

D E S I G N C O N T R A C T

Latest revision: _____

Agreement written as of the _____ day of _____ in the year of Two Thousand and _____ between the **Owner** (or Client): (Insert name and address) and the **Architect** (or Designer): **Benford Design Group**, 605 S. Talbot St., Suite One St. Michaels, MD 21663

For the following Project: (Insert description of design to be created or work to be done.)

The Owner and the Architect agree as set forth below:

The Architect's Services consist of the elements listed below or of other elements listed as part of **Schedule B: Services & Practices**.

ARTICLE I: PRELIMINARY DESIGN STAGE:

- 1) The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall review the understanding of such requirements with the Owner.
- 2) The Architect shall review, as applicable, with the Owner alternative approaches to design and construction of the Project.
- 3) Based on the mutually agreed upon program and Project budget requirements, the Architect shall prepare for approval by the Owner, Preliminary Design Documents including: A) Outboard Profile sketch; B) Accommodations sketch; and C) Other documents as determined by the Architect to be required to illustrate the scope of the Project.
- 4) At the request of the Owner the Architect will submit copies of these documents to three (3) Builders of the Owner's choice for a preliminary bid estimate and assist the Owner in evaluating these estimates.
- 5) Compensation for the Preliminary Design Stage and any other services included as part of this fee under Article VI shall be paid as follows: A) A fixed fee upon the execution of this agreement in the amount of _____, or B) A retainer of _____ upon execution of this agreement, with charges per the Architect's hourly rates as shown in **Schedule A: Fee Schedule** for the balance owing for the work performed.

ARTICLE II: CONSTRUCTION DOCUMENTS DESIGN STAGE:

- 1) Based on the approved Preliminary Design Documents and any further adjustments in the scope of the

Project by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents containing information delineated in **Article IV** setting forth in detail the requirements for the construction of the Project.

- 2) Prints of each drawing shall be submitted to the Owner for approval. The Owner agrees to indicate approval or disapproval within ten (10) days of receipt. If disapproved, the Owner shall promptly advise the Architect in writing of the desired changes. The Architect will revise the plans accordingly and resubmit prints for approval. Failing such notification in writing, the Architect may deem the drawings approved by the Owner. Substantial changes requested to the drawings by the Owner may be billed by the Architect based on the terms for "Additional Services" as outlined in **Schedule B**.
- 3) The Architect shall be the sole determiner of whether or not changes to drawings are substantial.
- 4) At the request of the Owner the Architect will submit copies of these documents to three (3) Builders of the Owner's choice for a construction bid estimate, and assist the Owner in evaluating these estimates.
- 5) The Architect agrees to perform such theoretical calculations as are customary to insure the safety and seaworthiness of the design and reasonable speed underway. The Architect will furnish a carefully prepared estimate of the speed of the vessel, but does not guarantee such speed.
- 6) The Architect agrees to submit the lines of the vessel to a recognized agency for model testing at the Owner's request. Observation of the tank testing by the Architect will be at the Architect's discretion or as listed in **Schedule B: Additional Services**. The Architect's presence at such test shall not be interpreted as an endorsement of the test results.
- 7) Compensation for the Construction Documents Design Stage and any other services included as part of this fee under **Article IV** shall be: A) A fixed fee of _____, payable as follows: First payment of _____ on _____, second payment of _____ on _____, third payment of _____ on _____, fourth payment of _____ on _____, and a fifth payment of _____ on completion of the drawing work. Or, B) Hourly charges per **Schedule A: Fee Schedule** for the time spent on the Project. Billings will be submitted with each set of progress prints and the Owner will promptly pay these. (See **Schedule B** for more detail on Payments.)

ARTICLE III: OWNER'S RESPONSIBILITIES:

- 1) The Owner shall provide full information regarding requirements for the Project including a program, which shall set forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, vessel type and style, speed requirements, extent of equipment compliment anticipated, special equipment and systems requirements, and other general information and specifications as are pertinent to the design of the vessel.
- 2) If the Owner provides a budget for the Project, it shall include contingencies for bidding, changes in Work during construction, and other costs which are the responsibility of the Owner.

- 3) If the Owner observes or otherwise becomes aware of any fault or defect in the Project or non-conformance with the Construction Documents, prompt written notice thereof shall be given by the Owner to the Architect.
- 4) The Owner shall furnish required information and service and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

ARTICLE IV: EXTENT OF AGREEMENT:

This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both Owner and Architect.

ARTICLE V: ARCHITECT SUPPLIED MATERIALS:

- 1) The information and materials to be supplied by the Architect during the Stages of the Design period are to include approximately the following lists:

The design work will be done in two Stages. The first Stage will be the Preliminary Design Phase, to define the concept of the Project. Drawings to be done include: Preliminary Lines Plan, Outboard Profile and/or Sail Plan, Accommodation Plans, Scantling Section, and Initial Weight Study.

The second Phase, the Construction Documents Design Stage, will be to create the actual working drawings. These will include the final versions of the drawings and work done in the Preliminary Design Phase, plus: Construction Plans and Profiles, Inboard Profiles, Sections of Construction Frames and Joiner and Outfitting, Engine, Steering and Tanks, and Deck and Rigging Plans.

Optionally, if desired or needed by the Builder, the Architect may provide: Full Size Frame Templates on Mylar, Plating Expansions, Piping Schematics, and Electrical Layout and One-line drawings.

- 2) The Architect may make necessary adjustments to the order in which materials are prepared or delivered based upon the Architect's determination of the most efficient design order.
- 3) This list is not meant to be all-inclusive or to suggest that the Builder will not have to develop Shop Drawings of less significant details (which are to be submitted to the Architect for approval).

ARTICLE VI: OTHER CONDITIONS OR SERVICES:

- 1) It is understood that this vessel is not intended to be licensed by the U.S. Coast Guard for carrying passengers for hire.
- 2) (Add other specifics here)

- 1) Providing services to investigate existing conditions of a vessel or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.
- 2) To prepare or examine evaluations of the Owner's Project budget, Statements of Probable Construction Cost and Detailed Estimates of Construction Cost.
- 3) Submit Preliminary or Construction Documents to additional Builders, or revise Preliminary or Construction Documents to reflect changes necessary due to the Bid estimates received by the Owner.
- 4) Attend Tank Test, or other tests or meetings suggested by the Owner in the furtherance of the Design.
- 5) On-site observation visits requested by the Owner, or requested by the Builder and approved by the Owner.
- 6) Review of Builder's or Subcontractor's shop drawings, of Product Data, or Samples submitted by the Owner or Builder.
- 7) Provide additional detail drawings for the Builder, at the Owner's request.
- 8) Providing interior design and other similar services required for, or in connection with the selection, procurement or installation of furniture, furnishings, and other equipment, or the engineering of any unusual equipment or systems aboard. The Architect shall be the sole one to define what is regarded as unusual.
- 9) Making revisions in Drawings, Specifications or other documents when 1) such revisions are inconsistent with prior written authorizations, documents that have been deemed to be approved, or instructions previously given; 2) when such revisions are required by the enactment of codes, laws or regulations subsequent to the preparation of such documents, or 3) when such revisions are due to the Builder's preferences, or capabilities or other causes not solely within the control of the Architect.
- 10) Preparing Drawings, Specifications and supporting data and providing other services in connection with Change Orders provided such Change Orders are required by causes not solely within the control of the Architect.
- 11) Making investigations, surveys, valuations, inventories or detailed appraisals necessitated in connection with construction performed by the Owner.
- 12) Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work.
- 13) Providing services made necessary by the default of the Builder, or by major defects or deficiencies in the Work of the Builder, or by failure of performance of either the Owner or Builder under the Contract for Construction.

- 14) Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Owner and/or the Builder to the Architect.

- 15) Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

- 16) Providing services to the Owner after the Architect's obligation to provide Basic Services under the Design Contract has terminated.

- 17) Providing any other services not otherwise included in the Design Contract or not customarily furnished in accordance with generally accepted design practice.

- 18) Compensation for Additional Services shall be in accordance with **Schedule A** for twelve (12) months after signing of the Design Contract. Thereafter, compensation for the Architect shall be at the then current revision to **Schedule A: Fee Schedule**.

COMMUNICATIONS – The use of the telephone has proven to greatly speed up the design process. At the same time, we would suggest that the Client follow up all verbal authorizations or suggestions or ideas with written copies for our files. At any time, we may have a dozen or more projects in process, and while we try to keep good notes and sketches from such conversations, there is the possibility we may have missed something. Thus an e-mail, a fax or letter follow-up is the best insurance.

COMPUTER USAGE & PROGRAM DEVELOPMENT – Computer rental time for equipment required beyond that owned by the Architect is billed at a rate permitting reasonable amortization of office programming expenses. Programming, including all documentation and work product is for the exclusive use of the Benford Design Group and shall be considered his property.

CONSTRUCTION COST ESTIMATING – The Benford Design Group may be asked by the Owner to make an evaluation of estimated construction costs of the completed vessel, or costs at any intermediate stage of completion. Evaluations of the Owner's project budget, statements of probable construction costs and detailed estimates of construction cost if prepared by the Architect represent the Architect's best judgment as a design professional familiar with the yacht construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, the builder's methods of determining bid prices, nor over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the project budget proposed, established or approved by the Owner, if any, or from any statement of probable construction cost or other cost estimate or evaluation prepared by the Architect.

GENERAL PROVISIONS

- 1) The Architect shall in dealings with the Builder be considered a representative of the Owner during the Vessel Construction Phase. As the Owner's agent, however, the Architect shall incur no pecuniary

responsibility concerning the construction of the Project.

- 2) The Architect is to be furnished with written copies of all instructions supplied by the Owner to the Builder which could affect in any way the structural integrity, performance, or aesthetic value of the design.
- 3) On-site consultation by the Architect with the Owner and Builder may be arranged as outlined herein. The Architect shall at all times have reasonable access to the Work whenever it is in preparation or progress.
- 4) The Architect is to be presented with copies of all Change Orders issued which result in the modification of the vessel in any way from the original Construction Documents. No major changes, omissions, or other variations from the Construction Documents shall be made without the permission of the Architect. No such changes shall be considered approved by the Architect unless agreed to in writing by the Architect. The Architect may bill the Owner for time spent on such items as above.
- 5) It is understood by the Owner that additions to or deletions of equipment or parts of the vessel as designed by the Architect will affect the handling characteristics of the completed vessel. Any such additions or deletions by the Owner or Builder are at the sole risk of the Owner, and the Architect will not be responsible for the results thereof.
- 6) The Architect shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. This time allocation is to be in keeping with any time constraints or commitments outlined in **Schedule C: Current Work List**.

GUARANTEE – A yacht compares in complexity with a car or airplane which may be the result of many hundreds of thousands of hours of design and engineering development. This contrasts with the few hundreds of hours which the Architect and his Client can afford for the designing and engineering of a new yacht. In place of exhaustive scientific and engineering research, we must sometimes depend upon past experience, rule-of-thumb calculation, and even a degree of intuition. Naturally we use our best efforts in each new design calling heavily on our years of experience designing successful vessels. Because of these complexities, however, we are simply not in a position to be able to warrant or guarantee that a new yacht will be entirely free of defects, whether caused by our error or omission, or that of the Builder.

For example, it is difficult to predict with complete accuracy the weights incorporated in a new yacht, and to visualize in three dimensions all of the spaces in a new design or the integration of a complex mechanical or electrical system. In deciding to construct a new yacht, therefore, the Owner must be prepared for the possibility that some changes may be required as work progresses or even after the yacht is completed.

Thus, the Architect is not a guarantor with respect to the results of his design. However, the Architect does commit to perform his duties in accord with the appropriate standard of care.

INSURANCE – Many years ago it was practical for an architect to carry "errors and omissions" insurance to protect themselves against claims arising out of potential defects in yachts constructed to their designs.

Today, however, even though our record in this regard has been excellent, the cost for coverage (if available at all) is so high that having coverage is no longer feasible. As a result it is now our policy (as with most other architects) to accept a design commission only if the client agrees to: 1) Accept the risk of all defects in the yacht whether caused by the Architect's error or omission or that of the Builder. 2) Bear the cost of "errors and omissions" insurance covering our work in connection with the yacht in question.

As a result, we must expect that the client is willing to agree to release Benford Design Group and its officers, employees, and subcontractors from any and all liability, suits or causes of action arising out of, or relating to the yacht being designed.

LEGAL ACTION – Unless otherwise specified, the Design Contract shall be governed by the law of the principal place of business of the Architect. Regarding all acts or failures to act by either party, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the completion of the construction documents by the Architect.

The Architect and Owner agree that should legal action be pursued by either party, that the winning party shall be entitled to reasonable attorney's fees, in addition to other damages.

LIABILITY – The Architect states and the Owner acknowledges that the Architect has no Professional Liability (Errors and Omissions) Insurance and is unable to reasonably obtain such insurance for claims arising out of the performance of or the failure to perform professional services, including but not limited to the preparation of reports, designs, drawings and specifications related to the design of this vessel. Accordingly, the Owner hereby agrees to bring no claim for negligence, breach of contract, or other cause of action, indemnity or otherwise against the Architect, his principals, employees, agents, sub-contractors and consultants if any claim in any way is related to the Architect's services for the design of this vessel.

The Owner further agrees to defend, indemnify and hold the Architect and his principals, employees, agents, sub-contractors and consultants harmless from any such claims that may be brought by third parties as a result of the services provided by the Architect for the Owner.

The Owner and the Architect waive all rights against each other and against the Builder, consultants, agents and employees of the other for damages covered by any liability insurance during construction. The Owner and the Architect shall require appropriate similar waivers from their Builder's consultants and agents.

OWNERSHIP OF PLANS – Unless otherwise agreed to by the Benford Design Group in writing the Owner is authorized to build only one vessel from the design contracted. Drawings and Specifications as instruments of service are owned by and shall remain the property of the Architect whether the Project for which they are made is executed or not. The design itself remains the exclusive property of the Benford Design Group. The Benford Design Group has the sole right to authorize subsequent use of such plans. The Owner, however, is entitled to receive complete sets of the plans developed for him.

The Owner shall be permitted to retain copies of Plans and Specifications for information and reference in

connection with the Owner's use for maintenance, repair and operation of the completed vessel. Upon completion of the vessel all Plans and Specifications used by the Builder during construction shall be returned to the Architect.

(See section on **Sisterships** for information about reuse of plans and design fees due.)

PAYMENTS TO THE ARCHITECT – Payments for basic services, additional services, and reimbursable expenses shall be made promptly upon presentation of the Architect's statement of services rendered or expenses incurred.

Failure of the Owner to promptly pay the Architect the fees outlined in the design contract will be construed a breach of contract. In such case, the Architect has the option to continue work, suspend services until payment is rendered, or terminate the Project.

If the fees due the Architect are not paid within the time constraints permitted under the terms of the design contract, the Architect shall charge the maximum legal interest rate on all such sums from the due date until paid. If the Architect must engage a collector or an attorney to collect the fees due, the Owner shall pay reasonable collector's and/or attorney's fees whether or not legal action is instituted, and all of the Architect's collection expenses, including court costs if legal action is commenced.

If the scope of the Project or of the Architect's services is changed substantially the amounts of compensation shall be equitably adjusted.

PUBLICITY AND MARKETING – The Owner agrees that the name of the Architect shall appear in all articles, information, advertisements, and brochures prepared by the Owner unless otherwise requested by the Architect. Architectural drawings appearing in such documents are to originate from the Architect or are to be approved by the Architect in writing. The Architect maintains the right to use any test data, drawings, specifications, photographs etc. of the vessel for publicity, including advertising brochures, magazine articles, etc. The Owner's name, however, may not be used by the Architect in such publicity without the Owner's express consent.

REIMBURSABLE EXPENSES – Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the Architect and the Architect's employees and consultants in the interest of the Project for the following expenses:

- A) Expenses of transportation in connection with the Project (Airline tickets of over \$200 will be prepaid by the Owner), living expenses in connection with out-of-town travel, and long distance telephone, fax and electronic communications.

- B) Expenses of prints, reproductions, postage, small package delivery service fees and handling of drawings, specifications and other documents, excluding reproductions for the office use of the Architect and the Architect's Consultants.

- C) Expenses of data processing, photographic reproduction techniques, and photographic prints.
- D) Expenses of renderings, artwork, models and mock-ups, tank testing fees and expenses.
- E) Expenses of overtime work requiring higher than regular rates, if authorized in advance by the Owner.
- F) Expenses of any additional insurance coverage or limits, including professional liability (errors and omissions) insurance, if requested by the Owner.

Compensation for reimbursable expenses as described herein shall be computed as a multiple of one point two (1.2) times the amounts expended by the Architect and the Architect's employees and consultants in the interest of the Project.

SERVICES – In addition to preparing preliminary plans, bidding or contract plans, and building plans, Benford Design Group may be contracted separately to perform the following functions:

- A) Recommendation of bidders, circulation of requests for bids, analysis of returns, assistance of a non-legal nature to the Client or Builder, or their attorneys, in the preparation of the building contract.
- B) Checking of Builder's detailed building plans, consultations with builder, preparation of addenda to specifications to embody changes approved by the Client and Builder under provisions of the construction contract, consultation on requests for extras or credits.
- C) Inspection visits to the Builder's yard can be made by the Architect to observe the progress and quality of the work being performed and to note if it is proceeding in general accordance with the plans and specifications. On such visits we often check specific items and take measurements on a sampling basis. In doing so we try to determine if defects or variation from the plans or specifications exist. We do not however supervise construction.
- D) In performing such inspection visits we do not accept financial responsibility either for the cost of correcting any defect or variation from the plans or for any consequential damages caused thereby. Because we inspect only at stages of work and because of the limitations of time and of the measuring and testing facilities available to us, it is not possible for us to determine that the plans and specifications have been followed in every particular, or that details of construction and arrangement are perfect. Consequently we must rely on the Builder (and expect the Owner to rely on the Builder) to see to it that such details are properly taken care of, that the plans and specifications are followed and that defects, where they occur, are corrected.

SISTERSHIPS – The design may be licensed for serial production, by notation in the Design Contract. For this permission, the Architect will be paid a design royalty for each vessel as specified in the Design Contract. Exclusive production rights require the guarantee of a certain minimum number of royalty payments per year for the exclusivity to be in effect.

SUCCESSORS AND ASSIGNS – The Owner and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants to the Design Contract. Neither the Owner nor the Architect shall assign, sublet or transfer any interest in this Design Contract without the written consent of the other.

SUSPENSION OF PROJECT – If payments due the Architect by the Owner are not made in a timely manner in accordance with the terms of the Design Contract the Architect may at his option choose to suspend all work on the project until such payment is made. The Architect cannot be held responsible for any delays or other consequences that arise out of suspension of work resulting from either non-payment of fees by the Owner, or suspension of work requested by the Owner.

TANK TESTS – Tank tests will be arranged by the Architect at the request of the Owner. The cost of these tests is billed on a time and material basis and may be expected to include tank costs, model costs, and design and analysis costs. Clients are expected to provide advance deposits to cover estimated tank billings. Tank test results, including all data and reports and the models themselves are to be considered the Architect's property and for their exclusive use.

SCHEDULE C: CURRENT WORK LIST

Latest revision: (Insert date here)

Hull No.	Type	Scope of Project (Add list of current projects here.)
-----------------	-------------	--