

# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« » \_\_\_\_\_, located at \_\_\_\_\_.  
« »

THE OWNER:

(Name, legal status and address)

William Marsh Rice University, a Texas non-profit corporation  
Facilities Engineering and Planning  
6100 Main Street - MS-312  
Houston, Texas 77005  
Attention: \_\_\_\_\_ « »  
« »

THE ARCHITECT:

(Name, legal status and address)

« » [To be inserted] « »  
« »

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For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of (i) the Agreement; (ii) these Conditions of the Contract for Construction, including the Exhibits hereto; (iii) the Drawings and Specifications, (iv) any Addenda issued after the execution of the Contract, (v) other documents listed in the Agreement, or referred to herein; and (vi) any Change Orders hereafter executed by Owner and Contractor. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 THE SITE

The term "site" means the land upon which the Project is or will be located, together with such area adjacent thereto as shall reasonably be considered a part thereof.

#### § 1.1.9 UNIVERSITY

The term "University" means William Marsh Rice University.

#### § 1.1.10 THE CAMPUS

The term "Campus" means (1) all land and improvements contained within the main campus of the University in Houston, Texas, bounded generally by Main, University, Greenbriar, Rice and Sunset and (2) any other land and/or improvements wherein or whereon any activity sponsored by the University is held or conducted.

### § 1.1.11 PROVIDE

Unless otherwise indicated, the term "provide" shall include furnishing and installing a product, materials, systems and/or equipment complete and in place, fully tested and approved.

### § 1.1.12 APPROVED

The term "approved" or "approval" shall mean approved or approval in writing, unless otherwise indicated.

## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 It is intended that the Contract Documents shall include all items necessary for the proper execution and completion of the Work by the Contractor. All Work shown in, described in or reasonably inferable from the Contract Documents to produce the indicated results shall be performed by the Contractor so that the Owner can occupy or utilize the Work for its intended use. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In the event of a conflict or inconsistency in or among the Contract Documents, or between the Contract Documents and any applicable laws, statutes, ordinances, regulations or codes in effect at the time the Contract Sum is bid or negotiated, the provision most favorable to the Owner shall control, and the Contractor shall, unless otherwise directed in writing by the Owner, perform to the extent reasonably inferable from the Contract Documents, as a whole, as being necessary or desirable to provide the indicated results and to provide the greatest quantity, highest quality, highest degree of safety, most stringent material, equipment or Work and must complete execution of the Architect's design intent as evidenced by the Contract Documents.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 All indications or notations which apply to one or a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.2.5 Codes, standards and published requirements or recommendations cited in the Contract Documents shall be current versions as of the date on which general bids were received, unless otherwise indicated.

§ 1.2.6 Work for which no explicit quality or standards of materials and/or workmanship is defined in the Contract Documents shall be of good quality for the intended use, and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 1.2.7 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturers' written instructions, unless specifically indicated otherwise in the Contract Documents.

§ 1.2.8 The Drawings are generally made to scale, but all working dimensions shall be taken from the figured dimensions, or by actual measurements taken at the job, and not be scaling the Drawings. Whether or not an error is believed to exist, deviation from the Drawings and the dimensions given thereon shall be made only after approval in writing from the Architect and Owner.

§ 1.2.9 Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or work, unless otherwise specified.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 Notwithstanding anything in Section 1.1.7 hereof to the contrary, the Owner shall be deemed the sole and exclusive owner of all common law, statutory and other reserved rights, including copyrights, in the Drawings, Specifications, Shop Drawings, Product Data and Samples (as defined in Section 3.12.1 below) and other documents and submittals, including those in electronic form, prepared by the Architect, the Contractor or any other providers of service for the Project (collectively, the “Documents”), whether or not the same constitute Instruments of Service. In the event of the termination of this Agreement, the Owner shall have the right to use the Documents for completion of the Project by Owner and for the purpose of making future additions and renovations to the Project (but not for the purpose of constructing a new, unrelated Project). The Contractor, the Architect and any other provider of services shall provide all necessary documentation to transfer ownership of the Documents to Owner and agree upon request of Owner to join in the execution of any additional documentation deemed necessary by Owner to vest in Owner all such rights, including the rights and privileges of a copyright holder. In addition, the Contractor, the Architect and any other provider of services shall transfer to Owner all right, title and interest in and to any visual art used on the Project, and the Contractor, the Architect and any other provider of services waive any artist’s rights of attribution and integrity in the work of any visual art relating to the Project and agree that Owner may remove any work of visual art from the Project, even if such work of visual art is destroyed, distorted, mutilated, or otherwise modified by such removal. Without limiting any of the foregoing, the Owner shall have the right to freely photograph or videograph all or any part of the Project and to use likenesses of the Project in any way, including iconography and other building emblems, and derivative works thereof. The Owner recognizes and acknowledges that the Contractor, the Architect and the other providers of services have developed and will continue to develop their own style and vocabulary and that this Section 1.5.1 shall under no circumstances be construed to limit such development of the Contractor, the Architect or any other provider of services’ creative and artistic integrity or growth and use of said style and vocabulary. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service or other Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner’s reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service or other Documents provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service or other Documents. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service or other Documents on other projects without the specific written consent of the Owner.

### § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail or by courier. Notwithstanding the foregoing, any notice to the Owner shall not be effective unless the original or a copy thereof is delivered or mailed in compliance with the requirements of the preceding sentence to the Owner at the Owner's address set forth on Page 1 of the Agreement. Addresses for notices may be changed by any party hereto upon proper notice thereof to the other party.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

Owner may establish protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form, which shall be complied with by the parties. If Owner does not establish protocols,

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the parties may elect to use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative to represent the Owner with respect to all matters requiring the Owner's approval or authorization. The Architect does not have authority to bind the Owner.

§ 2.1.2 The Owner shall furnish to the Contractor, promptly after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. If requested by the Owner, the Contractor shall assist the Owner in filing an Affidavit of Commencement and/or an Affidavit of Completion for the Project in accordance with applicable requirements so as to afford the Owner additional protection against lien claims. The Contractor shall furnish the Owner with a copy of all notices received from Subcontractors or suppliers in response to any Affidavit of Commencement or Affidavit of Completion.

### § 2.2 Confidential Information

Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Architect is the person lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner may employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall make available any existing surveys describing the site of the Project, and, if necessary, a legal description of the site. The Contractor shall be entitled to rely on the accuracy thereof, except to the extent that the Contractor has knowledge to the contrary.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.



§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case the cost of correcting such deficiencies shall be deducted from payments then or thereafter due the Contractor, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure, and an appropriate Change Order shall be executed by the parties. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative and shall include anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable.

§ 3.1.2 The Contractor shall use its best skill and effort in performing the Work and shall perform the Work in a good and workmanlike manner and in accordance with the Contract Documents and applicable industry standards. The Contractor represents that it has the necessary knowledge, experience, abilities, skills and resources to perform the Work.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor represents to the Owner that the Contractor has investigated the site and has fully reviewed all of the Contract Documents and that based on such investigation and review, the Contractor has determined that the Contractor can complete the Work for the Contract Sum within the Contract Time. The Contractor further represents that it has made its own determination regarding the suitability of the site for the Work to be performed by the Contractor under the Contract Documents and that it accepts the site in its existing "AS IS," "WHERE IS" condition and "WITH ANY AND ALL FAULTS," without representation or warranty by Owner of any kind, express or implied, as to the site's suitability, compliance with applicable laws or fitness for any particular purpose.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are both for the purpose of facilitating coordination and construction by the Contractor and for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. Any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect

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may require; provided, however, except as otherwise provided in Section 3.2.3 below, responsibility for any such errors, omissions or inconsistencies shall remain with the Architect.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor, without written notice thereof to the Architect and Owner, performs any Work with knowledge that such Work violates any applicable law, statute, ordinance, building code, rule or regulation or that there is an error, inconsistency or omission in the Contract Documents, or if the Contractor, in the exercise of its professional judgment, should have known of such violation, error, inconsistency or omission, the Contractor shall be responsible for the performance thereof and for the full cost of correcting the same.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15.

**§ 3.2.5** If the Contract Documents fail to describe the particular material, supplies, equipment or other item to be used or installed with respect to any portion of the Work, it shall be the duty of the Contractor to inquire of the Owner and Architect as to the material, supplies, equipment or other item to be used or installed, all of which shall be of the highest quality unless otherwise specifically required by the Contract Documents.

**§ 3.2.6** The Contractor shall be responsible for ascertaining the correct dimensions of all Work to be performed by Contractor in compliance with the provisions of Section 1.2.8.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. Notwithstanding the foregoing, if the Contractor determines that such means, methods, techniques, sequences or procedures specifically required under the Contract Documents may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Owner and Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Contractor shall not proceed with such portion of the Work without further written instructions from the Owner.

**§ 3.3.1.1** The Contractor shall review any specified construction or installation procedures provided for in the Contract Documents or recommended by the manufacturers of any materials or equipment specified to be used in the Work prior to the performance or installation thereof, and advise the Architect and Owner in writing if any of the following conditions exist:

- .1 if any specified procedure deviates from good construction practice;
- .2 if compliance with any specified procedure will be inconsistent with any manufacturer's recommendations or will adversely affect any warranties, including the Contractor's warranties contained in any of the Contract Documents; or
- .3 if the Contractor wishes to propose any alternative procedure to any specified procedure.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** The Contractor shall observe the following rules in connection with the installation of cable in any of the tunnels on the Campus:

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- .1 the Contractor shall not enter any tunnel, even when Contractor is working in collaboration with Owner's personnel, without, in each instance, first obtaining written permission from an employee of Owner's Central Plant (the "Central Plant Representative"), to be designated by Owner to Contractor upon request from Contractor;
- .2 the Contractor shall place barricades around any manhole opened for access to a tunnel, adequate to give notice of the danger thereof;
- .3 the Contractor and any Subcontractor shall install cable in a tunnel only at such locations and using such materials and methods of installation as may be specifically authorized by the Central Plant Representative. Any cable installed without such authorization, or in violation thereof, shall be removed and replaced by the Contractor without any additional cost to the Owner;
- .4 the Contractor shall remove and properly dispose of all scrap material (including cable tie clippings, wire clippings, etc.) resulting from or arising out of any cable installation;
- .5 the Contractor shall tag each cable installed in a tunnel by the Contractor or any of its Subcontractors with permanent markers containing the following information in the following format (fully completed):  
DATE:  
TO:  
FROM:  
CABLE IDENTIFICATION: (PURPOSE AND CABLE NO.)  
Tags or markers shall be installed at each end of any such cable and at intervals thereon of not less than one tag per each 100 feet of cable;
- .6 cable shall not be installed in cable trays or attached to stainless steel messenger wires without the prior written permission of the Central Plant Representative;
- .7 cable shall not be attached to existing electrical boxes or to conduits or steam lines; and
- .8 where circumstances permit, cables shall be installed in chilled water pipe rack supports, subject in each instance to written authorization thereof by the Central Plant Representative.

**§ 3.3.5** The relationship of the Owner and the Contractor shall be solely that of an independent contractor. The Contract Documents and any performance by the Contractor thereunder are not intended to create, and shall not be interpreted as creating, a partnership, joint venture or other association or any relationship of agency or employment between the Owner and the Contractor, and nothing herein or therein shall make the Contractor the agent, servant or employee of the Owner. The Owner and the Contractor shall remain separate and distinct legal entities, and the Owner does not hereby assume any legal, financial, regulatory or other responsibility, liability, and representatives of the Contractor, whether pursuant to the Contract, any of the other Contract Documents or otherwise. The Owner and Contractor shall retain full and exclusive authority to supervise, direct and control their respective businesses and other affairs, including, but not limited to, the supervision, direction and control of their respective employees and representatives; provided however, such employees and representatives must comply with all applicable policies, procedures, rules and regulations of the Owner. The activities of the Owner shall not be construed in any way as the exercise of supervision, direction or control over the employees or representatives of the Contractor, and the Owner shall not have any liability whatsoever, direct or indirect, in connection with any of the activities or conduct of any of the employees or representatives of the Contractor, whether pursuant to the Contract, any of the other Contract Documents or otherwise. Any direction or instruction by the Owner with respect to the Work shall relate to the results desired to be obtained by the Owner and shall not in any way affect the Contractor's status as an independent contractor.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary or incidental for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order. If, after the Contract Documents are executed, it becomes necessary for the Contractor to substitute a material or product of a different brand or manufacturer in lieu of that specified in the Contract Documents, the Contractor shall submit a written request to the Architect and Owner for approval of the proposed substitution. Each request for a substitution shall state any change to the Contract Sum to result therefrom and be accompanied by complete descriptive literature and performance data concerning both the item to be

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substituted and the proposed substitution, plus such samples as may be required by the Architect or the Owner. Any request by the Contractor for a substitution shall be submitted by the Contractor to the Architect and the Owner as soon as practicable after the need for the substitution is determined to allow for adequate consideration of such request by the Architect and the Owner and to minimize any delay in the progress of the Work. The Owner may, in its sole discretion, substitute any material or product in lieu of that specified in the Contract Documents; provided, however, in the event the substitution results in any net increase in the Contract Sum, the Owner and the Contractor shall execute a Change Order with respect thereto.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall use its best efforts to avoid creating any labor-related Work delays or disputes.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be of good quality and new, free from defects and faults and that the Work will conform to the requirements of the Contract Documents. Work, materials, or equipment not conforming to the requirements set forth in the immediately preceding sentence will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage, in each instance after acceptance by Owner. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used in the Work. The warranty provided for in this Section 3.5 shall be in addition to, and not in limitation of, any other warranty or remedy required or permitted by law or any of the Contract Documents, and such warranty shall be interpreted to require the Contractor to replace any defective materials and equipment and to re-execute any faulty Work or Work that is not in compliance with the Contract Documents that is disclosed to the Contractor within a period of one (1) year (or longer if otherwise specifically provided in the Contract Documents) after Substantial Completion of the Work. If the Owner discovers or determines, at any time prior to the expiration of the applicable warranty period, that any such fault or defect exists, the Contractor shall promptly correct such fault or defect at its sole expense, and such correction shall be warranted for an additional warranty period of one (1) year from the date of such correction. The Contractor's obligations under this Section 3.5 shall also extend to Work performed by any Subcontractor, except to the extent that any such warranties extend for a longer period of time, in which event Contractor's obligations shall also continue in effect for such longer period of time. Contractor shall assign such extended warranties directly to Owner.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor acknowledges that the Owner, as a tax-exempt entity, is generally not required to pay sales tax or ad valorem taxes on its property and is not subject to local, state or federal taxes on its income. The Contractor shall perform the Work, including procuring and storing any related materials and equipment, in such manner so as to avoid creating any such tax liability for Owner and shall indemnify, hold harmless and defend the owner, its trustees, governors, officers, directors, employees, representatives, affiliates and agents, for, from and against any and all suits, actions, proceedings, claims, demands, damages, losses, liabilities, costs and expenses (including, but not limited to court costs and attorney's fees), arising directly or indirectly, in connection with any adverse tax consequences resulting from the Contractor's performance of the Work.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work and the use and occupancy of the Project by Owner, including permits for any mechanical apparatus, such as elevators, boilers, air compressors, etc., which may be required by law to be obtained in order to permit full use and occupancy of the Project by Owner.

§ 3.7.2 The Contractor shall timely comply with and give and post notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work that the Contractor knows or reasonably should have known to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### § 3.7.4 Concealed or Unknown Conditions

If, in the performance of the Work, the Contractor encounters concealed or unknown conditions below the surface of the ground or in an existing structure at variance with the conditions indicated in the Contract Documents, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents and any such concealed or unknown conditions are such that the Contractor's cost of, or time required for, performance of any part of the Work would be materially increased, the Contractor shall immediately notify the Owner and the Architect of such condition and shall take no further action that would increase the Contract Sum or the Contract Time until such cost or time increase has been approved by written Change Order signed by the Owner and the Contractor. If the Contractor proceeds without such Change Order, any additional costs or delays in the completion of the Work incurred as the result of any such concealed or unknown condition shall be the responsibility of the Contractor.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall promptly notify the Owner and Architect of the condition in writing. Work in the affected area shall not thereafter be resumed except by written agreement executed by the Owner and the Contractor.

#### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

#### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent satisfactory to the Owner who shall be in attendance at the Project site at all times during performance of the Work. Prior to the commencement of any Work at the site, the Contractor shall (1) obtain the Owner's written approval of the superintendent (such approval not to be unreasonably withheld) and (2) furnish the Owner with a 24-hour emergency telephone number for the superintendent. A superintendent approved by the Owner shall not be reassigned or otherwise replaced by the Contractor without the Owner's prior written approval thereof. The superintendent shall represent the Contractor, and shall be authorized to act on behalf of the Contractor with respect to the Work and the Contract Documents. Communications given by the Owner or Architect to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner may notify the Contractor, stating whether the Owner (1) has approved the proposed superintendent or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made timely objection. The Contractor shall not change the superintendent without the Owner's written consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information and review a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including, without limitation, (1) "milestone" dates for the starting and completion of the various stages of the Work; (2) the dates for completion of shop drawings and submittals; (3) the dates for any proposed utility outages or tie-ins, parking lot or road obstructions, or any other proposed interferences to the normal operation and uses of the Campus; (4) delivery dates for materials and equipment relative to the Work; and (5) other critical timing factors. The construction schedule shall be coordinated with the Owner's academic calendars, to the extent applicable, and shall not thereafter be extended by the Contractor without the written acceptance of such extension by the Owner. The Contractor shall be responsible and liable for any and all costs caused by delays in the construction schedule resulting from improperly timed activities or Work not performed in accordance with the requirements of the Contract Documents, which costs shall not be included in the Cost of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's and the Owner's approval. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide a submittal in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on a failure to receive timely approval of the submittal, and shall be responsible and liable for any and all costs resulting to the Owner as a result thereof.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The Contractor shall prepare and submit to the Owner and Architect weekly (or at such other frequency as may be approved by the Owner), a summary report in a form and in sufficient detail and content as may be approved by the Owner, including a statement concerning whether the performance of the Work is on schedule and, if not, the reasons therefor. If the performance of the Work is not in compliance with the most recent schedule previously furnished by the Contractor, the weekly report shall include the Contractor's plan for completing the Work within the Contract Time.

§ 3.10.5 The Contractor shall hold progress meetings weekly (or at such other frequency as may be approved by the Owner), at the site with representatives of the Owner, Architect and such other parties as the Owner may request. At such meetings, the Contractor shall report in detail on the progress of the Work and the relationship thereof to the construction schedule.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, and other Modifications (the "Record Drawings"), in good order and marked currently by the Contractor and each Subcontractor to indicate field changes and selections made during construction, and one record copy of the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect upon completion of the Work as a record of the Work as constructed. At the date of final completion, as a condition precedent to final payment, the Contractor shall furnish to the Architect, for delivery to the Owner, the Record Drawings showing the field changes and selections (all of which changes and selections are subject to approval in advance by the Owner) and indicating the Work as actually installed, in electronic format, satisfying the requirements of, to the extent reasonably practical, the Contracted Information Exchanges attached as an Attachment to the Agreement, or, if not reasonably practical, the requirements of the CAD Drawings Guidelines referred to therein, a copy of which is attached as an Attachment to the Agreement (it being the Owner's preference that the Architect uses the Contracted Information Exchanges).



### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work and shall be subject to the provisions of Section 1.5.1 above.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals; provided, however, Shop Drawings, Product Data, Samples and similar submittals shall be prepared with the same technical thoroughness as if such Shop Drawings, Product Data, samples and similar submittals had been a part of the Contract Documents. Review by the Architect and the Owner is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect and Owner are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect or the Owner without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect and the Owner, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect and the Owner, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has reviewed, approved and verified all dimensions, quantities, field conditions, relations to existing Work, coordination with Work to be installed later, coordination with information on Shop Drawings, Product Data, Samples, or similar submittals previously approved by the Architect and Owner or submitted by the Contractor for approval but not yet acted upon by Architect and Owner, and verification of compliance with all the requirements of the Contract Drawings. The accuracy of all such information is the responsibility of the Contractor. In approving Shop Drawings, Product Data, samples, and similar submittals, the Architect and Owner shall be entitled to rely upon the Contractor's representation that such information is accurate and in compliance with the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect and Owner. The Contractor shall submit any such Shop Drawings, Product Data, Samples or other similar submittals to the Owner and Architect for approval prior to the construction thereof in a timely and orderly sequence so as to allow for adequate review thereof by the Owner and the Architect and to avoid any delay in the progress of the Work.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's and the Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect and the Owner of such deviation at the time of submittal and (1) the Architect and the Owner have given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's or the Owner's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those required by the Architect or the Owner on previous submittals. In the absence of such notice, the Architect's or Owner's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 If any equipment or systems are installed by Contractor or any Subcontractor in connection with the Work, the Contractor shall provide the Owner with (1) four (4) sets of any operation and/or maintenance manuals for such equipment or systems and any related manufacturer's warranties and (2) sufficient orientation and training sessions to familiarize the appropriate personnel of the Owner with such equipment or systems. The Owner shall be entitled to withhold final payment until the Contractor has provided such manuals, warranties or sessions.

§ 3.12.10.1 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The right of possession of the site, including the Project and all improvements thereon by the Contractor, shall remain at all times with the Owner.

§ 3.13.1 The Contractor shall perform the Work in such a manner as to cause minimum interference with or disruption of the Owner's operations and activities on the Campus and of other contractors performing work or services thereon. The Contractor shall take, and shall cause every Subcontractor to take, all necessary precautions (including those required by the Owner's safety regulations) to protect existing improvements and facilities on the Campus, including, but not limited to, all existing landscaping, buildings and equipment and all persons (including pedestrians, building occupants and guests) and property thereon, and shall reimburse the Owner, upon demand, for any costs, expenses, charges or fees relating to the replacement or repair of any loss or damage to the property of Owner caused by the Contractor or any Subcontractor.

§ 3.13.2 For security and energy conservation reasons, the Owner has a "closed door" policy, requiring that all doors and windows at the site be closed completely and not allowed to be propped open. The Owner expressly reserves the right to fine the Contractor Two Hundred and No/100 Dollars (\$200.00) for each violation of such policy committed by the Contractor or any Subcontractor, which amount may be deducted from those portions of the Contract Sum next becoming due to the Contractor. If the Contractor or any Subcontractor has a specific need to prop open any doors or windows in connection with the Work, the Contractor must obtain the Owner's prior approval thereof.

§ 3.13.3 Contractor acknowledges that limited space is available on the Campus for the parking of construction vehicles. Space on or about the site or otherwise on the Campus shall be used by the Contractor, any Subcontractor, any of their respective employees or others in their control only for the parking of vehicles actually needed during the construction process (which, typically, shall not exceed one vehicle at any particular time) and any such vehicles shall be parked only in areas designated and approved in advance by the Owner. All other vehicles belonging to the Contractor, any Subcontractors or any of their respective employees or others in their control, including, but not limited to, vehicles used by any of them for traveling to and from work, shall be parked only in the area designated and approved by the Owner. The Contractor shall be responsible and liable for ensuring that the owners of all vehicles utilized by the Contractor, any Subcontractors, any of their respective employees or others in their control, which are parked on the Campus at any time during the performance of the Work, regardless of location or duration, have obtained property parking permits in advance. Any parking fees, tickets, fines or other charges incurred or levied as the result of the parking of any vehicle in violation of this Section 3.13.3 shall be the responsibility and liability of Contractor.

§ 3.13.4 Under no circumstances shall the Contractor, any Subcontractor or any of their respective employees take any action (including, but not limited to, opening and closing valves or switches, tripping breakers, etc.) that might cause an interruption, regardless of the length thereof, of any utility service or other building service systems, including, without limitation, the gas, water, air conditioning and ventilating systems. If, during the course of the Work, it shall be necessary for reasons of safety, convenience or other reasons, to cause the interruption of any utility service or other building system service, Contractor shall timely notify Owner and make arrangements to schedule the required interruption of service so as to minimize any interference with or disruption of normal operations. The Contractor shall schedule such interruptions with Owner at least ten (10) working days in advance of the date of any such proposed interruption. The actual interruption and subsequent restoration of any such utility service or other building system service shall be performed only by maintenance employees of the Owner.

§ 3.13.5 The Contractor shall be permitted access to the site only between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, or at such other times as may be authorized by the Owner. If the Contractor desires access to the site other than during said authorized hours, the Contractor shall request permission therefor from the Owner at least twenty-four (24) hours in advance, which permission may be granted or denied in Owner's sole discretion.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. It shall be the responsibility of the Contractor to ensure that the Project site is inspected daily and that no debris or trash is permitted to remain thereon. The Contractor shall cause all trash and debris to be removed from the Project site daily at the Contractor's expense and not allowed to be disposed of in Owner's waste receptacles. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall indemnify, hold harmless and defend the Owner and its subsidiaries and their respective trustees, officers, directors, employees, representatives, agents and affiliates (collectively, the "Indemnified Parties") for, from and against any claims, demands, damages, suits, actions, proceedings, liabilities, costs, losses and expenses, including, but not limited to, court costs and reasonable attorneys' fees, arising, directly or indirectly as a result of any alleged infringement by Contractor or its Subcontractors of patent, copyright, trademark or other intellectual property rights in connection with the normal use of other normal disposition of any design, process or product furnished in connection with the Work; provided, however, the Contractor shall not be responsible for such loss or damage if a particular design, process or product of a particular manufacturer or manufacturers is specifically required by the Contract Documents and the Contractor gives prompt written notice to the Owner prior to incorporating the same in the Work that the use of such design, process or product will result in an infringement of a copyright, patent, trademark or other intellectual property right.

### § 3.18 Indemnification

§ 3.18.1(a) **TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR (1) SHALL BE SOLELY RESPONSIBLE AND LIABLE TO THE INDEMNIFIED PARTIES (AS DEFINED IN SECTION 3.17 ABOVE) FOR THE ACTS AND OMISSIONS OF THE CONTRACTOR, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS AND AFFILIATES, AND (2) SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS THE OWNER AND THE OTHER INDEMNIFIED PARTIES FROM AND AGAINST ALL DEMANDS, CLAIMS, DAMAGES, SUITS, ACTIONS, PROCEEDINGS, LIABILITIES, COSTS, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE ATTORNEYS' FEES, TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, AS A RESULT OF THE ACTS OR OMISSIONS OF THE CONTRACTOR, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS OR AFFILIATES, FROM ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, BODILY**



**INJURY, SICKNESS, DISEASE OR DEATH, OR LOSS OR DAMAGE TO PROPERTY), WHETHER FORESEEN OR UNFORESEEN.**

- (b) Notwithstanding the foregoing provisions of Section 3.18(a), with respect to each Indemnified Party individually (but without affecting Contractor's obligations under Section 3.18(a) to other Indemnified Parties), the Contractor shall not be required to indemnify, defend, protect or hold harmless such Indemnified Party only to the extent that such Claims (x) are caused by (1) the negligence or fault, or breach or violation of a statute, ordinance, governmental regulation, standard or rule, by such Indemnified Party, its agents, employees or any third party under the control or supervision of such Indemnified Party (which does not include any design professionals, any structural, mechanical, electrical, plumbing, civil and other engineers or any contractors or other consultants engaged by the Owner or any lender in connection with the Project) or (2) as to Owner, a breach of this Agreement by Owner and (y) not covered by the provisions of subparagraph (c) below.
- (c) NOTWITHSTANDING ANY LIMITATION ON INDEMNITY OBLIGATIONS IN SECTION 3.18(b) ABOVE, CONTRACTOR AGREES TO ASSUME THE ENTIRE LIABILITY FOR, AND INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS ALL OF THE INDEMNIFIED PARTIES FROM, ALL CLAIMS FOR PERSONAL INJURY OR DEATH SUFFERED BY CONTRACTOR'S OWN EMPLOYEES AND BY THE EMPLOYEES OF ANY SUBCONTRACTORS OR SUB-SUBCONTRACTORS, WHETHER DUE IN PART TO THE INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF ANY OF THE INDEMNIFIED PARTIES OR OTHERS, AND WHETHER ANY OF THE INDEMNIFIED PARTIES OR OTHERS HAS STRICT LIABILITY THEREFOR; AND WAIVES ANY LIMITATION OF LIABILITY DEFENSE BASED UPON THE WORKER'S COMPENSATION ACT, COURT INTERPRETATIONS OF SAID ACT OR OTHERWISE.
- (d) The Contractor's obligations under this section to provide a defense shall be with attorneys approved by the Owner. All of the Contractor's obligations under this section shall survive the termination or other expiration of the Contract Documents, provided that this section shall not serve independently to extend the statute of limitations applicable to the underlying cause of action for which the duty is sought.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.19 COMPLIANCE WITH LAWS**

**§ 3.19.1** The Contractor shall comply with all applicable laws, statutes, ordinances, building codes and other governmental rules and regulations in the performance of the Contract and any of the other Contract Documents.

**ARTICLE 4 ARCHITECT**

**§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect.

**§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and in accordance with the agreement between the Owner and the Architect and will be an Owner's consultant and representative on a non-exclusive basis (with the Owner retaining final decision making authority) during construction until final payment is due. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become familiar with and to observe and keep the Owner informed about the progress and quality of the portion of the Work completed, to guard the Owner against defects and deficiencies in the Work, and to determine if the Work observed is being performed in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

#### § 4.2.4 Communications

Any direct communication between the Owner and the Contractor that affects the performance or administration of the Contract or any of the other Contract Documents shall be made or confirmed in writing, with a copy thereof to the Architect. Any such communication that represents a modification of, or an amendment to the requirements of the Contract Documents shall also be documented as otherwise required under the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts after consultation with, and approved by the Owner.

§ 4.2.6 The Architect will reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, for the purpose of checking for conformance with information given in the Contract Documents and the intent of the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect and the Owner. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details not within the scope of the submittal, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The foregoing shall not limit the Architect's responsibility to the Owner. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders, which shall not become effective unless executed by the Owner and the Contractor.

§ 4.2.9 The Architect will conduct inspections to determine, subject to Owner's approval, the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment, for approval by the Owner, pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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§ 4.2.11 The Architect will make recommendations to the Owner on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 The recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such recommendations, the Architect will endeavor to secure faithful performance by the Contractor and will not be liable for recommendations rendered in good faith.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents; provided the Owner shall not be bound thereby. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. Notwithstanding anything in the Contract Documents to the contrary, a failure by the Architect to perform any of its duties or responsibilities under the Contract Documents shall not constitute a default by the Owner thereunder or relieve the Contractor from any of its duties or responsibilities under the Contract Documents.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor or with any Subcontractor of Sub-subcontractor of any tier to perform a portion of the Work at the site or that provides supplies, material or equipment for the Work or any portion thereof, and shall include anyone directly or indirectly employed by a Subcontractor and anyone for whose acts as a Subcontractor may be liable. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number. The term "Subcontractor" does not include a Separate Contractor of the Owner or the subcontractors of a Separate Contractor of the Owner.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or that provides supplies, material or equipment for the Work or any portion thereof, and shall include anyone directly or indirectly employed by a Sub-subcontractor and anyone for whose acts the Sub-subcontractor may be liable. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect or the Owner may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner or the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. If the Contractor desires to perform any portion of the Work itself, the Contractor must solicit and submit sealed bids for such portion of the Work to be opened by the Owner. Owner shall select the party to perform such portion of the Work after review of the sealed bids prior to any such portion of the Work being performed.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or

Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.4.1 With each request for approval by the Owner of a proposed Subcontractor, the Contractor shall furnish to the Owner the following:

1. The name of the proposed Subcontractor.
2. The request for bid submitted to the proposed Subcontractor.
3. An analysis of the proposed Subcontractor's bid as compared with the bids of other proposed Subcontractors.
4. The amount of any bond required to be obtained by the proposed Subcontractor.
5. The Contractor's recommendation with respect to the proposed Subcontractor.
6. Such other information with respect to the proposed Subcontractor as the Owner may reasonably request.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 Contractor shall be responsible and liable for ensuring that any portion of the Work to be performed by a Subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor, which shall include provisions requiring that such Subcontractor (1) perform the Work in accordance with the requirements of the Contract Documents, (2) waive all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils that would be covered by the property insurance required by the Contract Documents, and (3) agree to be bound by the Contract Documents, including, but not limited to, the indemnification provisions set forth in Section 3.17 and 3.18 above and the requirement that Subcontractor obtain and maintain the policies of insurance required under Article 11 below and furnish to the Owner the certificates and waivers referred to therein.

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner or its designee, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner or the Owner's designee accepts the assignment of a subcontract agreement, the Owner or such designee assumes the Contractor's rights under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

### § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and the Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 The Work, the Contract Time, the Contract Sum, or any other matter covered under the Contract Documents may be changed only by a written Change Order executed by Owner and Contractor prior to the performance of the Work or other occurrence giving rise thereto. The Owner may, in its sole discretion, order changes in the Work consisting of additions, deletions or modifications or the substitution of any material in lieu of that specified in the Contract Documents. The party desiring a change in the Work shall submit a request therefor to the other party and the Architect. The Contractor shall submit any request for a change as soon as practicable after determining the need for

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such change to allow for adequate consideration for such request by the Owner and the Architect and to minimize any delay in the progress of the Work that might result therefrom. Promptly after receipt of any such request, the Architect shall submit the same to the Contractor for an itemized quotation of any resulting changes in the Contract Sum, the Contract Time or any schedules previously furnished by the Contractor to the Owner. The submission of a request to the Contractor for a quotation with respect to a proposed change in the Work shall not constitute a directive to the Contractor to perform the proposed change.

§ 7.1.2 Intentionally deleted.

§ 7.1.3 Intentionally deleted.

§ 7.1.4 No change in the Work, whether by way of alteration, addition, the substitution of any material or otherwise, shall be the basis for an addition to the Contract Sum or a change in the Contract Time unless and until such alteration, addition or other change has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of this Article 7. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations, additions or other changes to the Work, and no claim that the Owner has been unjustly enriched by any such alteration, addition or other changes in the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or change in the Contract Time.

## § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum;
- .3 The extent of the adjustment, if any, in the Contract Time; and
- .4 The percentage of markup on the Change Order, if any.

§ 7.2.2 When the parties have reached agreement with respect to all the matters described in Section 7.2.1 above, the Architect shall prepare and submit the proposed Change Order to the Contractor and the Owner. After execution of a proposed Change Order by the Owner and the Contractor, the same shall thereafter constitute a part of the Contract Documents.

## § 7.3

§ 7.3.1 The Architect may interpret or explain the Drawings and Specifications and the intent thereof by issuing a written clarification statement, which statement may add details or supply additional information, but shall not alter the scope of the Work, the Contract Sum, or the Contract Time. If the Contractor believes that any such clarification constitutes a change to the Work, the Contract Sum, or the Contract Time, the Contractor shall immediately notify the Architect, and submit a request for a Change Order with respect thereto; provided, however, the Contractor shall not perform the change to Work covered by the request unless or until a written Change Order covering the same has been executed by the Owner and the Contractor.

§ 7.3.2 Intentionally deleted.

§ 7.3.3 Intentionally deleted.

§ 7.3.4 Intentionally deleted.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Intentionally deleted

§ 7.3.7 Intentionally deleted

§ 7.3.8 Intentionally deleted.

§ 7.3.9 Intentionally deleted.

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§ 7.3.10 Intentionally deleted.

## § 7.4 Intentionally deleted

## ARTICLE 8 TIME

### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date when (1) the progress of the Work has achieved the state of completion described in Section 9.8.1 below and (2) the progress of the Work has been certified by the Architect and approved by Owner as having achieved Substantial Completion.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work. By entering into the Contract Documents, the Contractor confirms that the schedule of the Work and other time limits specified in the Contract Documents are reasonable for the proper execution and completion of the Work.

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, it being agreed that time shall be of the essence in the performance by the Contractor of its agreements under the Contract Documents.

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is materially delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by Change Orders; (3) by unavoidable labor disputes, fire, unusual delay in deliveries, unavoidable casualties, unexpected abnormal adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control (other than inability to pay); or (4) by delay authorized by the Owner pending mediation and binding dispute resolution, then the Contract Time shall be extended for such reasonable time as the Architect, with the written consent of the Owner, may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 In the event that the Owner's performance under the Contract Documents is in any way prevented or delayed as a result of causes or conditions (other than inability to pay) beyond the Owner's reasonable control, the Owner shall be excused without liability with respect to such performance or nonperformance for the duration of such cause or condition.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial

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inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted in the proposed Change Order; provided, however, no increase in the Contract Sum shall occur unless the same is provided for in a Change Order satisfying the requirements of Section 7.2.1 above.

## § 9.2 Schedule of Values

Where the Contract is based on a Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect and the Owner, for their approval, before the first Application for Payment, and if necessitated by Change Orders, from time to time thereafter, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect and the Owner and certified by the Contractor as fairly representing the values so allocated. This schedule, upon approval by the Architect and the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

## § 9.3 Applications for Payment

§ 9.3.1 At the time established in the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Application for Payment shall be notarized and furnished in triplicate, shall be in the form of AIA Documents G702 (the "Application for Payment"), as amended, a copy of which is attached hereto as an Attachment to the Agreement, and where applicable, AIA Document G702A, (the "Continuation Statement") (or on such other forms as may be approved by the Owner) and accompanied by (i) a Conditional Waiver and Release on Progress Payment from the Contractor and from all Subcontractors and suppliers of material with respect to that portion of the Work to be paid for from funds requested under the Application for Payment or any prior Application for Payment, each in the form attached as an Attachment to the Agreement, and (ii) with the final Application for Payment, a Conditional Waiver and Release on Final Payment from the Contractor and from all Subcontractors and suppliers of material, each in the form attached as an Attachment to the Agreement, neither of which forms shall be amended or modified in any way except for completion of the blanks contained therein. The Contractor shall furnish a copy of each Application for Payment to the Owner concurrently with the submission thereof to the Architect. For purposes of this Section 9.3.1 only, the term "suppliers" shall not include vendors who only sell materials or rent equipment for use in connection with the Work, except vendors from whom the Contractor or any Subcontractor has purchased or will purchase materials or rent equipment having a total aggregate cost or rental in excess of \$2,500.00. The Architect shall not certify any payment based on an Application for Payment unless the same has been approved by the Owner. The submission by the Contractor to the Owner and the Architect of an Application for Payment shall constitute a representation by the Contractor to the Owner and the Architect that the portions of the Work with respect to which payment is being requested are complete in accordance with the requirements of the Contract Documents.

### § 9.3.1.1 Intentionally deleted.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to promptly pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to promptly pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner on the date of performance thereof. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be

free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 The Contractor may obtain reimbursement from Owner for certain necessary and reasonable expenses incurred in connection with the Work, but only in accordance with the Reimbursable Guidelines attached as an Attachment to the Agreement and only to the extent provided for in the Contract Documents and approved in advance by the Owner.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment (or by such other date as may be agreed to in an agreement between the Owner and the Architect), either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of all reasonably apparent conditions relating to the Work and the data in the Application for Payment, that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. In addition to, and not in derogation of, any of the foregoing provisions, the issuance by the Architect of a Certificate of Payment shall constitute a recommendation to the Owner by the Architect in respect to the amounts to be paid to the Contractor; provided, however, such recommendations shall be non-binding on the Owner, and the Owner shall have the right to refuse to make payment on a Certificate of Payment as otherwise provided for in the Contract Documents.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time.;
- .7 failure to carry out the Work or perform any of the Contractor's other obligations under any of the provisions of the Contract Documents; or
- .8 failure to maintain any specified records or documents relating to the Work.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 If the Contractor disputes any determination by the Architect with regard to all or any part of a Certificate for Payment, the Contractor shall nevertheless expeditiously continue to prosecute the Work.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment and the same has been approved by the Owner, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Notwithstanding the foregoing, the Owner may, in its sole discretion, withhold its approval of all or any portion of any progress payment otherwise to become due and owing to the Contractor as a result of (1) the occurrence of any acts and omissions described in Clauses 1 through 8 of Section 9.5.1 above, (2) failure by the Contractor to deliver and/or provide to the Owner any Conditional Waiver and Release on Progress Payment from the Contractor or any Subcontractors in compliance with the requirements of Section 9.3.1 above, (3) failure by the Contractor to reimburse Owner for any damage in compliance with the requirements of Section 10.2.5 below or clean-up of the site in compliance with the requirements of Section 3.15.1 above, (4) failure by the Contractor to address any reasonable concerns of the Owner regarding any pending or threatened claims for bodily injury, loss of or damage to property, or non-payment of labor, materials or equipment, including mechanic's and materialmen's liens, in connection with the Work, or (5) failure by the Contractor to comply with the requirements of Section 7.1.4 of the Agreement. The Owner shall not be deemed in default by reason of withholding payments to the Contractor as herein provided. When the basis for withholding any payment that has otherwise become due and owing to the Contractor has been resolved to the Owner's satisfaction, amounts withheld with respect thereto will be paid to the Contractor, less any amounts deducted for costs and expenses incurred by the Owner in connection therewith.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 Intentionally deleted.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within three days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.6.8 The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall

notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Intentionally deleted.

### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, subject only to minor punchlist items, the absence of completion of which will not interfere with the Owner's intended use of the Project. The Work will not be considered to have achieved Substantial Completion until all systems included in the Work are operational as designed, the instruction of the Owner's personnel in the operation of such systems is complete, all designated or required permits, inspections and certifications have been obtained, and all final finishes included in the Work have been completed, with the only remaining Work being of a minor punchlist nature which could be completed within thirty (30) days (or such other period as may be agreed to by the Owner) and the absence of completion of which, and the subsequent performance thereof, would not interfere with Owner's intended use of the Project. The date on which all said punchlist items have been fully completed and accepted by the Owner and the other conditions of this Contract fully satisfied shall be the date of final completion.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof designated in the Contract Documents for separate completion, has achieved Substantial Completion, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof has achieved Substantial Completion. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, has not achieved Substantial Completion the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect or the Owner to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that, when approved by the Owner, shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.6 As a condition to achieving Substantial Completion of the Work, the Contractor shall acquaint the Owner with various features and operations of the facilities and equipment contained therein. An orientation walk-through shall be scheduled by the Contractor upon not less than seventy-two (72) hours prior written notice thereof to the Owner and the Architect. The seventy-two (72) hour period written notice is intended to allow all interested parties an opportunity to be represented at the walk-through.

### § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by Owner, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them in accordance with the Contract Documents for payments, retainage, if any, security, maintenance, heat, air conditioning, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be required. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor. All warranty periods under the Contract Documents will begin on the date of achievement of Substantial

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Completion of the entire Work in accordance with the provisions of Section 9.8.4 hereof, notwithstanding the early occupancy and use of portions thereof by Owner pursuant to the provisions of this Section 9.9.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and the Owner will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the following:

.1 the Owner is satisfied in its sole discretion, (1) that the Work conforms with the requirements of the Contract Documents and (2) that the Contractor has performed its other obligations under the Contract Documents, including, but not limited to, the conducting of all orientation and training sessions required under Section 3.12.10 above, the compliance by the Contractor with its obligations under Section 9.8.6 above, and the delivery of all materials required to be delivered by the Contractor to the Owner, including (A) all matters required to be furnished by the Contractor to the Owner under Section 1.5.1 above, (B) the Record Drawings and other materials required to be furnished by the Contractor in compliance with the requirements of Section 3.11 above, (C) copies of all operations/maintenance manuals and manufacturer's warranties in compliance with the requirements of Section 3.12.10 above, and (D) Conditional Waivers and Releases on Final Payment from Contractor and all Subcontractors in compliance with the requirements of Section 9.3.1. above;

.2 no state of facts shall exist that gives to the Owner a right under the Contract Documents to withhold funds otherwise due the Contractor, including, but not limited to, any occurrence described in Section 9.6.1 above; and

.3 the Contractor submits to the Architect (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (b) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (c) a written statement that the insurance will not be renewable to cover the period required by the Contract Documents, (d) consent of surety, if any, to final payment, (e) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (f) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (g) an inventory of all equipment included in the Work in a format approved by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after the Owner determines that the Contractor has achieved Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect and compliance by the Contractor with the requirements of the Contract for final payment with respect to that portion of the Work fully completed, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted, subject to such retainage as may be



necessary, in Owner's good faith estimate, to pay for the cost of finally completing the Work and to comply with the retainage requirements of Chapter 53 of the Texas Property Code. If the remaining balance of the Contract Sum for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents or required under Chapter 53 of the Texas Property Code, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment, under which circumstances, the Owner may, at its election, pay the sum. Such payment shall be made under terms and conditions governing final payment and such other terms and conditions as may be satisfactory to the Owner, except that it shall not constitute a waiver of Claims.

§ 9.10.4 Intentionally deleted.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, a Sub-subcontractor or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall be responsible and liable for initiating, maintaining and supervising any health and safety measures necessary or desirable in connection with the proper execution and completion of the Work, including, but not limited to, compliance with the Owner's safety program as posted on the Owner's website and with such other actions as may be required by the Owner, the Contract Documents or existing conditions on or about the site, for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, or located on the Campus, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 It is the policy of the Owner to furnish a place of learning and employment that is as free as reasonably possible from recognized hazards that cause, or are likely to cause, harm to its faculty, staff, students, visitors and/or the surrounding community. The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss, including, but not limited to, OSHA 29 CFR 1910 and 1926, the City of Houston Fire Code and the City of Houston Building Code, and the Owner's safety regulations and policies, including, but not limited to, the Hot Works Procedures and Power and Mechanical Lock-Out Procedures attached hereto as Exhibits A and B, respectively. (For additional information concerning such procedures, the Contractor should contact Owner's Environmental Health & Safety Office at (713) 348-4444). The Owner's health and safety regulations and policies shall not relieve the Contractor from the primary responsibility of initiating, maintaining and supervising a health and safety policy for the proper execution of the Work and are intended merely to assist in protecting against bodily injury and loss of and damage to property in connection with the Contractor's performance of the Work under the Contract Documents. If the Contractor receives notice of any health or safety violation in connection with the Work, the Contractor shall promptly report such violation to the Owner and the Contractor shall pay all fines or penalties for which the Contractor is responsible in connection therewith..

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of scheduled activities. To the extent implicated by the nature of the Work, the Contractor shall also be responsible and liable for initiating, maintaining and supervising any traffic control measures (i.e., flagman or barricades) necessary or desirable in connection with the proper execution and completion of the Work, including such measures as may be required by the Contract Documents, existing conditions on or about the site, such other procedures and safeguards as the Owner may require, and any applicable traffic regulations and policies. Any such traffic control measures shall require the prior approval of and coordination of Owner's Campus Police Department.

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§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy, to the Owner's satisfaction, damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. The Contractor shall immediately notify the Owner if the Contractor becomes aware of the presence or suspected presence of any hazardous or regulated substances, to the extent not specifically provided for in the description of the Work to be performed by the Contractor. The Contractor shall ensure that neither the Contractor nor any Subcontractors will use, release, alter, modify, remove, transport or dispose of any hazardous or regulated substances in connection with the Work without the prior written approval of the Owner. The Contractor and every Subcontractor performing any such activity must be properly licensed and insured for such activity, as may be approved by the Owner in its sole discretion. Without limiting any definitions set forth in any of the other Contract Documents, the phrase "hazardous or regulated substances" shall include asbestos, polychlorinated biphenyl (PCBs) and such other substances (1) that are referred to as "hazardous substances" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, or under any other federal, state or local statute, rules, regulations, codes or ordinances, or (2) that are in such quantities or concentrations as could (a) constitute a hazard to health or the environment, (b) that could be required to be cleaned up or otherwise remediated, or (c) that result in requirements of public notice or recordation or other requirement in lieu of remediation.

§ 10.3.2 Upon receipt by the Contractor of notice that the Contractor has encountered a hazardous or regulated substance, the Contractor shall immediately cease Work in the area affected thereby and notify the Owner in accordance with the provisions of Section 10.3.1 above. Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and the Contractor until after either (1) it has been verified that the suspected material does not constitute a hazardous or regulated substance or (2) said material has been rendered harmless.

§ 10.3.3 To the extent required by the nature of the Work, the Contractor shall be responsible and liable for ensuring compliance by the Contractor, any Subcontractor and their respective employees with any applicable federal, state or local statutes, rules, regulations, codes, ordinances, orders or other requirements relating to hazardous or regulated substances or other environmental matters. If the Contractor receives notice of any environmental violation in connection with the Work, the Contractor shall promptly report such violation to the Owner and shall pay all fines or penalties for which the Contractor is responsible in connection therewith.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are expressly required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances expressly required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor or any Subcontractor brings to the site, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Intentionally deleted.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall immediately notify the Owner thereof and shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7, provided the emergency did not result from any acts or omissions of the Contractor or any Subcontractor. In the event of the occurrence of an emergency, the Contractor shall immediately notify the Owner of the occurrence thereof. If the Contractor fails or neglects to carry out the Work in accordance with the requirements of the Contract Documents and such failure results, in the Owner's sole discretion, in a threat to persons or property, the Owner may, in its sole discretion, (1) order the Contractor to stop performance of the Work until satisfactory corrective action has been taken, or (2) commence and continue any remedial action it deems necessary or desirable, and the Contractor shall be responsible and liable for any costs or expenses incurred in connection therewith. Prior to the commencement of Work at the site, the Contractor shall furnish to the Owner, in writing, a telephone number at which Contractor can be reached twenty-four (24) hours per day, seven (7) days a week, in the event of the occurrence of an emergency.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase from, obtain and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and approved by the Owner, the policies of insurance, including the coverages, terms and limits set forth in the Schedule of Construction Manager's Insurance Requirements attached as Attachment XI to the Agreement, together with such other policies of insurance with such coverages, terms and limits as may be set forth in the Contract Documents and/or this Article 11. The forms of all such policies of insurance must be satisfactory to the Owner. None of the requirements contained herein as to the types, limits, or the Owner's approval of insurance coverages to be maintained by the Contractor is intended to, and shall not in any manner, limit, qualify or quantify the liabilities and obligations assumed by the Contractor under the Contract Documents or as otherwise provided by law. Each of such insurance coverages shall provide that (1) the Owner is named as an additional insured (except for any builder's risk or property damage insurance, which shall provide that the Owner is the primary payee, or any worker's compensation insurance or professional liability insurance), (2) the coverage shall not be invalidated by any act, omission or negligence of the Owner, (3) the coverage shall be on a "claims occurring" basis (except for any professional liability insurance, which shall be on a "claims made" basis and provide for a minimum of four (4) years "tail" coverage, (4) all rights of subrogation shall be waived as against the Owner and its insurers, and (5) such insurance shall be primary with respect to claims and liabilities in connection with the Work and no contribution for any such claims and liabilities shall be sought from the Owner or its insurers. Contractor shall provide at least thirty (30) days' prior written notice to the Owner if any such policy of insurance shall be canceled, terminated, reduced, restricted, limited or materially changed. In addition, the commercial general liability insurance shall include (1) blanket contractual coverage for Contractor's obligations and liabilities under the Contract Documents, including, but not limited to, the indemnification obligations set forth in Sections 3.17 and 3.18 above, and (2) independent contractor coverage for any Subcontractors.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than the limits of liability specified in the Schedule of Construction Manager's Insurance Requirements attached as an Attachment to the Agreement, in any of the Contract Documents or required by law, whichever coverage is greater. Coverages shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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§ 11.1.3 Certificates of insurance on form ACORD 25-5 (or such other form as may be required by the Owner, and, if required by Owner, certified copies of any related policies of insurance) acceptable to the Owner shall be filed by the Contractor with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2.

§ 11.1.4 The Contractor shall be responsible and liable for ensuring that any Subcontract between the Contractor and each Subcontractor shall require that, except for any builder's risk or property damage insurance required to be obtained by the Contractor, such Subcontractor shall obtain and maintain in effect, with respect to the portion of the Work to be performed by such Subcontractor, policies of insurance of the same types, coverages and limits as those required to be obtained and maintained by the Contractor under this Article 11 (or such other coverages as may be approved by the Owner). The Contractor shall be responsible for ensuring that each Subcontractor obtains and maintains in effect, for the periods required hereunder, the required policies of insurance, and that the Contractor shall obtain and maintain, at the Contractor's offices, certificates of insurance from each Subcontractor, evidencing that such Subcontractor is in compliance with the requirements hereof, which certificates of insurance shall be made available to the Owner upon request. The term "Subcontractor" for the purposes of this Article 11 shall include subcontractors of any tier.

### § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain purchase and maintain such liability, builder's risk and/or property damage insurance as the Owner, in its sole discretion, may elect. In addition thereto, the Owner shall have the right to require that the Contractor maintain builder's risk and/or property damage insurance in such amount, with such deductible and for such period of time as the Owner may require.

§ 11.2.2 Intentionally deleted.

§ 11.2.3 Intentionally deleted.

§ 11.3 Intentionally deleted.

§ 11.3.1 Intentionally deleted.

§ 11.3.2 Intentionally deleted.

§ 11.4 Intentionally deleted.

§ 11.5 Intentionally deleted.

§ 11.5.1 Intentionally deleted.

§ 11.5.2 Intentionally deleted.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or the Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or the Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that is not contrary to requirements specifically expressed in the Contract Documents and which neither the Architect nor the Owner has specifically requested to examine prior to its being covered, the Owner or the Architect, with the Owner's approval, may request to see such Work and it shall be uncovered. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense and not included in the Cost of the Work.

## § 12.2 Correction of Work

### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct, at the Contractor's expense, Work rejected by the Architect or Owner that fails to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense and not included in the Cost of the Work.

### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor, at the Contractor's expense (without including the same in the Cost of the Work), shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor of any condition discovered by the Owner during said one-year period and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor, but without waiving any of the Owner's other rights, actions or remedies with respect thereto. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

#### § 12.2.2.2 Intentionally deleted.

§ 12.2.2.3 The one-year period for corrective Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, except with respect to the corrective work itself, which shall be warranted for an additional period of one year from the date of Substantial Completion of such subsequently executed Work.

§ 12.2.3 Promptly upon request of the Owner, the Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor (without including the same in the Cost of the Work) nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost, without including the same in the Cost of the Work, of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. The corrective remedies set forth in this Section 12.2 are not exclusive and shall not deprive the Owner of any action, right or remedy otherwise available to the Owner for breach of any of the provisions of the Contract Documents.

## § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located,, without regard to conflicts or the principles of the choice of law thereof.



## § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their successors, assigns, and legal representatives and, if Contractor is a partnership, its partners, to covenants, agreements, and obligations contained in the Contract Documents. Notwithstanding the foregoing, the Contractor may not assign or otherwise transfer in whole or in part, by operation of law or otherwise, any of its covenants, agreements, obligations or rights contained in the Contract Documents, including, but not limited to, any payment rights thereunder, without the prior written consent of the Owner, and any attempted assignment thereof without the prior written consent thereto by the Owner shall be void.

§ 13.2.2 Intentionally deleted.

## § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor, including any failure or delay to seek redress for any breach or default under the Contract Documents or to insist upon the strict performance of any provision of the Contract Documents, shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, and such party shall have all remedies provided for in the Contract Documents and at law and in equity with respect to such act or any subsequent act constituting the same, except as may be specifically agreed upon in writing executed by the waiving party.

## § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and the Owner of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate per annum equal to the prime rate of interest as published in *The Wall Street Journal* as it changes from time to time, plus 1%, but not to exceed the maximum rate permitted under applicable usury laws.

### § 13.6.1 OWNER'S LENDER

§ 13.6.1 The Contractor shall assist the Owner in the preparation and submittal of all reports and other information concerning the construction of the Work as required under the Owner's agreement with any person or entity financing the Project (the "Lender"). Upon Owner's request, the Contractor shall execute and deliver to the Lender such certificates relating to completion of the Work, its compliance with applicable laws, codes, ordinances, rules and regulations and such other matters as may be required by the Lender, all in such form as may reasonably be required by the Lender.

### § 13.7 ATTORNEY'S FEES

§ 13.7.1 In the event the Contractor or the Owner defaults in any of their respective obligations under any of the Contract Documents and the non-defaulting party engages an attorney and institutes any legal proceedings for the purposes of enforcing its rights under the Contract Documents, the party prevailing in any such legal proceedings shall be entitled to reimbursement from the non-prevailing party of all reasonable expenses and attorney's fees incurred by the prevailing party in enforcing such rights.

### § 13.8 NON-DISCRIMINATION AND AFFIRMATIVE ACTION

§ 13.8.1 The Contractor and all Subcontractors and their respective employees shall (1) adhere to and comply with the Owner's Equal Employment Opportunity/Affirmative Action Policy, a copy of which is available to the Contractor on the Owner's website, and with all applicable federal, state and local laws regarding non-discrimination and affirmative action, including, but not limited to, Section 503 of The Rehabilitation Act of 1973, Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and Executive Order 11246, requiring the return of a Certificate of Compliance from the Contractor and each Subcontractor in the form attached hereto as Exhibit C, and (2) be liable for any losses, fines or penalties sustained or suffered by the Owner resulting from a violation thereof and the same shall not be included in the Cost of the Work.

### § 13.9 JUDICIAL OR ADMINISTRATIVE MATTERS

§ 13.9.1 The Contractor shall notify the Owner in the event the Contractor or any of its principals (1) is or has been judicially or administratively determined to have violated any criminal or civil law involving the procurement, management or expenditure of federal, state or local government funds or committed fraud, forgery, embezzlement, theft or bribery, (2) is presently debarred, suspended, declared ineligible or voluntarily excluded from any transaction involving federal, state or local government funds, or (3) is a party to or the subject of any proceedings with respect to the foregoing, and the Contractor shall be liable for any losses, fines or penalties sustained or suffered by the Owner resulting from any occurrence described in Clauses (1), (2) or (3) of this Section 13.9.1 and the same shall not be included in the Cost of the Work.

### § 13.10 DRUG-FREE CAMPUS; GUN-FREE CAMPUS; CARTS ON CAMPUS; REGISTERED SEX OFFENDERS

§ 13.10.1 The Contractor and all Subcontractors and their respective employees shall adhere and comply with the policies of Owner with respect (1) to the use of drugs on the Campus, entitled "Drug Free University, (2) to the use of guns on the Campus, entitled the "University's Weapons Policy", (3) to the use of carts on the Campus, (4) Owner's Campus planning guidelines and (5) Owner's building design standards, copies of all of which policies are available to the Contractor on the Owner's website. In addition to compliance with said policies, procedures and guidelines, the Contractor shall not utilize any person in the performance of the Work or the supplying of any materials or equipment at the Project site who is registered as a sex offender. The Contractor shall be liable for losses, fines or penalties sustained or suffered by the Owner resulting from a violation of any of said policies and the same shall not be included in the Cost of the Work.

### § 13.11 LIMITATION OF OWNER'S PERSONAL LIABILITY

§ 13.11.1 No Trustee, officer, director or employee of Owner shall ever be personally or individually liable with respect to this Contract, any of the Contract Documents or the Work. Each Subcontract shall include the foregoing limitations, which shall be effective if the Owner or its designee ever succeeds to the Contractor's rights and obligations under a Subcontract.

### **§ 13.12 SURVIVAL**

**§ 13.12.1** Notwithstanding anything in the Contract Documents to the contrary, the indemnification obligations of the Contractor (as set forth in Section 3.17 and 3.18 above) shall survive any expiration or termination of the Contract Documents, and each party shall remain obligated to the other party under all provisions of the Contract Documents that expressly or by their nature extend beyond and survive the expiration or termination of the Contract Documents.

### **§ 13.13 POWER AND AUTHORITY; DUE AUTHORITY; NO CONFLICT; ENFORCEABILITY**

**§ 13.13.1** Each party represents and warrants to the other party that (1) such party has the power and authority to execute, deliver and perform its obligations under the Contract Documents, (2) the execution, delivery and performance of the Contract Documents have been duly authorized by such party and do not and shall not conflict with any agreement or instrument to which it is bound, and (3) the Contract Documents constitute legal, valid and binding obligations of such party, enforceable against it in accordance with their respective terms.

### **§ 13.14 ENTIRE AGREEMENT: SEVERABILITY**

**§ 13.14.1** The Contract Documents constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements, understandings and negotiations with respect to the subject matter thereof. Purchase orders issued by either party subsequent to the date hereof shall be solely for the internal convenience of the issuing party and shall not amend, modify, or otherwise affect the interpretation of, any provision of the Contract Documents except as may be specifically set forth therein. In the event any one or more of the provisions of the Contract Documents shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of the Contract Documents, and the Contract Documents shall be construed as if such invalid, illegal or unenforceable provision had never been incorporated therein.

### **§ 13.15 PARAGRAPH AND SECTION HEADINGS**

**§ 13.15.1** The Article, Paragraph, Section and other headings used herein are for the convenience of reference only and shall not affect the meaning or interpretation of any of the provisions thereof.

### **§ 13.16 COUNTERPARTS**

**§ 13.16.1** The Agreement and any of the other Contract Documents may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute a single agreement.

### **13.17 FACSIMILE EXECUTION**

**§ 13.17.1** The facsimile transmission of the signature of any party to any of the Contract Documents by electronic transmission shall be considered for all purposes as an original signature, and shall be considered to have the same binding legal effect as an original thereof. Notwithstanding the foregoing, at the request of any party to any of the Contract Documents, any signatures sent by facsimile transmission shall be re-executed by each signatory party in an original form.

### **13.18 MECHANIC'S LIEN CLAIMS**

**§ 13.18.1** The Contractor shall keep the Owner and the Project free from all mechanic's and materialman's liens and all other liens and claims, legal or equitable, arising out of, or alleged to arise out of, the performance of the Work and/or the furnishing of materials and/or services for use in connection therewith. In the event any such lien or claim of lien is filed against the Owner or the Project by anyone claiming by, through or under the Contractor, the Contractor shall cause the same to be removed from the Project to the satisfaction of Owner within thirty (30) days of the filing thereof. Pending the removal of any such lien or claim to Owner's satisfaction, the Owner shall have the right to reduce any payments otherwise to become owing to the Contractor under any of the Contract Documents by an amount up to one hundred ten percent (110%) of the amount of such lien or claim.

### **§ 13.19 CONTRACTOR'S RECORDS**

**§ 13.19.1** The Contractor's records with respect to the Project shall at all times be open to inspection by the Owner. The Contractor agrees to furnish the Owner such information as may be available in the Contractor's files and records for the Project for the purposes of assisting the Owner in establishing a depreciation schedule for the Project or such portions thereof as the Owner may determine.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 The Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents and the Contractor is not in breach or default under any of the requirements of the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' notice to the Owner and Architect, unless the same is cured prior to the expiration of said fourteen (14) day period, terminate the Contract and recover from the Owner payment for Work executed in accordance with the Contract Documents prior to the effective date of termination and for any additional Work thereafter performed by the Contractor at the Owner's request in connection with the termination (which payment shall be based on the payment provisions contained in the Contract Documents); provided, however, the Owner shall not otherwise be liable to the Contractor by reason of such termination, including any liability for damages for loss of anticipated profit on Work not performed. Notwithstanding the foregoing, the Owner may deduct from any payments otherwise due the Contractor any costs related to or otherwise made necessary by the termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters essential to the progress of the Work, the Contractor may, upon fourteen (14) additional days' notice to the Owner and the Architect, terminate the Contract on the same basis as provided in Section 14.1.3.

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, timely and workmanlike, skilled and careful manner;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers or fails or refuses to remove and discharge, within thirty (30) days of the filing thereof, any lien filed by anyone claiming by, through or under the Contractor (unless such lien is the result of the Owner's breach of its obligation to make payments required by the Contract Documents);
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 defaults, fails or neglects to carry out or correct Work in accordance with the requirements of the Contract Documents; or
- .5 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon its determination in its sole discretion that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate the Contract and the other Contract Documents and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of the site and all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts by the Owner or its designee pursuant to Section 5.4; and

- 3 Finish the Work by whatever method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor an accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the If the unpaid balance of the Contract Sum exceeds all of the costs to the Owner of finishing the Work, including, without limitation, the costs to the Owner of the services of the Architect, the Owner's consultants and attorneys and any additional expenses made necessary by the acts or omissions of the Contractor, its Subcontractors or employees, resulting in a termination by the Owner, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 14.2.5 If (1) an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Code, (2) any other similar order is entered into with respect to the Contractor under any debtor relief laws, (3) the Contractor makes a general assignment for the benefit of its creditors, (4) a receiver is appointed for the benefit of the Contractor's creditors, or (5) a receiver is appointed on account of the Contractor's insolvency, the Owner shall be entitled to request of the Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and all Contract Documents and to the accompanying rights set forth above in Sections 14.2.1 through 14.2.4 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Owner shall be entitled to proceed with the Work with its own force or with other contractors on a time and material or other appropriate basis, the costs of which will be backcharged against the Contract Sum.

§ 14.2.6 In addition to Owner's right to remove Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate and remove from the Contract Documents any part of the Work remaining to be performed for any reason whatsoever without termination of the Contract Documents as to the balance of the Work by giving seven (7) days prior written notice to Contractor specifying the Work to be terminated. If any unperformed portion of the Work is so terminated, the Owner shall incur no liability to the Contractor by reason of such termination, except that the Contractor shall be entitled to payment for Work not so terminated (which payment shall be based on the payment provisions contained in the Contract Documents). No payment shall be made by Owner, however, with respect to that portion of the unperformed Work that has been terminated. In case of a partial termination, the Owner and the Contractor shall execute a Change Order making an appropriate adjustment to the Contract Time and/or the Contract Sum to reflect the deletion of the terminated portion of the Work. The Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in this Section 14.2.6.

### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted by written Change Order signed by the Owner and the Contractor for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1 to the extent mutually agreed to by the Owner and the Contractor. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 In addition to the Owner's right to remove any unfinished portion of the Work from the Contract pursuant to Section 14.2.6 above, the Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; in accordance with the Contract Documents.

§ 14.4.4 In determining amounts due to Contractor under this Section 14.4, the Owner shall be credited for payments previously made to the Contractor for the terminated portion of the Work and any claims the Owner has against the Contractor under the Contract Documents, and for the value of materials, supplies, equipment and other items to be disposed of by the Contractor with respect to which the Owner has made payment to the Contractor.

§ 14.4.5 In the event of a termination of the Contract Documents, each party shall execute and deliver such documents and take such actions as may be required or reasonably requested by the other party to effectuate an orderly termination of the Contract Documents, including delivery of any Documents pursuant to Section 1.5.1 above.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, and within the period specified by applicable law.

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party with a copy sent to the Architect. Claims by either party under this Section 15.1.3.1 shall be initiated prior to such date as the same would become barred by the applicable statute of limitation or repose. After a Change Order has been implemented, no additional Claim by the Contractor based on the same scope of Work will be permitted.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Such notice shall include, to the extent known to the Contractor, full details and substantiating data to permit evaluation by the Owner and the Architect. If further, or other, information subsequently becomes known to the Contractor, the Contractor shall promptly furnish the same to the Owner and the

Architect in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice thereof shall be given to the Owner and the Architect within ten (10) days of the occurrence giving rise thereto. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time beyond the number of work days anticipated to be lost to inclement weather included in the Contract Time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Intentionally deleted.

### § 15.2 Initial Recommendation

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, and 11.5, may, upon the request of both the Contractor and the Owner, be referred to the Architect for initial recommendation.

§ 15.2.2 The Architect will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) recommend rejection of the Claim in whole or in part, (3) recommend approval of the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to make a recommendation if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to make a recommendation.

§ 15.2.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect shall take one of the four (4) numbered actions contemplated in Clause (2), (3), (4) or (5) of Section 15.2.2, in writing, stating the reasons therefor..

§ 15.2.5 The Architect will render an initial recommendation approving or rejecting the Claim, or indicating that the Architect is unable to make a recommendation with respect to the Claim. This initial recommendation shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of the recommendation.

§ 15.2.6 Intentionally deleted.

§ 15.2.6.1 Intentionally deleted.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Section 9.10.5, shall upon agreement between the Owner and the Contractor be subject to mediation.

§ 15.3.2 If the parties mutually agree to resolve their Claims by mediation, the parties may also mutually agree that the same will be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of request for mediation, and if the mediation is agreed to by both parties, the mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation may, by agreement of the parties, be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A request to the other party for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration.

§ 15.4.1.1 A request to the other party for arbitration shall be made prior to the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written request for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 If agreed to by the parties, the award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 Intentionally deleted.

#### § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 If the parties hereto agree to arbitration, subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 If the parties hereto agree to arbitration, subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 Intentionally deleted.