

Here's the Drill: The 2025 CCDC 5B Update – Modernized Pre-Construction Services, Payment Structures, and Risk Allocation

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The CCDC 5B Construction Management Contract – for Services and Construction is the industry's standard form agreement for projects where the Construction Manager provides advisory services during pre-construction and then performs the Work during construction. Under this model, pre-construction services are compensated by a fee, while construction is initially compensated on an actual-cost basis plus a fee, with optional conversion to a Guaranteed Maximum Price (GMP), a GMP plus cost-savings arrangement, or a Stipulated Price.

Recently, the Canadian Construction Documents Committee (CCDC) released the 2025 edition of the CCDC 5B, marking the first major revision since 2010. These updates reflect evolving construction practices, legislative reforms (notably prompt payment regimes), and the industry's emphasis on early collaboration, risk management, and transparency.

1. Structural Clarity: Defining Pre-Construction Services

One consequential update in CCDC 5B-2025 is the formal separation between Pre-construction Services and Construction Services. The 2025 edition now more clearly defines "Pre-construction Services" as a standalone contractual concept, supported by dedicated provisions addressing scope, compensation, invoicing, and administration.

This update reflects the growing emphasis on early contractor involvement and integrated project planning and provides clearer alignment of expectations among the parties during the pre-construction phase.

Other structural updates include:

- a separate fee model and payment structure for Pre-construction Services;
- the Consultant no longer interpreting disputes relating to pre-construction compensation;
- reimbursable expenses being limited to Pre-construction Services only; and
- the definition of "Work" expressly excluding Pre-construction Services.

2. Payment and Milestones

Ready-for-Takeover and Early Occupancy

Following the approach adopted in CCDC 2-2020, the CCDC 5B-2025 introduces Ready-for-Takeover (RFT) as a new project milestone. RFT follows Substantial Performance of the Work (which remains relevant for statutory lien and holdback purposes) and

identifies the point at which the Project is suitable for occupancy and operational use.

To achieve RFT, the following prerequisites must be satisfied:

- the Consultant has certified Substantial Performance;
- the Work satisfies occupancy requirements or an occupancy permit has been issued;
- cleaning and waste removal are complete;
- key operations and maintenance materials are provided;
- as-built drawings to date are made available; and
- required training, demonstrations, and commissioning activities are completed or reasonably scheduled.

RFT triggers several contractual consequences, including commencement of the warranty period, insurance timing, indemnity claim periods, and the waiver of certain claims.

The Owner may also take early occupancy of part of the Work, subject to the Construction Manager's agreement and authority approvals. Any portion occupied early is deemed to have reached RFT, transferring care and commencing the warranty period for that portion.

Prompt Payment Legislation and Progressive Holdback

To align with the increasing prevalence of provincial prompt-payment legislation across Canada, the 2025 update modernizes the payment provisions by requiring the Owner to make payment within 28 calendar days of receiving a proper invoice.

Additionally, where legislation permits the progressive release of holdback, the Owner must release the applicable portion once the Consultant has certified or verified that the corresponding part of the Work has been performed.

3. Risk Allocation and Financial Exposure

Limitation of Liability

The 2025 update introduces a comprehensive limitation-of-liability framework, marking a major evolution for the CCDC suite. Subject to enumerated exclusions, each party's liability is capped as follows:

- For losses that are required to be insured: liability is limited to the amount of the applicable insurance required under the Contract; and
- For all other losses: liability is limited to the greater of the Contract Price or \$2,000,000, subject to an overall maximum cap of \$20,000,000.
- Indirect, consequential, punitive, or exemplary damages: mutually waived.

These limitations of liability do not apply to:

- a party's obligation to indemnify where the obligation arises from a third-party claim;
- indemnification obligations relating to toxic or hazardous substances under GC 9.2 or mould under GC 9.5;
- the Owner's indemnity for patent infringement claims under GC 10.3.2;
- the Owner's indemnity for defects in title;
- claims arising from a party's wilful misconduct, wilful default, fraudulent or criminal acts, or abandonment;
- claims arising from a party's violation of applicable laws; and

- claims arising from substantial defects or deficiencies in the Work that were not known, and could not reasonably have been discovered, before the end of the warranty period.

Owner's Right to Terminate

A notable addition to CCDC 5B-2025 is the Owner's ability to terminate the Contract if it is unwilling or unable to proceed with the Pre-construction Services or the Work. The Construction Manager's entitlements differ depending on the project phase:

- Pre-construction Phase: a break fee, calculated as a percentage of the most recent Class Construction Cost Estimate.
- Construction Phase: direct damages, including reasonable loss of profit.

4. Project Management and Contract Administration

Contract Time and Schedules

CCDC 5B-2025 now defines Contract Time as the period from commencement of Pre-construction Services to the attainment of RFT. The contract also now distinguishes between:

- Project Schedule, prepared by the Owner, and
- Construction Schedule, prepared and continuously updated by the Construction Manager.

The Owner may also require a formal Execution Plan addressing procurement strategy, Construction Manager self-perform planning, cost-control methodology, and anticipated cash flow.

Audit Rights and Financial Oversight

Audit rights have been expanded. The Owner may review Construction Manager cost records for one year after final completion, replacing the previous 60-day window.

Additional Structural Refinements

The Contract also introduces several structural and procedural refinements, including:

- removal of cash allowances;
- relocation of the GMP Option to a dedicated appendix;
- an expanded list of delays beyond the Construction Manager's control, now expressly including subcontractor default, insolvency, abandonment, or termination; and
- express recognition of adjudication, aligning the Contract with prompt-payment and adjudication legislation adopted in several provinces.

Conclusion

In summary, the CCDC 5B-2025 introduces a broad set of revisions affecting pre-construction scope, payment processes, liability allocation, scheduling, and project administration. These changes respond to prompt-payment legislation and evolving construction-management practices and distinguish the 2025 edition in several material ways from its 2010 predecessor. As these provisions begin to be adopted in practice, their impact on project delivery and risk management will become clearer.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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