



# Guidelines on Intellectual Property

June 2009

**Association of Canadian Engineering Companies – British Columbia**

**The Association of Professional Engineers and Geoscientists of British Columbia**

**Architectural Institute of British Columbia**

## Table of Contents

<b>1.0 PREAMBLE .....</b>	<b>1</b>
<b>2.0 DISCLAIMER.....</b>	<b>1</b>
<b>3.0 COPYRIGHT .....</b>	<b>2</b>
3.1 GENERAL .....	2
3.2 COPYRIGHT NOTICES .....	3
<b>4.0 TRADE-MARKS.....</b>	<b>3</b>
4.1 GENERAL .....	3
4.2 TRADE-MARK NOTICES .....	4
<b>5.0 TRADE SECRETS.....</b>	<b>4</b>
<b>6.0 PATENTS .....</b>	<b>5</b>
<b>7.0 PROPOSALS .....</b>	<b>6</b>
<b>8.0 CONTRACT LANGUAGE.....</b>	<b>7</b>
<b>Appendix A – Article 7, ACEC Document 31</b>	
<b>Appendix B – Article 7, MMCD Consultant/Client Agreement</b>	
<b>Appendix C – GC5, AIBC Document 6C: Copyright and Use of Documents <i>and</i> AIBC By-law 28.3: Copyright, Ownership and Use</b>	

## 1.0 PREAMBLE

The purpose of this document is to provide a resource to Consultants in the area of intellectual property protection. These guidelines can be used in developing project agreements with Clients.

Consultants are retained by Clients to provide innovative, cost-effective and specialized solutions. One potential outcome of this business relationship is a desire by the Client to retain ownership of more than the deliverables generated by the Consultant's activities. In certain instances, the Client may seek to retain ownership of the intellectual property contained within the work product.

One of the Consultant's primary concerns with giving up ownership to the work product is the potential exposure to liability that stems from the unauthorized use of the Consultant's work product. This concern arises primarily from the possibility that the work product may be used for an addition to the project, or a new project, for which it may not be suitable. The Consultant may also have incorporated a patented design into the work product and will therefore be concerned with its unauthorized re-use on another project. The Consultant may also want to retain ownership in order to receive credit and recognition; Consultants who have worked on a project may wish to make copies of the work product to show prospective employers and Clients.

There is seldom a need for a Client to obtain the intellectual property rights, provided that the Client may use and reproduce the deliverables for the purpose of the project.

Generally speaking, contract language should ensure all intellectual property developed or created in conjunction with delivery of the Client services by the Consultant, its agents, employees and subconsultants remains the property of the Consultant.

If the Consultant wishes to transfer intellectual property rights to the Client, or grant to the Client a license to use any intellectual property outside the scope of the project, the Client should compensate the Consultant commensurate with the value of the rights being transferred or licensed.

## 2.0 DISCLAIMER

This document is intended as a general guideline only. Consultants should obtain appropriate, qualified professional advice before acting, or omitting to act, based upon any information, including suggested wording or clauses, provided in this document.

### 3.0 COPYRIGHT

#### 3.1 General

Copyright protects such documents as engineering and architectural drawings, proposals, specifications, reports, maps, and the like. Copyright gives the owner the sole right to publish, produce or reproduce the work, as well as the right to authorize or prevent others from doing so.

ACEC Document 31, the MMCD, AIBC and RAIC forms of Client/Consultant agreement establish the right of the Consultant to retain all copyright (and other intellectual property rights) in the works created in connection with a project. The agreements authorize the Client to keep a copy of such documents for their records. In addition, the MMCD Agreement permits the Client to use the documents for any future renovation, repair, modification or extension work with respect to the project, while the ACEC Document 31 restricts future use to maintenance only.

Provided the work is original, copyright arises automatically upon the creation of the work. Except in certain circumstances (such as where the author creates the work in the course of his or her employment), the work's author is its first owner. Therefore, a Consulting firm would typically be the first owner of copyright in works created by employees of the firm.

Thus, under the above-noted standard form agreements, the Client will "own" a copy of the documents themselves, but will have very limited permission as to how they may use the documents in the future because the copyright remains with the Consultant.

If a Client wishes to purchase the copyright in the documents associated with a project, this would give the Client the right to deal with the documents as they see fit, including reusing them for other projects of their own or selling them to others or authorizing others to use them for a fee. Accordingly, if the Client wishes to purchase the copyright in the documents, the Consultant should insist on receiving appropriate additional compensation commensurate with the value of the rights being transferred.

In addition to copyright, the author of a work has a set of rights, referred to as "moral rights", which always remain with the author unless they are waived. This is the case even if the author is not the first owner of the copyright, or assigns the copyright. Moral rights include the right of the owner to have his or her name associated with the work and the right to prevent others from modifying or distorting the work to the extent that doing so would prejudice the author's reputation. Accordingly, even if the Consultant decides to sell the copyright in the documents associated with a project, the Consultant may for example, continue to insist on having his or her name associated with the work.

It is important to remember that copyright does not protect ideas or functionality; rather, copyright protects against copying original literary and artistic creations. For example, copyright would protect an engineering drawing from unauthorized copying, but it would not protect the way the object depicted in the drawing actually functions. A patent would be required to protect any functional elements of the object. For the same reason, copyright would not protect the information contained in a proposal; it merely protects against copying the language used to convey that information. If the information is confidential, trade secrets law can be used to protect it. These and other forms of intellectual property are described elsewhere in these guidelines.

### 3.2 Copyright Notices

The owner of the copyright in a work (even if the copyright is unregistered) should affix a copyright notice to the work as a deterrent to potential infringers and to preserve all of its available remedies for any infringement (e.g. copying) that does occur.

When the Consultant retains the copyright in its engineering or architectural documents as mentioned above, or other written materials, such as CADD standards, it is suggested that a notice and legend appear on the documents. Suggested wording is as follows:

"© _____ ALL RIGHTS RESERVED Year Name of copyright holder
THIS DOCUMENT IS PROTECTED BY COPYRIGHT LAW AND MAY NOT BE REPRODUCED IN ANY MANNER, OR FOR ANY PURPOSE, EXCEPT BY WRITTEN PERMISSION OF <u>COPYRIGHT HOLDER.</u> "

## 4.0 TRADE-MARKS

### 4.1 General

Trade-marks are words, phrases or logos used by a business to distinguish its wares and services from the wares and services of others. For example, trade-mark rights can protect your business name, the name of products you sell, and the brands you use to offer services, provided those names or brands are distinctive in a particular geographic region within Canada.

Provided a mark is distinctive, trade-mark rights will arise automatically by using the mark. However, registration of a trade-mark under the *Trade-marks Act* provides significant additional benefits, such as the exclusive right to use the trade-mark throughout Canada in association with particular wares and services. Registration also confers an automatic defense to any allegation that your use of the mark violates the rights of anyone with an unregistered trade-mark under the law of passing-off.

Trade-marks must be “used” in association with goods and services. Remedies may be sought for the unauthorized use (“infringement”) of a trade-mark, the resulting depreciation of the goodwill in the trade-mark, and misrepresentations that other goods or services are associated with the owner of the trade-mark (“passing-off”). If a trade-mark owner fails to protect against its unauthorized use, the trade-mark may lose its distinguishing qualities and even cease being a trade-mark.

#### **4.2 Trade-mark Notices**

Trade-marks should be designated using “™” for unregistered trade-marks and “®” for registered trade-marks.

### **5.0 TRADE SECRETS**

Documents containing trade secrets must be kept confidential in order to maintain their trade secret status. Consultants should address any breaches of confidentiality quickly and firmly, to minimize any exposure of secrets to third parties.

Careful control should be maintained over all confidential documents, and they should only be disclosed when necessary. This includes limiting access to employees or other persons who need to know the contents of the documents.

When a document is intended to be kept confidential by the Client, the following notice and legend are suggested (in addition to a formal confidentiality agreement in appropriate circumstances):

“© _____ ALL RIGHTS RESERVED Year Name of consultant firm
THIS DOCUMENT IS A CONFIDENTIAL WORK PROTECTED BY COPYRIGHT AND TRADE SECRET LAW AND NEITHER IT NOR ANY OF THE INFORMATION CONTAINED THEREIN MAY BE DISCLOSED, USED OR REPRODUCED IN ANY MANNER, OR FOR ANY PURPOSE, EXCEPT BY WRITTEN PERMISSION OF <u>CONSULTANT FIRM NAME.</u> ”

A signed “Acknowledgment of Receipt” may be appropriate for documents containing particularly sensitive confidential information and trade secrets.

## 6.0 PATENTS

Patents protect inventions in the country or countries where a patent for the invention is registered. A registered patent gives the owner of the invention a monopoly to make, use and sell the patented invention for the life of the patent, which is typically 20 years from the date of filing the patent application. There is no “automatic” patent protection as there is with copyright or, to a certain extent, trade-marks.

An “invention” is typically defined as any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement over an earlier invention.

A patent will not be granted unless an invention is absolutely new, which means that it cannot have been disclosed to the public. Such disclosure includes using the invention in a project for a Client or any other public use or sale of the invention. There is a one-year grace period in Canada and the United States, but not in most other countries.

In contrast with copyright, a patent protects the functionality of the invention. In contrast with both copyright and trade secrets law, a patent confers a complete monopoly, in that it prohibits a third party from using or selling the invention even if they have come up with the same invention independently, without any knowledge of the existence of the original.

## 7.0 PROPOSALS

Proposals to Clients should include copyright and trade secret notices. The intention would be to protect the Consultant's "investment" by making it absolutely clear that the proposal and the information it contains may not be adopted or used by Clients (or competitors) in those cases where the Consultant has not been retained.

In most instances, the Consultant's proposals would be considered confidential. Accordingly, the following notice is suggested:

"© _____ ALL RIGHTS RESERVED Year Name of copyright holder
THIS PROPOSAL IS A CONFIDENTIAL WORK PROTECTED BY COPYRIGHT AND TRADE SECRET LAW AND NEITHER IT NOR ANY OF THE INFORMATION CONTAINED THEREIN MAY BE DISCLOSED, USED OR REPRODUCED IN ANY MANNER, OR FOR ANY PURPOSE, EXCEPT BY WRITTEN PERMISSION OF <u>COPYRIGHT HOLDER.</u> "

The following disclaimer would be used in connection with any proposals and other documents submitted by the Consultant to government departments, agencies, etc. where the Consultant wishes to improve its ability to rely upon the statutory exceptions to subsequent disclosure of such documents to the public or business competitors under any **Freedom of Information** legislation that may be applicable (recognizing that the parties generally cannot, by using notices or contracts, prevent the relevant authorities from finding that information must be disclosed):

"THIS DOCUMENT IS SUPPLIED TO [NAME OF PUBLIC BODY] BY [INSERT NAME OF COMPANY] AND CONSTITUTES CONFIDENTIAL TRADE SECRETS, OR COMMERCIAL, FINANCIAL, SCIENTIFIC, OR TECHNICAL INFORMATION. THIS DOCUMENTATION IS SUBMITTED TO [NAME OF PUBLIC BODY] IN CONFIDENCE. IT HAS SIGNIFICANT ECONOMIC VALUE TO [INSERT NAME OF COMPANY] AND ITS DISCLOSURE, WITHOUT THE EXPRESS CONSENT OF [INSERT NAME OF COMPANY], COULD REASONABLY BE EXPECTED TO LEAD TO SIGNIFICANT AND UNDUE FINANCIAL AND OTHER HARM TO [INSERT NAME OF COMPANY], INCLUDING HARM TO [INSERT NAME OF COMPANY] COMPETITIVE AND NEGOTIATING POSITIONS, AND UNDUE FINANCIAL GAIN TO ONE OR MORE THIRD PARTIES."
--

The foregoing notice would appear on the front page of the document and in the covering letter accompanying the document and each page of the document should be clearly stamped "CONFIDENTIAL".

## 8.0 CONTRACT LANGUAGE

Consultant/Client agreements should reflect the ACEC Document 31, AIBC Documents 6C or 8C, RAIC-6 or the standard MMCD Client/Consultant Agreement wording relative to intellectual property. Article 7 of ACEC 31, Article 7 of the MMCD document as well as GC5 of AIBC-6C generally articulate the preferred contract language surrounding the matters of intellectual property.

Appendices A, B and C of this Policy contain copies of the articles of the respective agreements, as well as AIBC By-law 28.3, for reference purposes.

Any rights that a Consultant firm transfers to a Client in terms of use, copyright or ownership of documents or instruments of service, should be subject to full payment of the Consultant's fees. The ACEC 31, AIBC-6C, AIBC-8C and RAIC-6 documents are satisfactory in this respect, while the MMCD document would require a minor amendment.

# APPENDIX A

## ARTICLE 7, ACEC DOCUMENT 31



- 3.4 The Engineer shall coordinate the activities of the Engineer's Sub-Consultants as well as those of the Client's Consultants on the Project to the extent that the Engineer is empowered to do so in the Consultants' contracts with the Client.
- 3.5 No acceptance by the Engineer of the Work or of the services of the Contractor or the Consultants, whether express or implied, shall relieve the Contractor or the Consultants from their responsibilities to the Client for the proper performance of such Work or services, and further, the Engineer shall not be responsible to the Client or to the Contractor or the Consultants for the means, methods, techniques, sequences, procedures and use of equipment, of any nature whatsoever, whether reviewed by the Engineer or not, which are employed by the Contractor or by the Consultants in executing, designing or administering any phases of the Work, or for placing into operation any plant or equipment or for safety precautions and programs incidental thereto.

## ARTICLE 4

### CERTIFICATIONS BY THE ENGINEER

- 4.1 The Engineer shall issue certifications as set forth in Paragraph A.7.9 in Schedule A only where Field Services have been performed by the Engineer as defined in Article 1.8.
- 4.2 In the event that the Engineer attends at the site of the Project in accordance with Paragraph A.7.2 of Schedule A, then the Engineer shall issue qualified certificates only in respect of such attendances.

## ARTICLE 5

### COST OF THE WORK AND CONTRACT TIME ESTIMATES

- 5.1 The parties expressly acknowledge and agree that the Cost of the Work and Contract Time estimates provided by the Engineer to the Client under this Agreement are subject to change and are contingent upon factors over which the Engineer has no control. The Engineer does not guarantee the accuracy of such estimates. Exact costs and time will be determined only when tenders have been received for the Work and when the Work has been performed.

## ARTICLE 6

### TERMINATION AND SUSPENSION

#### BY THE CLIENT:

- 6.1 If the Engineer is shown to be in default in the performance of any of the Engineer's material obligations set forth in this Agreement, then the Client may, by written notice to the Engineer, require such default to be corrected. If within 30 days after receipt of such notice such default shall not have been corrected or reasonable steps to correct such default shall not have been taken, the Client may, without limiting any other right or remedy the Client may have, immediately terminate this Agreement and make settlement for the cost of the Services rendered and disbursements incurred by the Engineer pursuant to this Agreement and remaining unpaid as of the effective date of such termination.
- 6.2 If the Client is unwilling or unable to proceed with the Project, the Client may suspend or terminate this Agreement by giving 30 days prior written notice to the Engineer. Upon receipt of such written notice, the Engineer shall perform no further Services other than those reasonably necessary to suspend or close out the Project. In such event the Engineer shall be paid by the Client for all Services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such suspension or termination, plus the Engineer's Suspension or Termination Expenses as defined in Article 1.14.

- 6.3 If the Engineer is practising as an individual and is unable to satisfactorily perform Services for a period of 30 consecutive days or for an aggregate of 45 days in any 3 month period, the Client may terminate this Agreement upon giving 7 days written notice to the Engineer, and shall pay for the Services rendered and disbursements incurred by the Engineer to the date of such termination.

#### BY THE ENGINEER:

- 6.4 If the Client is shown to be in default in the performance of any of the Client's material obligations set forth in this Agreement, including payment of the Engineer's fee as required herein, then the Engineer may, by written notice to the Client, require such default to be corrected. If within 30 days after receipt of such notice such default shall not have been corrected, the Engineer may, without limiting any other right or remedy he may have, immediately terminate this Agreement. In such event, the Engineer shall be paid by the Client for all Services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such termination plus the Engineer's Termination Expenses as defined in Article 1.14, in addition to any other rights or remedies the Engineer may have.
- 6.5 If the Engineer's Services are suspended by the Client at any time for more than 30 consecutive or non-consecutive days through no fault of the Engineer, then the Engineer shall have the right at any time until such suspension is lifted by the Client, without limiting any other right or remedy the Engineer may have, to terminate this Agreement upon giving written notice thereof to the Client. In such event the Engineer shall be paid by the Client for all Services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such suspension, plus the Engineer's Suspension Expenses as defined in Article 1.14.

## ARTICLE 7

### OWNERSHIP AND USE OF DOCUMENTS, PATENTS AND TRADEMARKS

- 7.1 All drawings, plans, models, designs, specifications, reports, photographs, computer software, surveys, calculations and other data, including computer print-outs, contained in the Contract Documents or which are otherwise used in connection with the Project, and prepared by or on behalf of the Engineer, are instruments of service for the execution of the Work and as such are the property of the Engineer, whether the Work is executed or not, and the Engineer reserves the copyright therein and in the Work executed therefrom, and they are not to be used on any other work without the prior written agreement and remuneration of the Engineer. The Client is entitled to a copy of the said documents and models for record and maintenance purposes, but only in connection with the Project. In the event that the said documents and models are used by the Client for purposes other than in connection with the Project, or if the said documents and models have been amended, altered or revised in any manner whatsoever without notice to the Engineer and without receiving the Engineer's prior written consent, the Engineer does not warrant the fitness of same for the Client's use, and the Client agrees to indemnify, hold harmless and defend the Engineer from and against all claims, demands, losses, damages, liability and costs (including costs between solicitor and own client) associated with such use by the Client.
- 7.2 Subject to Article 6, the Client and the Engineer agree that the Engineer's fee shall be payable by the Client even in the event that the Client does not, for any reason, proceed with the Work as described in the Contract Documents. The Client and the Engineer further agree that payment of the Engineer's fee by the Client pursuant to this Agreement shall be condition precedent to the Client's right to the use of the Contract Documents and models for all purposes in connection with the Project or under this Agreement.

- 7.3 All concepts, products or processes produced by or resulting from the Services rendered by the Engineer in connection with the Project, or which are otherwise developed or first reduced to practice by the Engineer in the performance of Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Engineer, and other than as hereinafter set forth in Article 7.4 the Client shall not use, infringe upon or appropriate such concepts, products or processes without the express written agreement and remuneration of the Engineer.
- 7.4 The Client shall have a permanent non-exclusive royalty-free license to use any concept, product or process which is patentable or capable of trademark, produced by or resulting from the Services rendered by the Engineer in connection with the Project, for the life of the Project, and for no other purpose or project.
- 7.5 The parties agree that the Engineer shall, for all purposes, be deemed to hold in his/her possession the original of the Contract Documents, including any computer-generated designs related thereto.

## ARTICLE 8

### BUILDING CODES AND BY-LAWS

- 8.1 The Engineer shall, to the best of his/her ability, interpret building codes and by-laws as they apply to the Project at the time of design, but it is expressly acknowledged and agreed by the Client that as the Work progresses, the building codes and by-laws may change or the interpretation by any public authority may differ from the interpretation of the Engineer, through no fault of the Engineer, and any extra cost necessary to conform to such changes or interpretations during or after execution of the Work will be paid by the Client in the event that the Engineer has received a prior authorization from such authorities in respect of such changes or interpretations.

## ARTICLE 9

### MEDIATION AND ARBITRATION

- 9.1 If requested in writing by either the Client or the Engineer, the Client and the Engineer shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. Failing such agreement, the mediator shall be appointed by reference to a Judge of the \_\_\_\_\_ Province \_\_\_\_\_ Court.
- 9.2 If a dispute cannot be settled within a period of thirty (30) calendar days by the mediator appointed under Article 9.1, or such longer period as may be agreed to by the parties, the dispute may, with the prior written concurrence of both the Client and the Engineer, be referred to and finally resolved by way of binding arbitration by a single arbitrator. The arbitrator shall be appointed by agreement of the parties. Failing such agreement, the arbitrator shall be appointed by reference to a Judge of the \_\_\_\_\_ Province \_\_\_\_\_ Court.
- 9.3 The place of the mediation/arbitration shall be the city closest to the location of the Project, unless the parties agree otherwise.
- 9.4 No one shall act as a mediator/arbitrator who is in any way financially interested in the conduct of the Project or in the business affairs of either the Client or the Engineer.
- 9.5 The laws of the Province where the Project is located shall govern this Agreement and any mediation/arbitration or litigation in respect thereof.
- 9.6 The award of an arbitrator under Article 9.2 shall be final and binding upon the parties, and shall be enforceable by them in any Court of competent jurisdiction.

## ARTICLE 10

### SUCCESSORS AND ASSIGNMENT

- 10.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors and assigns.
- 10.2 If a party to this Agreement who is an individual should desire to bring in a partner or partners, or if a party who is a partnership should desire to bring in a new partner or partners to share the benefits and obligations of this Agreement, they may do so by promptly notifying the other party in writing of such intended action.
- 10.3 If a party to this Agreement is a partnership, and a partner thereof either dies or retires then the remaining parties therein shall form a new successor partnership to share the benefits and obligations of this Agreement.
- 10.4 Except as set forth in this Article 10, neither party may assign this Agreement without the prior consent in writing of the other.

## ARTICLE 11

### NOTICES

- 11.1 All notices required by this Agreement to be given by either party shall be deemed to be properly given and received within three (3) business days if made in writing to the other party by certified mail, telegram, facsimile or personal delivery, addressed to the regular business address of such other party.

## ARTICLE 12

### ENTIRE AGREEMENT

- 12.1 This Agreement constitutes the sole and entire agreement between the Client and the Engineer relating to the Project, and supersedes all prior agreements between them, whether written or oral, respecting the subject matter hereof, and no other terms, conditions or warranties, whether express or implied, shall form a part hereof. This Agreement may be amended only by written instrument signed by both the Client and the Engineer.



# APPENDIX B

## ARTICLE 7, MMCD CLIENT/CONSULTANT AGREEMENT

**OWNERSHIP AND USE  
OF DOCUMENTS** 7.

**Service Continuity** 7.1

7.1.1 The *Client* acknowledges that all plans, specifications, drawings and designs are provided by the *Consultant* to the *Client* on the assumption that the *Consultant* will continue with the *Services* during construction and installation relating to such plans, specifications, drawings or designs. Accordingly, such plans, specifications, drawings and designs may not be sufficient or reliable on their own in the absence of such continuity of *Services*. The *Client* shall give due consideration to continuing with the *Consultant's Services* during construction and installation and shall consult with the *Consultant* prior to retaining any party other than the *Consultant* to continue the *Services* during construction and installation. If the *Consultant* is not retained to provide services during construction and installation then the *Consultant* shall not be liable in contract or in tort for any loss or damage incurred as a result of any defect or deficiency in any plans, specifications, drawings or designs provided by the *Consultant* to the *Client*, except where such defect or deficiency would be obvious or apparent to an experienced professional performing services similar to the *Services*.

**Ownership** 7.2

7.2.1 All concepts, plans, drawings, specifications, designs, models, reports, photographs, computer software, surveys, calculations, construction and other data, documents, and processes produced by the *Consultant* in connection with the *Project* (the "*Instruments of Service*"), including all copyright and other intellectual property therein, are and shall at all times remain the property of the *Consultant* unless otherwise agreed in writing between the parties.

7.2.2 The *Client* may copy and use any of the *Instruments of Service* for record and maintenance purposes and for any future renovation, repair, modification and extension work undertaken with respect to that part of the *Project* to which the *Services* relate.

7.2.3 In no event shall the *Client* copy or use any of the *Instruments of Service* for any purpose other than those noted above or in relation to any project other than the *Project* without the prior written permission of the *Consultant*. The *Consultant* shall not unreasonably withhold or deny such consent but shall be entitled to receive additional equitable remuneration in connection with its grant of consent.

7.2.4 The *Client* shall have a permanent non-exclusive royalty-free license to use any *Instruments of Service* which is capable of being patented or registered as a trademark for the life of the *Project* only. For the purposes of this paragraph, "life of the *Project*" means the period during which the physical asset or assets described on page 1 of this *Agreement* are designed, under construction or operational. The *Consultant* shall have full rights to any *Instruments of Service* arising from his *Services* which is capable of being patented or registered as a trademark and may use any such *Instruments of Service* on any other project.

**Changes to Instruments  
of Service** 7.3

7.3.1 The *Client* accepts full responsibility for any changes made to any *Instruments of Service* without the prior written consent of the *Consultant* and shall indemnify and hold harmless the *Consultant* from any claims arising from use of such changed *Instruments of Service*.

# APPENDIX C

**AIBC DOCUMENT 6C – GC5, COPYRIGHT AND USE OF DOCUMENTS**

**AIBC BY-LAW 28.3 – COPYRIGHT, OWNERSHIP AND USE**

## GC5 COPYRIGHT AND USE OF DOCUMENTS (excerpt, AIBC Standard Form of Contract 6C, February 2007)

1. Copyright for the *Consultant's Instruments of Service* belongs to the *Consultant*. The *Consultant's Instruments of Service* shall remain the property of the *Consultant* whether the *Project* for which they are made is executed or not, and whether or not the *Consultant* has been paid for the services. Their alteration by the *Client* is prohibited.
2. Submissions or distribution of the *Consultant's Instruments of Service* including all software and electronic media to meet the official regulatory requirements or for other purposes in connection with the *Project* is not to be construed as publication in derogation of the *Consultant's* reserved rights.
3. The *Client* may retain copies, including electronic or digital and other reproducible copies, of the *Consultant's Instruments of Service* for information and reference in connection with the *Client's* use and occupancy of the *Project*. Copies may only be used for the purposes intended and for a one time use, on the same site, and for the same *Project*, by this *Client* only and may not be offered for sale or transfer without the express written consent of the *Consultant*. Except for reference purposes, the *Consultant's Instruments of Service*, including all electronic or digital files and information, shall not be used for renovations, additions or alterations to the *Project* or on any other project without a written licence from the *Consultant* for the limited or repeat use of the documents.
4. As a condition precedent to the use of the *Consultant's Instruments of Service* for the *Project*, all fees and expenses as a result of Suspension or Termination, due to the *Consultant*, are required to be paid in full.
5. The *Client* shall be entitled to keep original models or architectural renderings which the *Client* specifically commissioned and paid for.

### AIBC Bylaw 28.3: Copyright, Ownership and Use

All drawings, specifications, models and documents prepared by the Architect as instruments of service shall remain the Architect's property, the copyright in the same being reserved to the Architect in the first instance. As a precondition of their use, all fees and reimbursable expenses due the Architect are to be paid.