This template should be read together with the standard architectural services contract, OAA 600-2021.

This template may be used to prepare Schedule 5, adapted for use with your own contract.

Coordinate the numbering and clause references with any additional items you may include.

Refer to Attachment 1, Guide to Apply PT.25Design-Build to OAA 600-2021, for additional comments and background information.

Refer to the *OAA 600-2021 GUIDE to the Standard Form of Contract for Licensed Member’s Services* for additional comments and background information.

Seek legal review for your proposed contract.

**Schedule 5 – Other Terms and Conditions**

**Other Terms and Conditions of the Contract**

These other terms and conditions are to be read in conjunction with and as part of the *Contract* when Schedule 5 is listed as a contract document in the appropriate Article. Amendments to the Articles shall take precedence over the Articles. Amendments to the Definitions shall take precedence over the Definitions. Supplementary Conditions shall take precedence over the General Conditions.

**Amendments to the Articles of Agreement**

1. Delete Article A05 in its entirety and replace it with the following:

A05 The *Client* has entered into a design-build agreement with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “*Owner*”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the *Project* (the “*Design-Build Contract”).*

1. Delete the word “*Client’s*” from Article A06.
2. Delete the word “*Client’s*” from Article A07.
3. Replace the content of Article A08 with:

 A08 The anticipated construction delivery method and anticipated form of construction contract
 between the *Client* and the *Client’s Contractors* for this design-build *Project* are:
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. In Article A11.2, add the words “or *Owner*” after the words “the *Client*”.
2. In the first sentence of Article A12, after the words “The *Client* shall provide”, add the words “the *Functional Program*, if any, and”.
3. In paragraph 4 of Article A12, replace the words “construction contract documents” with “*Design-Build Contract Documents*”.
4. In the second sentence of Article A13, delete the word “The” at the start of the sentence and replace it with the words “To the extent permitted by the *Owner* and *Design-Build Contract Documents*, the”.
5. Throughout Articles A22 and A23, replace the words “*Proper Invoice*” with the word “*Invoice*”.
6. Delete the text of Article A24 and replace it with the following:

 *Invoices* shall be issued and submitted to the *Client* monthly on or after the \_\_\_\_\_ day of the month unless otherwise agreed to in writing by the parties. Subject to compliance with the *Lien Legislation*, the *Client* shall pay the *Architect* the invoiced amount or, where there is a *Dispute* respecting the invoiced amount, the undisputed portion thereof on account of the *Architect’s* fee less any applicable statutory holdback, plus agreed upon *Reimbursable* *Expenses*, and applicable *Value Added Taxes* within twenty-eight (28) days of the *Client’s* receipt of such *Invoice* or as otherwise required by the *Lien Legislation*.

Where applicable, upon request, the *Client* shall confirm to the *Architect* when it includes all or part of amounts claimed in an *Invoice* in an application for payment under the *Design-Build Contract* and the *Client* shall exert reasonable and diligent efforts to collect payment from the *Owner* in respect of such amounts*,* including interest on overdue payments.

1. In Article A25, replace all references to “*Proper Invoice*” with the word “*Invoice*”.
2. In Article A26, add the words “and the *Design-Build Contract*” after the words “*Lien Legislation*”.
3. In Article A27, add “13. *Functional Program*, as provided or developed in accordance with GC5.1 and as may be amended from time to time” to the list of contract documents.
4. In Article A31, add the words “and *Owner*” after the words “for *Client*”.
5. Add new A33 as follows:

“The *Architect* shall coordinate the *Services* with the *Work* of the following *Client’s Contractors*:

[insert a list of *Client’s Contractors* who, when contributing to the design and *Design-Build Contract Documents*, shall be coordinated with the *Architect’s* Services; for example: mechanical contractor, door hardware supplier, or others providing opinion, evaluation, specifications, value engineering, and the like. If no such coordination is to be provided by the *Architect*, then delete the addition of new A33 entirely, or insert “None” or “N/A”.]”

**Amendments to the Definitions**

1. Add a new definition of *Client’s Contractors*:

“***Client’s Contractors***  are any persons or entities engaged by the *Client* to perform *Work* for the *Project*. *Client’s Contractors* do not include the *Architect*, the *Architect’s* *Consultants* or the *Client’s Consultants*.”

1. In the definition of “***Consultant***” (i), add the words “the Owner,” after the words “engaged by” and add the following to the end: “For certainty, all references in this *Contract* to “*Client’s Consultants*” shall include *Consultants* retained by the *Owner* listed in Article A11.2.”
2. In the definition of ***Construction Cost,*** replace the words “to the *Client”* and replace them with the words “to the *Owner*”, replace the words “contractor’s general conditions costs” with the words “general conditions costs of the *Client* and *Client’s Contractors*”, and replace the words “responsibility of the *Client*” with the words “responsibility of the *Owner*”.
3. Add a new definition of ***Client Contractor Coordination*** as follows:

“***Client Contractor Coordination*** means reviewing the instruments of service, including shop drawings and specifications, and other information provided to the *Architect* by the *Client’s Contractors* listed in Article A33 to assist in identifying conflicts or interferences, and to monitor general compliance with directions of the *Client*.”

1. Add a new definition for *Design-Build Contract*:

 “***Design-Build Contract*** is the design-build contract between the *Client*, as design-builder, and the *Owner* for the *Project* as identified in Article A05.”

1. Add a new definition for *Design-Build Contract Documents*:

“***Design-Build Contract Documents*** consist of those documents that comprise the *Design-Build Contract* and amendments thereto agreed upon by the *Client* and *Owner*.”

1. In the definition of ***Functional Program,*** delete the word “*Client’s*” and replace it with the word “*Owner’s*”.
2. In the definition of ***General Review,*** delete the word “contractor” and replace it with the words “*Client* and *Client’s Contractors*”.
3. Add a new definition for *Invoice*:

 “***Invoice***  means a written application for payment for *Services*, materials, *Reimbursable Expenses* or other compensation containing at a minimum the following information: (i) *Architect’s* name, address and telephone number; (ii) Date of the invoice and the period during which the *Services*, materials, or related documentation were supplied; (iii) Information identifying the authority under which the *Services*, materials or related documentation were supplied; (iv) Description, including quantities where appropriate, of the *Services*, materials, or related documentation that were supplied; (v) Amount payable for the *Services*, materials, or related documentation that were supplied, and the payment terms; (vi) Name, title, telephone number, and mailing address of the *Architect* to whom payment is to be sent; (vii) Any additional information specified in Article A23; and (viii) Any additional information specified in the *Lien Legislation* or its Regulations.”

1. Delete the definition of *Proper Invoice* in its entirety.
2. In the definition of ***Ready-for-Takeover***, in the first sentence, delete the words “form of construction contract stipulated in Article A08.2” and replace them with the words “*Design-Build Contract*”. In the second sentence, delete the words “construction contract” and replace them with the words “*Design-Build Contract*”.
3. Add a new definition for *Owner*:

 “***Owner*** is the person or entity identified as such in Article A05.”

1. In the definition of ***Record Drawings,*** delete the words “contractor or construction manager” and replace them with the words “*Client* or *Client’s Contractors*”.
2. In the definition of ***Reimbursable Expenses,*** replace the words “*Proper Invoice*” with the word “*Invoice*”.
3. In the definition of ***Work,*** replace the words “*Contract Documents*” with the words “*Design-Build Contract Documents*”.

**Supplementary Conditions to the General Conditions**

1. In GC01.1.4, add the words “and *Owner*” after the words “the *Client*”.
2. In GC01.1.7, add the words “and *Owner*” after the words “information provided by the *Client*”.
3. In GC01.1.8, add the words “or *Owner*” after the words “of the *Client*”.
4. In GC01.1.10, add the words “or *Owner*” after the words “if the *Client*” and delete the words “the *Client’s*” and replace them with the word “such”.
5. In GC01.1.11, delete the word “contractor” and replace it with the words “the *Client*, the *Client’s Contractors*”.
6. In GC01.1.14, delete the word “contractor” and replace it with the words “the *Client* and *Client’s Contractors*”.
7. In GC01.1.16, add the words “and *Owner*” after the words “for the *Client*”.
8. Add new GC01.1.18 as follows:

“.18 include *Client Contractor Coordination* of those *Client’s Contractors* engaged by the *Client* that are listed in Article A33.”

[Note: If new Article A33 has been added, then insert this new general condition.]

1. In GC04.1.1, delete the word “*Client’s*”.
2. In GC04.1.2, add the words “the *Functional Program*,” after the words “in Article A07,”.
3. In GC04.1.3, delete the words “the form of construction contract as identified in Article A08” and replace them with the words “the *Design-Build Contract Documents*”.
4. In GC04.1.6, add the words “or *Owner’s*” after the word “*Client’s*”.
5. In GC04.1.7, delete the word “contractor” and replace it with the words “*Client* or *Client’s Contractors*”.
6. In GC04.1.8, delete the word “contractor” and replace it with the words “*Client*, the *Client’s Contractors*”.
7. Delete GC04.1.10 in its entirety and replace it with the following:

 “.10 made necessary by the default of the *Client* or *Client’s Contractors*, by major defects or deficiencies in the *Work* of the *Client* or the *Client’s Contractors*, or by failure of performance by any of the *Owner*, *Client* or the *Client’s Contractors* under or in relation to the *Design-Build Contract*;”

1. In GC04.1.11, add the words “the *Design-Build Contract* or” after the words “in respect of”.
2. In GC05.1, after the words “The *Client*” in the first line, add the words “, in consultation with the *Owner* as required by the *Design-Build Contract Documents*,” and add the word “and *Owner’s*” after the word “*Client’s*”.
3. Delete GC05.2 and replace it with the following:

 “The *Client*, in consultation with the *Owner* as required by the *Design-Build Contract Documents*, shall initially establish and periodically update the *Construction Cost Budget*, which includes appropriate *Contingencies*. If the *Construction Cost Budget* is significantly increased or decreased, either incrementally or in the aggregate, the *Client* shall notify the *Architect* by *Notice in Writing*. Adjustments to the *Project* and the *Architect’s* fee shall be as an *Extra Service*.”

1. .Delete GC05.3.3 and replace it with the following:

 “sign applications for permits and pay for the building permit and all other *Project*-related permits and development costs, unless the *Owner* is required to do so under the *Design-Build Contract Documents*;”

1. In GC05.3.4, add the words “the *Owner* or” before the words “authorities having jurisdiction”.
2. In GC05.3.5, add the words “or *Owner*” after the words “the *Client*” in the second line.
3. In GC05.3.8, delete the words “contractor’s applications for payment” and replace them with the words “applications for payment by *Client’s Contractors*”. Delete the words “the contractor uses the monies paid by or on behalf of the *Client*” and replace them with the words “such *Client’s Contractors* use the monies paid by or on behalf of the *Client* or *Owner*, as applicable,”
4. Delete GC05.3.11 in its entirety and replace it with the following:

 “.11 engage *Client’s Contractors* under construction contracts consistent with the *Design-Build Contract* and compatible with this *Contract*; and”

1. Amend GC06.2 by deleting the words “the *Architect’s Estimate of Construction Cost*” and replacing them with the words “an *Estimate of Construction Cost* provided by the *Architect*, if any,”
2. In GC06.8, add the words “or *Owner*” after the word “*Client*”.
3. Add new GC06.9 as follows:

 “6.9 To the extent required by the *Design-Build Contract Documents*, all decisions of the *Client* under this GC06 shall be made in consultation with the *Owner* and with the *Owner’s* consent or approval, which consent or approval shall be obtained by the *Client* pursuant to the *Design-Build Contract* with no liability to the *Architect* and its *Consultants*.”

1. In GC07.1, add the words “and, if required by the *Design-Build Contract Documents*, the *Owner*” after the words “the *Client* and the *Architect*”.
2. Delete GC07.2.5 in its entirety.
3. Delete GC07.3 in its entirety.
4. Delete GC07.4 in its entirety and replace it with the following:

 “7.4 For certainty, in keeping with the *Architect*’s professional obligations, the *Architect’s Services* under this *Contract* shall not include payment certification. Without limiting the foregoing, the *Architect* shall not certify the value of the *Services* provided by the *Architect* to the *Client* under this *Contract* and the *Services* shall not include engagement of the *Architect* to provide payment certification of applications for payment made by the *Client* under the *Design-Build Contract* in this respect. Further, the *Services* shall not include and the *Architect* shall not be deemed to be the “payment certifier” under s.32(1) of the *Construction Act*, R.S.O. 1990, c. C.30, in respect of, certification of *Substantial Performance of the Work* under the *Design-Build Contract*. Any determination of *Substantial Performance of the Work* under the *Design-Build Contract* shall be undertaken in accordance with the *Design-Build Contract* and *Lien Legislation*. Without limiting the foregoing the parties acknowledge and agree that the *Architect* cannot independently certify the value of the *Services* provided by the *Architect* to the *Client* and (ii) the *Architect* may assist the *Client* in preparation of the *Client*’s application for payment under the *Design-Build Contract*, but cannot independently certify the value of the work completed to date under the *Design-Build Contract*.”

1. In GC08.1, add the words “Unless otherwise required by the *Design-Build Contract*,” to the beginning of the first sentence, and to the end of the second sentence.
2. In GC08.2, add the words “, the *Owner*” after the words “the *Client*”.
3. In GC08.4, add the following to the end after the words “by this GC08”:

 “, including the power and authority to grant the *Client* the right to grant sub-licences to the *Owner* in accordance with the terms set out in this GC08”

1. In GC08.6.1, add the following to the end after the words “the *Project*”:

 “, with the right to grant a sub-licence to the *Owner* for the same objects and purposes”

1. In GC08.6.2, add the following to the end of the first sentence after the words “completion of the *Work*”:

 “with the right to grant a sub-licence to *Owner* for the same objects and purposes”

1. In GC08.6.2, delete in the second sentence the words “This licence is subject to the *Client*” and replace them with the following:

 “This licence and any sub-licence thereunder are subject to the *Client* and *Owner*”

1. In GC08.6.3, add the following to the end after the words “the *Project*”:

 “, with the right to grant a sub-licence to *Owner* for the same objects and purposes”

1. In GC08.6.4, add the following to the end after the words “foregoing licences”:

 “and any sub-licences thereunder”

1. In GC08.7, add the following after the words “The licenses granted under GC08.6”:

 “, and any sub-licences granted by *Client* to *Owner* thereunder”

1. Delete GC08.7.2 in its entirety and replace it with the following:

 “.2 in the case of a licence to the *Client*, permit the *Client* to, and authorize the *Client*’s *Consultants*, contractors, subcontractors, suppliers, and tenants to reproduce applicable portions of *Instruments of Service* solely and exclusively for use in performing services or construction for the *Work* and *Project*, and, in the case of a sub-license to the *Owner*, permit the *Owner* and its consultants, contractors, subcontractors, suppliers, employees, and tenants to reproduce applicable portions of *Instruments of Service* for the same objects and purposes;”

1. Delete GC08.7.3 in its entirety and replace it with the following:

 “.3 permit the *Client*, in the case of a licence, or permit the *Owner*, in the case of a sub-licence,to alter, modify, amend, or have altered, modified, or amended the *Instruments of Service* as may be required by the *Client* or the *Owner*, as the case may be, for the purposes of constructing, using, maintaining, repairing, renovating, adding to, altering, and occupying the *Work* and the *Project*, including in the event of termination of this *Contract* by the *Client* pursuant to GC11.2, provided that, in the case of a license to *Client*, any such alteration, modification, or amendment not performed by the *Architect* shall be at the *Client*’s sole risk and the *Client* will not hold out that any such changes to the *Instruments of Service* were approved, reviewed, or otherwise accepted by the *Architect*, and, in the case of a sub-licence to the *Owner*, the *Client* will require that any such alteration, modification, or amendment not performed by the *Architect* shall be at the *Owner*’s sole risk and that the *Owner* will not hold out that any such changes to the *Instruments of Service* were approved, reviewed, or otherwise accepted by the *Architect*;”

1. Delete GC08.7.4 in its entirety and replace it with the following: “may only be transferred by the Client, in the case of a licence, or by the *Owner*, in the case of a sub-licence;”
2. In GC08.7.4, add the words “or sub-licence” after the words “except that such licence”.
3. In GC08.8, delete the words “employees, or tenants” and replace them with the words “employees, tenants or licensees,” and add the following new sentence to the end of GC08.8:

 “In any sub-licence to the *Owner*, the *Client* shall require that the *Owner* indemnify and hold harmless the *Architect* to the fullest extent permitted by law, from and against any and all claims, damages, liabilities, or costs, including reasonable attorney’s fees and costs of defense, in any way arising out of or related to alteration, modification, or amendment to the *Instruments of Service* by the *Owner*, the *Owner*’s consultants, contractors, subcontractors, suppliers, employees, or tenants, or any other person for whom the *Owner* is responsible at law.”

1. In GC08.9, add the following new sentence after the first sentence ending with “that of the Project.”:

 “In any sub-licence to the *Owner*, the *Client* will require that the *Owner* acknowledge that the *Architect*’s design is unsuitable for any site other than that of the *Project*.”

1. In GC09.1, add the words “(including the *Owner*)” after the words “by a third party”.
2. In GC09.6.2, delete the words “contractor, subcontractors, suppliers,” and replace them with the words “the *Client*, the *Client’s Contractors*, their subcontractors or suppliers or”.
3. In GC09.6.6, add the words “, the *Owner*,” after the words “providing financing to the *Client*”.
4. Throughout GC 10, replace all instances of the words “*Proper Invoice*” with the word “*Invoice*”.
5. In GC 10.1, add the words “or the *Owner*” after the words “If the *Client*”.
6. In GC 10.3.3, add the words “or the *Owner*” after the words “by the *Client*”.
7. In GC10.7.1, add the words “subject to compliance with the *Lien Legislation*,” at the start of the sentence before the words “the *Architect*”, and add the words “or as otherwise required by the *Lien Legislation*” after the words “by the *Client*”.
8. Throughout GC 11, replace all instances of the words “*Proper Invoice*” with the word “*Invoice*”.
9. In GC11.3 and GC11.6, add the words “or the *Owner*” after the words “by the *Client*” in each instance.
10. In GC11.8, delete the word “In” at the commencement of the sentence and replace it with the words “Subject to compliance with the *Lien Legislation*, in” and add the words “or as otherwise required by the *Lien Legislation*” after the words “by the *Client*”.
11. Throughout GC 12, replace all instances of the words “*Proper Invoice*” with the word “*Invoice*”.
12. In GC12.4, replace the word “contractors” with the words “*Client’s Contractors*”.
13. In GC14.1, add the words “or the *Owner*” after the words “the *Client*” in the first line.
14. In GC 14.2, add the words “, including as may be required under the *Design-Build Contract,*” after the words “deems necessary”.
15. In GC14.3, replace the words “*Proper Invoices*” with the word “*Invoices*”.
16. In the first sentence of GC15.2, add the words “or *Owner*” after the words “so as to give the *Client*”.
17. In GC16.6, delete the words “The *Client* agrees that, should a construction *Contract* include a provision that any dispute between the *Client* and the contractor may be finally resolved by arbitration, such construction contract shall include provisions satisfactory to the *Architect* that” and replace them with the following:

 “The *Client* agrees that, should a construction contract with a *Client’s Contractor* include a provision that any dispute between the *Client* and such *Client’s Contractor* may be finally resolved by arbitration, such construction contract shall include provisions satisfactory to the *Architect* that”

1. In GC 16, GC16.6.1, and 16.6.3, replace each instance of the word “contractor” with the words “*Client’*s *Contractor*”.
2. Add new GC16.9 as follows:

 “16.9 The *Client* agrees that, where a *Dispute* is related to or subject to any dispute resolution process under the *Design-Build Contract* or where the *Architect* has a vested or contingent financial interest in the outcome of a dispute between the *Client* and *Owner* under the *Design-Build* *Contract*, the *Client* shall give the *Architect Notice in Writing* of such dispute resolution process or dispute between the *Client* and *Owner* and, subject to the *Design-Build Contract*, provide the *Architect* the option to participate in any such dispute resolution process under the *Design-Build Contract*.”

1. Delete GC17.3 in its entirety and replace it with the following:

 “17.3 Subject to the terms of the *Design-Build Contract*, the *Architect* shall be entitled to sign the building by inscription, or otherwise, on a permanent, suitable and reasonably visible part of the building, provided that the *Architect* obtains the *Owner*’s approval of the format and location of any such sign.”

1. In GC17.5, add the words “or *Client’s Contractors*” after the words “*Client’s Consultants*”.
2. Add new GC18.2 and GC18.3 as follows:

 GC18.2 Nothing in this *Contract* shall create any contractual relationship between the *Architect* and the *Owner*, or the *Owner*’s agents or employees. The *Client* will provide to the *Architect* a copy of the *Design-Build Contract*, from which commercial terms may be redacted. Unless otherwise directed by the *Client* or required by the *Design-Build* *Contract Documents*, all communications between the *Architect* and *Owner* shall be forwarded through the *Client*. The *Client* shall keep the *Architect* fully informed of any changes in available information respecting the *Services* and *Work*, whether obtained from the *Owner* or otherwise, including changes in the *Functional Program*.

 GC18.3 In carrying out its responsibilities under this *Contract*, the *Client* shall exercise the level of skill, care, and diligence as would be exercised by a reasonable design-builder performing similar services and work in the same or similar locality under similar circumstances. The *Client* acknowledges and agrees that throughout this *Contract*, the *Client’s* obligations, duties and responsibilities shall be interpreted in accordance with this standard.