



AGC DOCUMENT NO. 603
STANDARD SHORT FORM AGREEMENT BETWEEN
CONTRACTOR AND SUBCONTRACTOR
(Where Contractor Assumes Risk of Owner Payment)



The original text of this document is endorsed by The Associated Specialty Contractors, Inc. (ASC), an umbrella organization composed of the following seven specialty contractor groups: Mechanical Contractors Association of America, National Electrical Contractors Association, National Insulation Association, National Roofing Contractors Association, Painting and Decorating Contractors of America, Plumbing-Heating-Cooling Contractors' National Association, and Sheet Metal and Air Conditioning Contractors' National Association.

Job No.: _____

Account Code: _____

This Agreement is made this _____ day of _____,
_____, by and between

CONTRACTOR,

and

SUBCONTRACTOR,

PROJECT:

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OWNER:

ARCHITECT/ENGINEER:

1 SUBCONTRACT WORK To the extent terms of the agreement between **Yellowknife Building Systems, Inc.** and **TBD** (prime agreement) apply to the work of Subcontractor, **TBD** assumes toward Subcontractor all obligations, rights, duties, and redress that **Yellowknife Building Systems, Inc.** assumes toward **TBD**. In an identical way, Subcontractor assumes toward **TBD** all obligations, rights, duties, and redress that **TBD** assumes toward **Yellowknife Building Systems, Inc.** and others under the prime agreement. In the event of conflicts or inconsistencies between provisions of this Agreement and the prime agreement, this Agreement shall govern. Subcontractor shall perform Subcontract Work under the general direction of **TBD** and shall cooperate with **TBD** so **TBD** may fulfill obligations to **Yellowknife Building Systems, Inc.** Subcontractor shall provide Subcontract Work for the Project in accordance with the Progress Schedule to be prepared by **TBD** after consultation with Subcontractor, and as it may change from time to time. Subcontractor shall give timely notices to authorities pertaining to Subcontract Work and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete Subcontract Work. Subcontractor to provide _____ (Brief Description of Subcontract Work), as more fully described in Exhibit A.

2 SUBCONTRACT AMOUNT **TBD** agrees to pay Subcontractor for satisfactory and timely performance and completion of Subcontract Work: _____. Retainage shall be _____ percent (_____%), which is equal to the percentage retained from **TBD**'s payment by **Yellowknife Building Systems, Inc.** for Subcontract Work.

3 INSURANCE Subcontractor shall purchase and maintain insurance that will protect Subcontractor from claims arising out of Subcontractor operations under this Agreement, whether the operations are by Subcontractor, or any of Subcontractor's consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor shall maintain coverage and limits of liability as set forth in Exhibit E.

4 BONDS Subcontractor ___ shall ___ shall not furnish to **TBD**, as Obligee, surety bonds in a form as set forth in Exhibit F to this Agreement, and through a surety mutually agreeable to **TBD** and Subcontractor, to secure faithful performance of Subcontract Work and to satisfy Subcontractor payment obligations related to Subcontract Work.

5 EXHIBITS The following Exhibits are incorporated by reference and made part of this Agreement:

EXHIBIT A: Subcontract Work, _____ pages.

EXHIBIT B: Prime agreement, Drawings, Specifications, General, Special, Supplementary, and other conditions, and addenda.

(Attach a complete listing by title, date and number of pages.)

EXHIBIT C: Progress Schedule, _____ pages.

EXHIBIT D: Alternates and Unit Prices, include dates when alternates and unit prices no longer apply, _____ pages.

EXHIBIT E: Insurance Provisions, _____ pages.

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EXHIBIT F: Bonds, _____ pages.

EXHIBIT __: Other _____, _____ pages.

6 SAFETY To protect persons and property, Subcontractor shall establish a safety program implementing safety measures, policies and standards conforming to (1) those required or recommended by governmental and quasi-governmental authorities having jurisdiction and (2) requirements of this Agreement. Subcontractor shall keep project site clean and free from debris resulting from Subcontract Work.

7 ASSIGNMENT Subcontractor shall not assign the whole or any part of Subcontract Work or this Agreement without prior written approval of **TBD**.

8 TIME

8.1 TIME IS OF THE ESSENCE Time is of the essence for both parties. The parties agree to perform their respective obligations so that the Project may be completed in accordance with this Agreement.

8.2 SCHEDULE In consultation with Subcontractor, the **TBD** shall prepare the schedule for performance of **TBD**'s work (Progress Schedule) and shall revise and update such schedule, as necessary, as **TBD**'s work progresses. Subcontractor shall provide **TBD** with any scheduling information proposed by Subcontractor for Subcontract Work and shall revise and update as Project progresses. **TBD** and Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to Subcontractor reasonably in advance of required performance. **TBD** shall have the right to determine and, if necessary, change the time, order and priority in which various portions of Subcontract Work shall be performed and all other matters relative to Subcontract Work.

9 CHANGE ORDERS When **TBD** orders in writing, Subcontractor, without nullifying this Agreement, shall make any and all changes in Subcontract Work, which are within the general scope of this Agreement. Any adjustment in the Subcontract Amount or time of performance shall be authorized by a Change Order. No adjustments shall be made for any changes performed by Subcontractor that have not been ordered by **TBD**. A Change Order is a written instrument prepared by **TBD** and signed by Subcontractor stating their agreement upon the change in Subcontract Work. If commencement and/or progress of Subcontract Work is delayed without the fault or responsibility of Subcontractor, the time for Subcontract Work shall be extended by Change Order to the extent obtained by **TBD**, and the Progress Schedule shall be revised accordingly.

10 PAYMENT

10.1 SCHEDULE OF VALUES As a condition of payment, Subcontractor shall provide a schedule of values satisfactory to **TBD** not more than fifteen (15) days from the date of this Agreement.

10.2 PROGRESS AND FINAL PAYMENTS Progress payments, less retainage, shall be made to Subcontractor, for Subcontract Work satisfactorily performed, no later than seven (7) days after receipt by **TBD** of payment from **Yellowknife Building Systems, Inc.** for Subcontract Work. Final payment of the balance due shall be made to Subcontractor no later than seven (7) days after receipt by **TBD** of final payment from **Yellowknife Building Systems, Inc.** for Subcontract Work. These payments are subject to receipt of such lien waivers, affidavits, warranties, guarantees or other documentation required by this Agreement or **TBD**. If payment from **Yellowknife Building Systems, Inc.** for such Subcontract Work is not received by **TBD**, through no fault of Subcontractor, **TBD** will make payment to Subcontractor within a reasonable time for Subcontract Work satisfactorily performed.

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10.3 PAYMENTS WITHHELD **TBD** may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect **TBD** from loss or damage caused by Subcontractor's failure to (1) timely perform Subcontract Work, (2) properly pay subcontractors and/or suppliers, or (3) promptly correct rejected, defective or nonconforming Subcontract Work.

10.4 PAYMENT DELAY If **TBD** has received payment from **Yellowknife Building Systems, Inc.** and, if for any reason not the fault of Subcontractor, Subcontractor does not receive a progress payment from **TBD** within seven (7) days after the date such payment is due, or if **TBD** has failed to pay Sub-contractor within a reasonable time for Subcontract Work satisfactorily performed, Subcontractor, upon giving seven (7) days' written notice to **TBD**, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to Subcontractor has been received. Subcontract Amount and time of performance shall be adjusted by the amount of Subcontractor's reasonable and verified cost of shutdown, delay and startup, and shall be affected by an appropriate Change Order.

10.5 WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by Subcontractor relating to Subcontract Work, but shall in no way relieve Subcontractor of liability for warranties, or for nonconforming or defective work discovered after final payment.

10.6 OWNER'S ABILITY TO PAY

10.6.1 Subcontractor shall have the right upon request to receive from **TBD** such information as **TBD** has obtained relative to **Yellowknife Building Systems, Inc.**'s financial ability to pay for **TBD**'s work, including any subsequent material variation in such information. **TBD**, however, does not warrant the accuracy or completeness of information provided by **Yellowknife Building Systems, Inc.**

10.6.2 If Subcontractor does not receive the information referenced in Subparagraph 10.6.1, Subcontractor may request information from **Yellowknife Building Systems, Inc.** and/or **Yellowknife Building Systems, Inc.**'s lender.

11 INDEMNITY To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless **TBD**, **TBD**'s other subcontractors, **AEC Design Building Concepts, Yellowknife Building Systems, Inc.** and their agents, consultants, employees and others as required by this Agreement from all claims for bodily injury and property damage that may arise from performance of Subcontract Work to the extent of the negligence attributed to such acts or omissions by Subcontractor, Subcontractor's subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

12 CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT

12.1 FAILURE OF PERFORMANCE Should Subcontractor fail to satisfy contractual deficiencies or to commence and continue satisfactory correction of the default with diligence or promptness within three (3) working days from receipt of **TBD**'s written notice, then **TBD**, without prejudice to any right or remedies, shall have the right to take whatever steps it deems necessary to correct deficiencies and charge the cost thereof to Subcontractor, who shall be liable for such payment, including reasonable overhead, profit and attorneys' fees. In the event of an emergency affecting safety of persons or property, **TBD** may proceed as above without notice, but **TBD** shall give Subcontractor notice promptly after the fact as a precondition of cost recovery.

12.2 TERMINATION BY OWNER Should **Yellowknife Building Systems, Inc.** terminate the prime agreement or any part which includes Subcontract Work, **TBD** shall notify Subcontractor in

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writing within three (3) days of termination and, upon written notification, this Agreement shall be terminated and Subcontractor shall immediately stop Subcontract Work, follow all of **TBD**'s instructions, and mitigate all costs. In the event of **Yellowknife Building Systems, Inc.** termination, **TBD** liability to Subcontractor shall be limited to the extent of **TBD** recovery on Subcontractor's behalf under the prime agreement. **TBD** agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of **Yellowknife Building Systems, Inc.** termination and to permit Subcontractor to prosecute the claim, in the name of **TBD**, for the use and benefit of Subcontractor, or assign the claim to Subcontractor.

12.3 TERMINATION BY CONTRACTOR If Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) days after written notification issued under Paragraph 12.1, then **TBD** may, in lieu of or in addition to Paragraph 12.1, issue a second written notification, to Subcontractor and its surety, if any. Such notice shall state that if Subcontractor fails to commence and continue correction of a default within seven (7) days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by **TBD** to Subcontractor at the time Subcontractor is terminated. **TBD** may furnish those materials, equipment and/or employ such workers or subcontractors as **TBD** deems necessary to maintain the orderly progress of **TBD**'s work. All costs incurred by **TBD** in performing Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At Subcontractor's request, **TBD** shall provide a detailed accounting of the costs to finish Subcontract Work.

12.4 TERMINATION BY SUBCONTRACTOR If Subcontract Work has been stopped for thirty (30) days because Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of Subcontractor, then Subcontractor may terminate this Agreement upon giving **TBD** seven (7) days' written notice. Upon such termination, Subcontractor shall be entitled to recover from **TBD** payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit and attorneys' fees, costs and expenses. However, if **Yellowknife Building Systems, Inc.** has not paid **TBD** for the satisfactory performance of Subcontract Work through no fault or neglect of **TBD**, and Subcontractor terminates this Agreement under this Article because it has not received corresponding progress payments, Subcontractor shall be entitled to recover from **TBD**, within a reasonable period of time following termination, payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead and profit. **TBD**'s liability for any other damages claimed by Subcontractor under such circumstances shall be extinguished by **TBD** pursuing said damages and claims against **Yellowknife Building Systems, Inc.**, on Subcontractor's behalf, in the manner provided for in Paragraph 12.2 of this Agreement.

13 CLAIMS AND DISPUTES

13.1 CLAIMS RELATING TO CONTRACTOR Subcontractor shall give **TBD** written notice of all claims within seven (7) days of Subcontractor's knowledge of facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes and other matters in question between **TBD** and Subcontractor shall be resolved in the manner provided in this Agreement.

13.2 DAMAGES If the prime agreement provides for liquidated or other damages for delay beyond the completion date set forth in this Agreement, and such damages are assessed, **TBD** may assess a share of the damages against Subcontractor in proportion to Subcontractor's share of responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against **TBD**. Nothing in this Agreement shall be construed to limit Subcontractor's liability to **TBD** for **TBD**'s actual delay damages caused by Subcontractor's delay.

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13.2.1 CONTRACTOR CAUSED DELAY Nothing in this Agreement shall preclude Subcontractor's recovery of delay damages caused by **TBD**.

13.3 WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, Subcontractor shall continue Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If Subcontractor continues to perform, **TBD** shall continue to make payments in accordance with this Agreement.

13.4 MULTIPARTY PROCEEDING The parties agree, to the extent permitted by the prime agreement, that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between **TBD** and Subcontractor involve in whole or in part disputes between **TBD** and **Yellowknife Building Systems, Inc.**, disputes between Subcontractor and **TBD** shall be decided by the same tribunal and in the same forum as disputes between **TBD** and **Yellowknife Building Systems, Inc.**

13.5 NO LIMITATION OF RIGHTS OR REMEDIES Nothing in Article 13 shall limit any rights or remedies not expressly waived by Subcontractor which Subcontractor may have under lien laws or payment bonds.

13.6 STAY OF PROCEEDINGS In the event that provisions for resolution of disputes between **TBD** and **Yellowknife Building Systems, Inc.** contained in the prime agreement do not permit consolidation or joinder with disputes of third parties, such as Subcontractor, resolution of disputes between Subcontractor and **TBD** involving in whole or in part disputes between **TBD** and **Yellowknife Building Systems, Inc.** shall be stayed pending conclusion of any dispute resolution proceeding between **TBD** and **Yellowknife Building Systems, Inc.**

13.7 DIRECT DISCUSSION If a dispute arises out of or relates to this Agreement, the parties shall endeavor to settle the dispute through direct discussion.

13.8 MEDIATION Disputes between Subcontractor and **TBD** not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. The parties shall select the mediator within fifteen (15) days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

13.9 OTHER DISPUTE PROCESSES If neither direct discussions nor mediation successfully resolve the dispute, the parties agree that the following shall be used to resolve the dispute.

___ Arbitration Arbitration shall be pursuant to the Construction Industry Rules of the American Arbitration Association, unless the parties mutually agree otherwise. A written demand for arbitration shall be filed with the American Arbitration Association and the other party to the Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding has run. The arbitration award shall be final. This agreement to arbitrate shall be governed by the Federal Arbitration Act, and judgment upon the award may be confirmed in any court having jurisdiction.

___ Litigation Action may be filed in the appropriate state or federal court.

13.10 COST OF DISPUTE RESOLUTION The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute that goes beyond mediation arising out of or relating to this Agreement or its breach shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute.

14 JOINT DRAFTING The parties expressly agree that this Agreement was jointly drafted, and that they

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both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

CONTRACTOR: _____

BY:

PRINT NAME: _____

PRINT TITLE: _____

SUBCONTRACTOR: _____

BY:

PRINT NAME: _____

PRINT TITLE: _____

