Consultant would normally, but not necessarily in all cases, be agreed upon in writing by the Client and Architect under the provisions of the Prime Contract, before they become Additional Services under this contract. It is imperative, and in the interests of both the Architect and the Client, that the Consultant never perform any services considered to be beyond the scope of the Services identified in Schedule A without the Architect's prior written agreement. Such services performed without the Architect's prior written agreement are not Additional Services by definition and therefore the Architect would be under no obligation to invoice the Client for them or to pay for them.

2.1 Upon recognizing a need to perform *Additional Services,* either the *Consultant* or the *Architect* shall promptly notify the other explaining the facts and circumstances.

2.2 The *Consultant* shall only perform *Additional Services* with the prior written agreement of the *Architect* and the *Consultant.*

GC 3 Architect's Responsibilities

Unlike the previous edition of Document Nine, use of a Schedule A – Consulting Services is essential with this edition. Edit Schedule A to describe the Services to whatever level of detail is considered appropriate.

3.1 The *Architect's* responsibilities shall include those items identified as *Architect's* responsibilities in Schedule A – Consulting Services.

3.2 The *Architect* shall:

.1 authorize in writing a person to act on the *Architect's* behalf and shall define that person's scope of authority as necessary (in the absence of such authorization, the signatory on the agreement is deemed to be the *Architect's* authorized representative), and

.2 be the coordinating professional who:

.1 manages the communications among all *Consultants* identified in the *Prime Contract*,
.2 provides direction to all *Consultants* identified in the *Prime Contract* as necessary to give effect to all design decisions, and
.3 reviews the services of all *Consultants* identified in the *Prime Contract* to identify matters of concern and monitor *Consultants'* compliance with directions.

GC 4 Construction Budget and Construction Cost Estimate for This part of the Work

The Consultant and the Architect must clearly understand each other's responsibilities concerning the Construction Budget and Construction Cost Estimates. For the most part, these responsibilities "flow down" from the Prime Contract, but they are restated here because of their importance and for greater clarity. In particular, the Consultant must be aware of its obligations, as set out in this GC, in the event that the Construction Cost Estimate for the Part of the Project for which the Consultant is responsible is exceeded.

4.1 The *Consultant's* initial evaluation of the *Construction Budget* and any preliminary or updated *Construction Cost Estimates* that may be prepared by the *Consultant* for *This Part of the Work* represent the *Consultant's* best judgement. However the *Consultant* cannot and does not warrant or represent that the lowest compliant bid or the lowest negotiated proposal will not vary from the *Construction Cost Estimate* and the *Construction Budget* for *This Part of the Work*.

4.2 If at any time the *Construction Cost Estimate* or the lowest compliant bid or the lowest negotiated proposal exceeds the *Construction Budget* for *This Part of the Work* by more than the percentage stated in Article A19 of the agreement, the following provisions shall apply:

.1 If the *Client* chooses to co-operate with the *Architect* in decreasing the scope or quality of *This Part of the Work*, and

.2 the overage is not due to extraordinary market conditions or other factors not reasonably foreseeable by or under the control of the *Consultant*, then,

.3 the *Architect* may require the *Consultant* to modify the design, the *Construction Documents*, or provide other *Services* as necessary to reduce the *Construction Cost Estimate* for *This Part of the Work* to within the percentage in excess of the *Construction Budget* as stated in Article A19 of the agreement, in which case the *Consultant* shall perform these *Services* for no additional fee. This shall be the limit of the *Consultant's* responsibility under this GC 4.2.

GC 5 Consulatnt's Role and Authority During Construction

The Consultant and the Architect must have a common understanding of the extent to which the Architect's role and authority during construction is delegated to the Consultant with respect to the Part of the Project for which the Consultant is responsible, as described in this GC. Most, but not all, of these provisions are similar to those of the Prime Contract.

5.1 The *Consultant* shall assist the *Architect* in providing administration of the *Construction Contract.*

5.2 The *Consultant* is not the *Architect*'s nor the *Client's* authorized agent or representative for the purposes of the *Construction Contract.*

5.3 The *Consultant* shall:

.1 perform *General Review* of the *Work* for *This Part of the Project,*

.2 be, in the first instance, the interpreter of the *Construction Contract* for *This Part of the Project*, and shall make written interpretations and findings that are impartial and consistent with the intent of the *Construction Documents,*

.3 have the authority to reject work for *This Part of the Project* that does not conform to the requirements of the *Construction Contract*,

.4 have the authority to require special inspection or testing of work for *This Part of the Project*, whether or not such work has been fabricated, installed or completed, and

.5 have the authority to order minor adjustments in the *Work* for *This Part of the Project* that are consistent with the intent of the *Construction Contract*, when these do not involve an adjustment in the *Construction Cost* or an extension of the *Construction Contract* time.

5.4 The *Consultant* shall assist the *Architect* in the evaluation of the *Constructor's* applications for payment and in the *Architect*'s issuance of certificates for payment. The *Consultant*'s recommendation to the *Architect for the Constructor*'s entitlement to payment for the *Work* of *This Part of the Project* shall constitute a representation by the *Consultant*, based on the *Consultant's General Review* of the *Work* for *This Part of the Project* and on review of the *Constructor's* schedule of values and application for payment, that the *Work* has progressed to the value indicated, that to the best of the *Consultant's* knowledge, information and belief, the *Work* observed during the course of *General Review* is in general conformity with the *Construction Contract*, and that the *Constructor* is entitled to payment in the amount recommended by the *Consultant*.

5.5 The *Consultant* shall not be responsible:

.1 for, nor be responsible for the discovery of, acts or omissions of the *Constructor*, subcontractors, suppliers or any other persons performing any of the *Work*, nor for failure of any of them to carry out the *Work* in accordance with the *Construction Documents,*

.2 for, nor have control, charge, or supervision of construction means, methods, techniques, schedules, sequences or procedures, nor for safety precautions and programs required in connection with the *Work*,

.3 for any and all matters arising from *Toxic or Hazardous Substances or Materials*,

.4 for information provided by product manufacturers, nor

.5 for providing *Services* that involve substantive modification of the *Construction Documents*, except as provided under GC 7.3 of the *Prime Contract* or except as *Additional Services*.

GC 6 Use of Documents - Refer to Prime Contract

The use of documents provisions of the Prime Contract are deemed to "flow down" to this contract, such that the Consultants rights and obligations with respect to the Instruments of Service prepared by the Consultant are similar to the Architect's rights and obligations with respect to the Instruments of Services prepared by the Architect.

GC 7 Standard of Care - Refer to the Prime Contract

The standard of care provisions of the Prime Contract are deemed to "flow down" to this contract, meaning that this contract requires the Consultant, if a professional, to be held to the same standard of care to which the Architect is held under the Prime Contract. The same notification provisions as under the Prime Contract also apply.

GC 8 Indemnification

The indemnification provisions in this contract are identical to those in the Prime Contract. Because of their legal significance, and in the interests of greater clarity, they are restated here instead of simply referencing them as "flow down" from the Prime Contract.

8.1 Subject to GC 9 Limitations of Liability, the *Consultant* and the *Architect* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits or proceedings in respect of claims by a third party, provided such claims are attributable to:

.1 negligent performance of the *Services* by the *Consultant* or by those for whom the *Consultant* is responsible in law, or

.2 a breach of this contract by the party from whom indemnification is sought.

8.2 This GC 8 shall survive suspension, termination or completion of this contract.

GC 9 Limitations of Liability

The limitation of liability provisions in this contract are identical to those in the Prime Contract, except that the actual dollar amount of the limitation could vary depending on the insurance coverage provided or the amount stated in the agreement for this contract. For this reason the limitation of liability provisions are restated here instead of referencing them as "flow down" from the Prime Contract.

9.1 Any and all claims, whether in contract or tort, which the *Architect* has or may have against the *Consultant* in any way arising out of, or related to, the *Consultant's* duties and responsibilities, including those arising from GC 8 Indemnification, shall be limited in amount to the lesser of:

.1 the amount of insurance coverage provided under Article A20 or A21 of the agreement that is available at the time the claim is made, or

.2 the amount stated in Article A22 of the agreement.

9.2 The *Consultant* shall not be liable, in contract or tort, for:

.1 any alterations to the *Consultant's* design or to the *Construction Documents* made by the *Architect, the Client*, the *Constructor*, or other third parties without the *Consultant's* written approval,

.2 acts, omissions, or errors of the *Architect, the Client, Other Consultants,* the *Constructor*, or other third parties retained by the *Architect* or the *Client*, or

.3 for the result of any interpretation or finding of the *Consultant* rendered in good faith in accordance with the *Construction Documents*.

9.3 The liability of the *Consultant* and the *Architect* with respect to any claims against each other, in contract or in tort, shall be limited to direct damages only and neither party shall have any liability whatsoever for consequential or indirect loss or damage incurred by the other party.

GC 10 Insurance

The insurance provisions in this contract are similar to those in the Prime Contract, except that the insurance limits could vary, depending on the amounts stated in the agreement for this contract. Normally the Consultant would be expected to maintain professional liability insurance and general liability insurance with limits not less than those required of the Architect in the Prime Contract.

10.1 Unless the *Client* arranges and pays for project specific professional liability insurance as stated in Article A21 of the agreement, the *Consultant* shall carry professional liability insurance under a policy that has limits not less than those stated in Article A20 of the agreement.

10.2 The *Consultant* shall carry general liability insurance under a policy with limits not less than those stated in Article A23 of the agreement, from the date of commencement of the *Services* until one year after the *Ready-for-Takeover* date.

10.3 The *Consultant* shall require all *sub-consultants* engaged by the *Consultant* to carry professional liability insurance and general liability insurance.

10.4 Upon request, insurance policies of the *Consultant* and of *sub-consultants* engaged by the *Consultant* shall be available for the *Architect's* inspection.

It is good practice to obtain a certificate of proof of insurance for your records and append it to this contract.

GC 11 Termination and Suspension - Refer to the Prime Contract

The termination and suspension provisions of the Prime Contract are deemed to "flow down" to this contract, meaning that the Consultant's and the Architect's respective rights and obligations with respect to termination and suspension under this contract are the same as the Client's and the Architect's respective rights and obligations under the Prime Contract.

GC 12 Payments to the Consultant

The payment provisions of this contract differ from those of the Prime Contract. As indicated in article A17 of the agreement, this contract requires the Architect to invoice the Client on the Consultant's behalf after receiving the Consultant's invoice. The Architect's obligation to pay the Consultant's invoice is contingent on receiving payment from the Client for Services allocable to the Consultant, whether received by the Architect in whole or in part.

12.1 The *Consultant* shall invoice the *Architect* for *Services* performed and *Reimbursable Expenses* incurred based on, as applicable:

.1 the apportionment of a fixed or percentage-based fee for each phase of the *Services* as stated in Article A13 of the agreement and in proportion to progress made within each phase of the *Services,*

.2 time-based rates as stated in Schedule C – Time Based Rates, and

.3 *Reimbursable Expenses* as stated in Schedule B – Reimbursable Expenses.

12.2 If the *Client* does not pay the *Architect's* invoice in full for any reason, the *Architect* shall pay the *Consultant* that portion of the *Architect's* invoice to the *Client* as is allocable to the *Consultant* and for which the *Architect* has received payment from the *Client*.

12.3 If required by lien legislation applicable at the *Place of the Work,* the *Architect's* payments to the *Consultant* may be subject to statutory holdback.

GC 13 Percentage-Based Fee

The provisions for calculating a percentage-based fee are the same as those in the Prime Contract, except they are based on the cost of This Part of the Project. For this reason, and for greater clarity, they are restated here instead of referencing them as "flow down" from the Prime Contract.

13.1 This GC 13 shall apply only when the *Consultant's* fee, or a part thereof, is percentage-based as stated in Article A12 of the agreement.

13.2 The basis for calculating the percentage fee shall be as follows:

.1 before a *Construction Cost Estimate* is available, the fee shall be based on the *Construction Budget* for *This Part of the Work* at the time of the invoice,

.2 after a *Construction Cost Estimate* is available, the fee shall be based on the *Construction Cost Estimate* for *This Part of the Work* at the time of the invoice, and

.3 after the *Construction Contract* is entered into, the fee shall be based on the *Construction Cost* for *This Part of the Work* at the time of the invoice.

13.3 The fee shall not be subject to any retroactive adjustments based on increases or decreases to the *Construction Budget* or the *Construction Cost Estimate* as the *Services* progress.

13.4 If the *Client* furnishes labour or material below market cost for *This Part of the Work*, the amounts upon which the fee is calculated shall be adjusted as if all labour and material were paid for at market prices at the time of construction.

GC 14 Dispute Resolution - Refer to the Prime Contract

The dispute resolution provisions of the Prime Contract are deemed to "flow down" to this contract, meaning that procedures for dispute resolution between the Consultant and the Architect are exactly the same as for a dispute between the Architect and the Client. In some cases a dispute between Architect and Consultant may need to include the Client or a dispute between Architect and Client may need to include the Consultant. For this reason it is helpful to have the same dispute resolution provisions in both contracts. Unlike the previous edition of Document Nine, CCDC 40 – Rules for Mediation and Arbitration of Construction Industry Disputes, is referenced in Document Six and therefore also applies to this contract.

GC 15 Miscellaneous General Conditions - Refer to Prime Contract

The miscellaneous general conditions of the Prime Contract are deemed to "flow down" to this contract to the extent they are applicable. GC 15.2, the right to "sign the building by inscription or otherwise" would generally not be considered to be applicable to a Consultant.