

**ATTACHMENT I**

**GENERAL CONDITIONS OF THE CONTRACT FOR  
FURNITURE, FURNISHINGS AND EQUIPMENT**

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# **GENERAL CONDITIONS OF THE CONTRACT FOR FURNITURE, FURNISHINGS AND EQUIPMENT**

## **ARTICLE I GENERAL PROVISIONS**

### **§1.1 BASIC DEFINITIONS**

#### **§1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are described in the Agreement between Owner and Contractor (hereinafter the “Agreement”). Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or portions of addenda relating to bidding requirements).

#### **§1.1.2 THE CONTRACT**

The Contract Documents form the “Contract” for the FF&E (as defined in the Agreement). 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 written Change Order executed by Owner and Contractor. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Consultant and Contractor, (2) between Owner and a Subcontractor (except as provided in Section 5.4 below) or Sub-subcontractor or (3) between any persons or entities other than Owner and Contractor. Consultant shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of Consultant’s duties.

#### **§1.1.3 THE WORK**

The term “Work” means the FF&E required by the Contract Documents, whether completed or partially completed, and includes fabrication, transportation, installation, and all other services, labor and materials provided or to be provided by Contractor to fulfill Contractor’s obligations. The Work may constitute the whole or a part of the Project.

#### **§1.1.4 THE PROJECT**

The Project is defined in the Agreement.

#### **§1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, 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 the FF&E standards and workmanship for the Work, and performance of related services.

#### **§1.1.7 THE PROJECT MANUAL**

The Project Manual is the volume assembled by Consultant for the Work, which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

#### **§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 OWNER/UNIVERSITY**

The term “Owner” is defined in the Agreement and the term “University” shall mean 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, including, but not limited to, the Rice Graduate Apartments located generally at 1515 Bissonnet, and the South Annex located generally at 11620 Main, the BioScience Research Collaborative located generally at 6500 Main, the Rice Village Apartments, located generally at 2410 Shakespeare, the Rice Children’s Campus, located generally at 5504 Chaucer and the Morningside Square Apartments, located generally at 2401 Shakespeare, all in Houston, Texas.

#### **§1.1.11 PROVIDE**

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

#### **§1.1.12 APPROVED**

The terms “approved” or “approval” shall mean approved or approval in writing, unless otherwise indicated.

#### **§1.1.13 CONSULTANT**

The term “Consultant” is defined in the Agreement.

## **§1.2 EXECUTION, CORRELATION AND INTENT**

**§1.2.1** The Contract Documents shall be signed by Owner and Contractor as provided in the Agreement. If either Owner or Contractor or both do not sign all of the Contract Documents, Consultant shall identify such unsigned Documents (hereinafter defined in Section 1.3.1 below) upon request.

**§1.2.2** Execution of the Contract by Contractor is a representation that Contractor has visited the Project site or, if the Project site has not yet been constructed, has reviewed the documents pertaining thereto, has become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§1.2.2.1** Contractor represents to Owner that Contractor has investigated the Project site and has fully reviewed all of the Contract Documents and that based on such investigation and review, Contractor has determined that it can complete the Work for the Contract Sum within the Contract Time. Contractor further represents that it has made its own determination regarding the suitability of the site for the Work to be performed by 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.

**§1.2.3** It is intended that the Contract Documents shall include all items necessary for the proper execution and completion of the Work by Contractor. 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 or regulations or codes in effect at the time the Contract Sum is bid or negotiated, the provision most favorable to Owner shall control.

**§1.2.4** Organization of the Specifications into divisions, sections and articles, and arrangement of the Drawings shall not control Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor and all Subcontractors shall refer to all Contract Documents, including those not specifically showing the Work of their specialized trades, and shall perform all Work necessary to produce the results shown or reasonably inferable therefrom.

**§1.2.5** Unless otherwise stated in the Contract Documents, words which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

**§1.2.6** When more than one material, brand or process is specified for a particular item of work accompanied by the words “Alternate,” a separate bid shall be given for such item. The choice shall be Owner’s. The Contract Sum shall be appropriately modified according to the Alternate accepted.

**§1.2.7** Where a specific standard (i.e. ASTM, ACI, FS, NEMA) appears in the Contract Documents, the latest most current edition of such standard shall be applicable unless otherwise noted. *[Note: LouAnn to review for required changes.]*

**§1.2.8** 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.

**§1.2.9** 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.

**§1.2.10** 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 by 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 Consultant and Owner.

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

### **§1.3 OWNERSHIP AND USE OF CONSULTANT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

**§1.3.1** All models, patterns, samples, Drawings, Specifications and other documents prepared by Consultant and others providing services on behalf of Owner in connection with the Project, together with the Shop Drawings, Product Data, Samples and similar submittals prepared by or on behalf of Contractor and referred to in Section 3.12 below (all of the foregoing being referred to in this Section 1.3.1 collectively as the "Documents") are instruments through which the Work to be executed by Contractor is described. All Documents are and shall remain the property of Owner. Owner shall retain all common law, statutory, copyright and other intellectual property rights (collectively, the "Intellectual Property Rights") therein, including the right to create derivative works therefrom. Contractor may retain one contract record set. Neither Contractor nor any Subcontractor or Sub-subcontractor shall own or claim any Intellectual Property Rights in any of the Documents, and all copies, except Contractor's record set, shall be returned or suitably accounted for to Owner upon completion of the Work. The Documents and copies thereof furnished to Contractor are for use solely with respect to this Project, and Contractor and its Subcontractors and Sub-subcontractors are granted a limited license to use and reproduce applicable portions thereof as may be appropriate for use in the execution of their Work under the Contract Documents, but not otherwise. All copies made under this license shall bear the statutory copyright notice, if any, to reflect ownership in Owner. Submittal or distribution of any Document to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of Owner's Intellectual Property Rights. Notwithstanding anything in this Section 1.3.1 to the contrary, Owner shall own the Intellectual Property Rights only in those items of FF&E that are manufactured, constructed, assembled or otherwise created especially for the Project and based on the design and other criteria with respect

thereto contained in the Documents, but not in items of FF&E that are not manufactured, constructed, assembled or otherwise created especially for the Project and based on the design and other criteria contained in the Documents. Contractor and its Subcontractors 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 Intellectual Property Rights with respect to the Documents. In addition, Contractor and its Subcontractors shall transfer to Owner all right, title and interest in and to any visual art provided by Contractor used on the Project, and Contractor and its Subcontractors 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, 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, derivative works thereof.

## **§1.4 CAPITALIZATION**

**§1.4.1** Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Sections, Subsections and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

## **§1.5 INTERPRETATION**

**§1.5.1** 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.

# **ARTICLE II OWNER**

## **§2.1 DEFINITION**

**§2.1.1** 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.

**§2.1.2** Owner, upon reasonable written request, shall furnish to Contractor in writing information which is necessary and relevant for 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 and Owner's interest therein at the time of execution of the Agreement. Contractor agrees that such condition has been satisfied as of the date of the Agreement.

## **§2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§2.2.1** Owner shall, to the extent that the same is available, furnish a survey of the Project site, and shall indicate areas which Contractor may utilize. Contractor agrees that the

furnishing of such information shall not relieve Contractor from its duties under the Contract Documents.

**§2.2.2** Except for permits and fees which are the responsibility of Contractor under the Contract Documents, 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.

**§2.2.3** Information or services required to be provided by Owner shall be furnished by Owner with reasonable promptness to avoid delay in orderly progress of the Work.

**§2.2.4** Unless otherwise provided in the Contract Documents, Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

**§2.2.5** Unless otherwise provided in the Contract Documents, Owner shall provide:

- .1** access to the Project site to Contractor at reasonable times as the Project will require;
- .2** suitable space for receipt, inspection and storage of the FF&E; and
- .3** temporary utilities and facilities on the Project site and vertical transportation necessary for progress and execution of the Work.

**§2.2.6** The foregoing are in addition to other duties and responsibilities of Owner enumerated herein.

## **§2.3 OWNER'S RIGHT TO DEMAND ASSURANCES**

**§2.3.1** Owner may require Contractor to furnish from time to time written evidence that Contractor can fulfill the requirements of the Contract. Failure of Contractor to provide adequate assurances within a reasonable time shall entitle Owner to stop the Work, carry out the Work or terminate the Contract.

## **§2.4 OWNER'S RIGHT TO STOP WORK**

**§2.4.1** If Contractor (i) fails to provide assurances as provided in Section 2.3 or (ii) fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 13.2 or (iii) fails to carry out Work in accordance with the Contract Documents, or (iv) fails or refuses to remove and discharge within thirty (30) days any lien filed by anyone claiming by, through or under Contractor (unless such lien is the result of Owner's breach of its obligation to make payments required under the Contract Documents), or (v) otherwise defaults under the Agreement, Owner, by written order, may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity.



## **§2.5 OWNER'S RIGHT TO CARRY OUT THE WORK**

**§2.5.1** If Contractor (i) fails to provide assurances as provided in Section 2.3 or (ii) defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7)-day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the cost of correcting such deficiencies, including compensation for Consultant's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the differences to Owner.

In addition to the foregoing, if Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and such failure results, in Owner's judgment, in imminent threat to persons or property, then Owner may, with only such notice to Contractor as is reasonable under the circumstances and without prejudice to other remedies Owner may have, commence and continue to correct any such deficiencies. An appropriate Change Order shall be issued promptly after such event deducting from payments then or thereafter due Contractor the cost of correcting such deficiencies, including compensation for Consultant's additional services and expenses made necessary by such default, neglect or failure.

## **ARTICLE III CONTRACTOR**

### **§3.1 DEFINITION**

**§3.1.1** 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 term "Contractor" means Contractor or Contractor's authorized representative, who shall have authority to bind Contractor.

### **§3.2 REVIEW OF CONTRACT DOCUMENTS AND INSPECTION OF SITE BY CONTRACTOR**

**§3.2.1** Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner pursuant to Section 2.2 and shall at once report to Consultant and Owner errors, inconsistencies or omissions discovered. If Contractor performs any activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to Consultant and Owner, or if Contractor should have known or discovered such error, inconsistency or omission in the exercise of its professional judgment, Contractor shall assume responsibility for such performance and shall bear the full amount of the attributable costs for correction.

**§3.2.2** In addition to Contractor's representations under Section 1.2.2, Contractor shall, prior to shipment, delivery and installation, visit and inspect the Project site in order to confirm the conditions under which the Work is to be performed, verify the stage of completion of the site and the Project, determine availability of facilities for access, delivery, transportation and storage, determine physical restrictions imposed by Owner, separate contractors and building

trades, and correlate these observations with the requirements of the Contract Documents. Contractor shall promptly report to Owner difficulties observed during such inspection or thereafter.

**§3.2.3** Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to Consultant and Owner at once. If Contractor performs any activity knowing it involves a recognized error, inconsistency or omission without such notice to Consultant and Owner, Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

**§3.2.4** Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.12. 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 Contractor to inquire of Owner and Consultant as to the materials, supplies, equipment or other items to be used or installed, all of which shall be of the highest quality unless otherwise specifically required by the Contract Documents.

### **§3.3 SUPERVISION AND PROCEDURES**

**§3.3.1** Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of fabrication, transportation and installation and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

**§3.3.1.1** Contractor shall review any specified construction or installation procedures provided for in the Contract Documents or recommended by the manufacturer of any materials or equipment specified to be used in the Work prior to the performance or installation thereof, and advise Consultant 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 adversely affect any warranties, including Contractor's warranties contained in any of the Contract Documents; or
- .3 if Contractor wishes to propose any alternative procedure to any specified procedure.

**§3.3.2** Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Contractor.

It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of Owner, or (2) create any

partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

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

**§3.3.4** Contractor shall be responsible for inspection of portions of the Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

**§3.3.5** Contractor shall be permitted access to the site during such hours as may be approved in writing by Owner. Contractor is encouraged to complete all Work during these hours. However, if Contractor desires access to the site during other times, it may request access at least twenty-four (24) hours in advance. Contractor must obtain written approval of such access by Owner before using the Project site during off hours.

**§3.3.6** Owner will utilize the University Campus Police for periodic inspections of the site; provided the use thereof shall in no way relieve Contractor of any security responsibilities indicated elsewhere herein or in any of the other Contract Documents.

## **§3.4 LABOR AND MATERIALS**

**§3.4.1** Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, FF&E, tools, installation equipment and machinery, 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** Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Contract. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**§3.4.3** Contractor shall disclose the existence and extent of any financial interest, whether direct or indirect, it has in any subcontractors or material suppliers which it may propose for this Project.

## **§3.5 WARRANTY**

**§3.5.1** Contractor warrants to Owner and Consultant that FF&E supplied under the Contract will be of good quality and new unless otherwise required by the Contract Documents, that the Work will be of good quality free from defects and faults, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by Owner and Consultant, may be considered defective by Owner in its sole discretion. Contractor's warranty excludes remedy for

damage or defect caused by (1) modifications not executed by Contractor, and (2) after use and occupancy of the Work by Owner, improper or insufficient maintenance, improper operation, abuse or normal wear and tear under normal usage. If required by Consultant or Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of the FF&E.

**§3.5.1.1** In addition to the warranty set forth in Section 3.5.1 above, Contractor warrants to Owner the Work performed under the Contract against defects in materials and workmanship for a period of one (1) year (or longer if specified in the Contract Documents) after Final Completion of all of the Work. Contractor's obligations under this Section 3.5.1.1 shall also extend the Work performed by any Subcontractor, except to the extent that any such warranties extend for a longer period of time. Contractor shall assign such extended warranties to Owner.

**§3.5.2** No examination or inspection by Owner or Consultant shall operate as a waiver or exclusion of any express or implied warranty unless so indicated in writing by Owner.

### **§3.6 TAXES**

**§3.6.1** Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

Contractor acknowledges that Owner, as a tax exempt entity, generally pays no ad valorem taxes on its property and is not subject to local, state and federal taxes on its income. Contractor agrees that Owner shall not pay or otherwise be liable, directly or indirectly (i.e. through Contractor), for any such taxes in any way related to the Work. Accordingly, Contractor shall perform the Work, including procuring and storing any related materials and equipment, in such a manner so as to minimize creating any such tax liability for Owner.

Contractor shall obtain Certificates of Resale on materials incorporated into the Project. Failure of Contractor to obtain Certificates of Resale from its suppliers shall make Contractor responsible for any taxes arising from such failure.

### **§3.7 PERMITS, FEES AND NOTICES**

**§3.7.1** Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for permits, governmental fees, licenses, certifications, approvals and inspections necessary for proper execution and completion of the Work and the occupancy and use thereof by Owner.

**§3.7.2** Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

**§3.7.3** If the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules or regulations, Contractor shall promptly notify Consultant and Owner in writing, and necessary changes shall be accomplished by appropriate Change Order.

**§3.7.4** If Contractor performs Work that Contractor knows or reasonably should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to Consultant and Owner, Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

### **§3.8 ALLOWANCES**

**§3.8.1** 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 Owner may direct.

**§3.8.2** Unless otherwise provided in the Contract Documents, whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which shall recognize changes, if any, in handling costs, overhead, profit and other expenses.

### **§3.9 SUPERINTENDENT**

**§3.9.1** Contractor shall employ a competent superintendent satisfactory to Owner and necessary assistants who shall be in attendance at the Project site during performance of the Work. Prior to the commencement of any Work at the site, Contractor shall (1) obtain Owner's written approval of the superintendent (such approval not to be unreasonably withheld) and (2) furnish Owner with a 24-hour emergency telephone number for the superintendent. A superintendent approved by Owner shall not be reassigned or otherwise replaced by Contractor without Owner's prior written approval thereof. The superintendent shall represent Contractor, and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

### **§3.10 CONTRACTOR'S SCHEDULES**

**§3.10.1** The Performance Schedule (as defined in the Agreement), shall not be revised without Owner's written approval and shall provide for expeditious and practicable execution of the Work.

**§3.10.2** Contractor's Performance Schedule shall include (1) "milestone" dates for starting and completion of the various phases of the Work, within the Contract Time, including dates for fabrication, transportation and installation; (2) completion of shop drawings and submittals; (3) the dates proposed for any utility outages and tie-ins, parking lot and road obstructions, and other interferences to the normal operation and uses of the Campus; (4) estimated equipment delivery dates; and (5) other critical timing factors. The Performance Schedule shall also indicate other critical dates, such as deadlines for selection of colors, finishes, fabrics and materials; commencement of production; and commencement of manufacturers' warranties. Contractor shall obtain and submit for Owner's and Consultant's information written confirmation from Subcontractors of dates of fabrication and transportation.

**§3.10.3** Contractor shall prepare and keep current, for Consultant's and Owner's approval, a schedule of submittals which is coordinated with Contractor's Performance Schedule and allows Consultant and Owner reasonable time to review submittals.

**§3.10.4** Contractor shall conform to the most recent Performance Schedule approved in writing by Owner.

**§3.10.5** Contractor shall cooperate with Owner and Consultant in coordinating Contractor's Performance Schedule with those of separate contractors and with the needs of Owner and Consultant. Contractor shall cooperate in determining mutually acceptable dates and times for delivery, installation and inspection of the Work and use of services and facilities provided to Contractor, all to be confirmed in writing within a reasonable time in advance of such dates and times.

**§3.10.6** Contractor shall prepare and submit to Owner and Consultant weekly a written summary report in a form and in sufficient detail and content as may be approved by 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 Performance Schedule, the weekly report shall include Contractor's plan for completing the Work within the Contract Time.

### **§3.11 DOCUMENTS AND SAMPLES FOR THE OWNER'S RECORD**

**§3.11.1** Contractor shall maintain for Owner one record copy of the Drawings, Specifications, addenda and Change Orders, in good order and marked currently to record changes and selections made during performance of the Work, together with all approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to Consultant and Owner and shall be maintained at the Project site and delivered to Consultant for submittal to Owner upon completion of the Work.

### **§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 Contractor or a Subcontractor or Sub-subcontractor to illustrate some portion of the Work.

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

**§3.12.3** Samples are physical examples which illustrate some portion of the Work.

**§3.12.4** Contractor shall review, approve and submit to Consultant and Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate contractors. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.

**§3.12.5** Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by Consultant and Owner. Such Works shall be in accordance with approved submittals. Contractor shall submit any such Shop Drawings, Product Data, Samples or other similar submittals to Owner and Consultant for approval prior to the performance of the Work shown thereon in a timely and orderly sequence so as to allow for adequate review thereof by Owner and Consultant and to avoid any delay in the progress of the Work.

**§3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined 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 Consultant or submitted by Contractor for approval but not yet acted upon by Consultant. The accuracy of all such information is the responsibility of Contractor. In approving Shop Drawings, Product Data, Samples, and similar submittals, Consultant and Owner shall be entitled to rely upon Contractor's representation that such information is accurate and in compliance with the Contract Documents.

**§3.12.7** Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Consultant's or Owner's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed Consultant and Owner in writing of such deviation at the time of submittal and Consultant and Owner have given written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Consultant's or Owner's approval thereof.

**§3.12.8** Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Consultant or Owner on previous submittals.

**§3.12.9** Informational submittals upon which Consultant or Owner is not expected to take responsive action may be so identified in the Contract Documents.

**§3.12.10** When professional certifications of performance criteria of the FF&E is required of Contractor by the Contract Documents, Consultant shall be entitled to rely upon the accuracy and completeness of such certifications, except where Consultant knows or should know of any deficiencies based on its professional expertise.

**§3.12.11** Contractor shall furnish Owner four (4) sets of operation and maintenance manuals as may be necessary of appropriate for the use and maintenance of the Work, and shall be responsible for furnishing all manufacturers' warranties to Owner.

### **§3.13 USE OF SITE**

**§3.13.1** Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

**§3.13.2** Contractor shall perform its Work in such a manner as to cause minimum interference with the operation of Owner and of other contractors on the Project site. Contractor shall take all necessary precautions (including those required by Owner's safety regulations) to protect the Project site (including, but not limited to landscape, existing buildings and equipment) and all persons (pedestrians and building occupants or guests) and property thereon from damage or injury. Contractor shall cause every Subcontractor to take the same precautions.

**§3.13.3** For security and energy conservation reasons, Owner has a "closed door" policy meaning that doors and windows are not allowed to be propped open. Owner reserves the right to fine contractor \$200 for each occurrence, which amount shall be deducted from portions of the Contract Sum next coming due to Contractor. Specific needs to prop doors for materials delivery or other purposes must be coordinated in advance with Owner.

**§3.13.4** Contractor acknowledges that limited space is available on the Campus for the parking of construction vehicles. Spaces on or about the site or otherwise on the Campus shall be used by 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 writing in advance by Owner. All other vehicles belonging to 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 in advance by Owner. Contractor shall be responsible and liable for ensuring that the owners of all vehicles utilized by 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 proper parking permits in advance. Any parking fees, tickets, fines or other charges incurred or levied as the result of the parking of a vehicle in violation of this Section 3.13.4 shall be the responsibility and liability of Contractor.

**§3.13.5** Under no circumstances shall Contractor or its Subcontractors or any of their respective employees take any action, including opening or closing of valves or switches, tripping breakers, etc., which shall cause any interruptions regardless of duration, of any utility or building service, including building 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 such services, the interruption shall be performed with a minimum disturbance to normal building operation. Such interruptions shall be scheduled at least ten (10) working days in advance and be indicated in the CPM schedule provided at commencement of construction. Maintenance employees of Owner will interrupt the services as required and will restore the interrupted systems at completion of the Work.

## **§3.14 CLEANING UP**

**§3.14.1** Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, Contractor shall remove from and about the Project site waste materials, rubbish, Contractor's tools, installation equipment, machinery and surplus materials.



**§3.14.2** If Contractor fails to clean up as provided in the Contract Documents, Owner may do so and the cost thereof shall be charged to Contractor.

**§3.14.3** Contractor shall provide covered garbage cans and keep the Project site free of garbage and shall provide sufficient cans on each floor and at locations on the site used as eating areas. Contractor shall cause all trash and debris to be removed from the Project site daily at Contractor's expense and such trash and debris shall not be allowed to be disposed of in Owner's waste receptacles.

**§3.14.4** The Project site shall be cleared of trash by Contractor daily. When rapid accumulation occurs, more frequent removal shall be made. Contractor shall (1) make legal disposal of trash and debris; (2) take all necessary precautions to prevent accidental burning of materials by avoiding large accumulation of combustible materials; and (3) restore property to its original condition where no improvements are shown.

**§3.14.5** Should Contractor fail to comply with the requirements of the Contract Documents, Owner may, upon twenty-four (24) hours written notice, cause the trash to be collected and removed. The costs to Owner for each such removal will be deducted from the Contract Sum.

### **§3.15 ACCESS TO WORK**

**§3.15.1** Contractor shall provide Owner and Consultant access to the Work wherever it is in preparation and progress, before, during and after delivery to the Project site and in any stage of completion. Contractor shall provide facilities necessary for such access for Owner and Consultant to perform their functions under the Contract Documents.

### **§3.16 ROYALTIES AND PATENTS**

**§3.16.1** Contractor shall pay all royalties and license fees. Contractor shall indemnify, hold harmless and defend Owner, Consultant and the trustees, officers, directors, employees, representative, affiliates, subsidiaries, and agents of each of them (collectively, the "Indemnified Parties"), 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 reasonable attorney's fees), arising, directly or indirectly, as a result of any alleged infringement of patent, copyright, trademark or other intellectual property rights in connection with the normal use or other normal disposition of any design, process or product furnished in connection with the Work; provided, however, 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 Contractor gives prompt written notice to Owner prior to incorporating the same in the Work that the use of the required design, process or product will result in an infringement of a patent, copyright or trademark, or other intellectual property rights.

### **§3.17 INDEMNIFICATION**

**§3.17.1** (a) TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR (1) SHALL BE SOLELY RESPONSIBLE AND LIABLE TO OWNER AND THE OTHER INDEMNIFIED PARTIES (AS DEFINED IN SECTION 3.16.1 ABOVE) FOR THE ACTS AND OMISSIONS OF CONTRACTOR, ITS OFFICERS, DIRECTORS, EMPLOYEES,

SUBCONTRACTORS, AGENTS AND AFFILIATES, AND (2) SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS OWNER AND THE OTHER INDEMNIFIED PARTIES FROM AND AGAINST ALL DEMANDS, CLAIMS, DAMAGES, SUITS, ACTIONS, PROCEEDINGS, LIABILITIES, COSTS, LOSSES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, COURT COSTS AND REASONABLE ATTORNEYS' FEES ("CLAIMS"), DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR FURNISHING OF THE WORK (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 3.17.1(a), with respect to each Indemnified Party individually (but without affecting Contractor's obligations under Section 3.17.1(a) to other Indemnified Parties), 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 Owner or any lender in connection with the Project) or (2) as to Owner, a breach of the Contract by Owner and (y) are not covered by the provisions of Section 3.17.1(c) below.

(c) NOTWITHSTANDING ANY LIMITATION ON INDEMNITY OBLIGATIONS IN SECTION 3.17.1(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) Contractor's obligations under this section to provide a defense shall be with attorneys approved by Owner. All of Contractor's obligations under this section shall survive the termination or other expiration of the Contract, 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.

**§3.17.2** In claims against any person or entity indemnified under this Section 3.17 by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations under this Section 3.17 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**§3.17.3** The obligations of Contractor under this Section 3.17 shall not extend to the liability of Consultant, Consultant's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of drawings, opinions, reports, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by Consultant, Consultant's consultants, and agents and employees or any of them provided such giving or failure to give is the primary cause of the injury or damage.

## **ARTICLE IV ADMINISTRATION OF THE CONTRACT**

### **§4.1 CONSULTANT**

**§4.1.1** Consultant is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Consultant" means Consultant or Consultant's authorized representative.

### **§4.2 CONSULTANT'S ADMINISTRATION OF THE CONTRACT**

**§4.2.1** Consultant will provide administration of the Contract as described in the Contract Documents and any agreement between Owner and Consultant, and will be Owner's representative on a non-exclusive basis (with Owner retaining final decision-making authority), (1) during performance of the Work, (2) until final payment is due and (3) with Owner's concurrence, from time to time during the correction period described in Section 13.2. Consultant will advise and consult with Owner. Consultant will have authority to act on behalf of Owner only to the extent provided in the Contract Documents, unless otherwise authorized by written instrument in accordance with other provisions of the Contract.

**§4.2.2** Consultant will assist Owner in coordinating schedules for fabrication, transportation and installation of the Work.

**§4.2.3** Consultant will visit the Project site at intervals appropriate to the progress of the Work or as otherwise agreed to with Owner to become familiar with the progress and quality of the completed Work and to determine if the Work is being performed in accordance with the Contract Documents. However, Consultant will not be required to make exhaustive or continuous inspections at the Project site to check quality or quantity of the Work. On the basis of such observations as a consultant, Consultant will keep Owner informed of the progress of the Work, and will endeavor to guard Owner against defects and deficiencies in the Work. The foregoing provisions do not limit any greater responsibility of Consultant under its agreement with Owner.

**§4.2.4** Consultant and Owner will not have control over or charge of and will not be responsible for the means, methods, techniques, sequences or procedures of fabrication, procurement, transportation or installation, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibility as provided in Section 3.3. Consultant will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents. Consultant will not have control over or charge of and will not be responsible for acts or omissions of Contractor, Subcontractors or their agents or employees, or of any other persons performing portions of the Work.

**§4.2.5** Any direct communication between Owner and 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 Consultant. 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 Consultant's consultants shall be through Consultant. Communications by and with Subcontractors shall be through Contractor. Communications by and with separate contractors shall be through Owner.

**§4.2.6** Based on Consultant's observations and evaluations of the progress and quality of the Work and Contractor's Invoices, Consultant will advise Owner of such amounts as Consultant shall consider to be owing to Contractor.

**§4.2.7** Consultant is not authorized (1) to receipt for or accept Work on behalf of Owner, (2) to sign Change Orders on behalf of Owner, (3) to stop the Work or (4) to terminate the Contract on behalf of Owner.

**§4.2.8** Consultant will recommend to Owner rejection of Work which does not conform to the Contract Documents. Whenever Consultant considers it necessary or advisable for implementation of the intent of the Contract Documents, Consultant will have authority to require additional inspection or testing of the Work in accordance with Sections 14.5.2 and 14.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of Consultant 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 Consultant to Contractor, Subcontractors, their agents or employees, or other persons performing portions of the Work.

**§4.2.9** Consultant will review and approve or take other appropriate action upon Contractor's submittals such as Invoices, Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given in the Contract Documents and making recommendations to Owner with respect to payments to Contractor. Consultant's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of Owner, Contractor or separate contractors, while allowing sufficient time in Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details not intended within the scope of the submittal or for substantiating instructions for installation or performance of the FF&E, all of which remain the responsibility of Contractor as required by the Contract Documents; provided, however, nothing in this sentence shall limit Consultant's responsibility under its agreement with Owner. Consultant's review of Contractor's submittals shall not relieve Contractor of the obligations under Sections 3.3, 3.5 and 3.12. Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Consultant, of any construction means, methods, techniques, sequences or procedures. Consultant's approval of a specific item shall not constitute approval of an assembly of which the item is a component, and Consultant's approval of a Sample or Samples shall not constitute an approval of that item as delivered or installed if not in conformance with such approved Samples.

**§4.2.10** Consultant will prepare Change Orders for execution by Owner and Contractor, which shall not become effective unless executed by Owner and Contractor.

**§4.2.11** Consultant will conduct inspections to determine, subject to Owner's approval, the date or dates of Final Completion and will review and forward to Owner for Owner's review and records written warranties and related documents required by the Contract and assembled by Contractor, and will issue a final recommendation for Owner's approval upon compliance with the requirements of the Contract Documents.

**§4.2.12** If Owner and Consultant agree, Consultant will provide one or more project representatives to assist in carrying out Consultant's responsibilities at the Project site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an agreement to be entered into between Owner and Consultant.

**§4.2.13** Consultant will make recommendations concerning performance under and requirements of the Contract Documents on written request of either Owner or Contractor. Consultant's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of Consultant shall be furnished in compliance with this Section 4.2, the delay shall not be recognized on account of failure by Consultant to furnish such interpretations until fifteen (15) days after written request is made for them.

**§4.2.14** The recommendations of Consultant 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, Consultant will endeavor to secure faithful performance by Contractor, will not show partiality to either party and will not be liable for the results of recommendations so rendered in good faith.

### **§4.3 CLAIMS AND DISPUTES**

**§4.3.1** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§4.3.2** Claims, including those alleging an error or omission by Consultant, may, upon the request of both Contractor and Owner, be referred initially to Consultant for recommendation as provided in Section 4.4.

**§4.3.3** Claims by Contractor must be initiated prior to such date as the same would become barred by the applicable statute of limitation or repose. Claims must be made by written notice to Owner, with a copy sent to Consultant. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. After a Change Order has been implemented, no additional Claim by Contractor based on the same scope of Work will be considered.

**§4.3.4** Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make payments in accordance with the Contract Documents.

**§4.3.5** If concealed conditions are encountered in the performance of the Work that are at variance with the conditions indicated in the Contract Documents, and such concealed or unknown conditions are such that the cost of the Work and/or time to complete the Work will be increased, Contractor shall that day notify Consultant and Owner of such conditions and shall take no further action that will increase the cost of the Work until such cost has been approved in a written Change Order executed by Owner and Contractor. If 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 Contractor.

**§4.3.5.1** Should regulated substances be encountered (such as asbestos, PCB's, etc.), Contractor shall notify Consultant and Owner immediately. Contractor shall not alter, modify, or remove such substances unless specifically licensed for such activity and approved by Consultant and Owner.

**§4.3.6** Contractor shall not be entitled to any increase in the Contract Sum, or have any right to make a Claim with respect thereto, except (i) with respect to additional Work added to the Contract Documents by written Change Order executed by Owner and Contractor prior to the performance of such Work and (ii) where the amount of such increase is set forth in the Change Order. With any request for a Change Order, Contractor shall submit full details and substantiating data to permit evaluation thereof by Owner and Consultant. If further or other information subsequently becomes known to Contractor, Contractor shall promptly furnish the same to Owner and Consultant, in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 11.3.

**§4.3.7** If Contractor wishes to make a Claim for an increase in the Contract Time, written notice thereof shall be given to Owner and Consultant within ten (10) days of the occurrence giving rise thereto. 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.

**§4.3.7.1** 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 days anticipated to be lost due to inclement weather included in the Contract Time, and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled operations. Contractor must notify Owner and Consultant within five (5) days of any event that Contractor believes entitles Contractor to an extension of the Contract Time as the result of any adverse weather conditions.

**§4.3.8** If Contractor suffers injury or damage to person or property because of an act or omission of Owner, of any of Owner's employees or agents, or of others for whose acts Owner is legally liable, written notice of such injury or damage, whether or not insured, shall be given to Owner within a reasonable time, not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable Owner to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 4.3.6 or 4.3.7.

## **§4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**§4.4.1** Consultant will review Claims for the purpose of making a recommendation to Owner with respect thereto and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when Consultant expects to make a recommendation, (3) recommend rejection of the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. Consultant may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

**§4.4.2** If a Claim has been resolved, Consultant will prepare or obtain appropriate documentation.

**§4.4.3** If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after Consultant's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by Consultant, (2) modify the initial Claim or (3) notify Consultant that the initial Claim stands.

**§4.4.4** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by Consultant, Consultant will notify the parties in writing that Consultant's recommendation will be made within seven (7) days, which recommendation shall be advisory only and not binding on the parties. Upon expiration of such time period, Consultant will render to the parties Consultant's written recommendation relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, Consultant may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## **§4.5 ARBITRATION**

**§4.5.1** Any controversy or claim arising out of or related to the Contract Documents, or the breach thereof not resolved under Section 4.4, may, upon agreement between Contractor and Owner, be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or claims relating to aesthetic effect (as to which Owner shall have sole authority). Such controversies or claims upon which Consultant has given notice and rendered an advisory recommendation as provided in Section 4.4 may, upon agreement between Owner and Contractor, be subject to arbitration upon written request of either party. Notice of request for arbitration shall be filed in writing with the other party to the Agreement between Owner and Contractor and with the American Arbitration Association, and a copy shall be filed with Consultant.

**§4.5.2** During arbitration proceedings, Owner and Contractor shall comply with Section 4.3.4.

**§4.5.3** Request for arbitration of any Claim 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.

**§4.5.4** A party who files a notice of a request for arbitration must assert in the request all Claims then known to that party on which arbitration is permitted to be requested. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

**§4.5.5** If agreed to by Owner and Consultant, 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.

**§4.5.6** Notwithstanding anything herein to the contrary, in the event of any Claim arising out of or related to the Contract Documents, and without first seeking mediation or arbitration, Contractor and Owner shall each have the right, at any time, to institute all such legal proceedings and request all such legal remedies as may be available to such party, either at law or in equity, including, but not limited to, a right to enforce the provisions of the Contract Documents by specific performance, it being agreed that the rights and remedies provided in the Contract Documents are cumulative in nature and shall be in addition to any such other rights and remedies as may be available at law or in equity. The parties hereto hereby irrevocably consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction sitting in the County of Harris, State of Texas, shall be an appropriate and convenient place of venue to resolve any dispute with respect to the Contract Documents or any Work with respect thereto. All reasonable attorney's fees, expert witness fees, arbitrators' compensation and expenses, court costs and all other reasonable and necessary costs of any arbitration or legal proceedings shall be recoverable by the prevailing party in any such arbitration or legal proceedings in addition to all other relief granted therein.

## **ARTICLE V SUBCONTRACTORS**

### **§5.1 DEFINITION**

**§5.1.1** A Subcontractor is a person or entity who has a direct contract, purchase order or other authorization with Contractor or with any Subcontractor of any tier to perform a portion of the Work at the Project site, or to fabricate, transport, supply or install a portion of the Work for the Project, and shall include anyone directly or indirectly employed by Contractor or any Subcontractor of any tier and anyone for whose acts Contractor or any Subcontractor of any tier 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 Owner or subcontractors of a separate contractor of Owner.

**§5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract, purchase order or other authorization with a Subcontractor to perform a portion of the Work at the Project site, or to fabricate, transport, supply or install a portion of the Work for the Project, and shall include anyone directly or indirectly employed by a Sub-subcontractor and anyone for whose



acts a 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 or the bidding requirements, Contractor, within five (5) days after award of the Contract, shall furnish in writing to Owner and Consultant the names of persons or entities (including those who are to furnish FF&E fabricated to a special design) proposed for each principal portion of the Work. Consultant will promptly reply to Contractor in writing stating whether or not Owner or Consultant, after due investigation, has reasonable objection to any such proposed person or entity.

**§5.2.2** Contractor shall not contract with a proposed person or entity unless such person or entity has been approved by Owner. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable objection.

**§5.2.3** If Owner or Consultant has reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another person or entity to whom Owner or Consultant has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless Contractor has acted promptly and responsively in submitting names as required.

**§5.2.4** Contractor shall not change a Subcontractor, person or entity previously selected if Owner or Consultant makes reasonable objection to such change.

## **§5.3 SUBCONTRACTUAL RELATIONS**

**§5.3.1** By appropriate written agreement, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor, by these Documents, assumes toward Owner and Consultant. Each subcontract agreement shall preserve and protect the rights of Owner and Consultant 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 Contractor that Contractor, by the Contract Documents, has against Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. 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 which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to the respective proposed Sub-subcontractors.

**§5.3.2** Any part of the Work performed for Contractor by a Subcontractor shall be pursuant to a written subcontract between Contractor and such Subcontractor. Each such subcontract shall:

- (a) require that such Work be performed in accordance with the requirements of the Contract Documents;
- (b) waive all rights the contracting parties may have against one another or that the Subcontractor may have against Owner for damages caused by fire or other forces that would be covered by the property insurance required by the Contract Documents;
- (c) require the Subcontractor to carry and maintain liability insurance in accordance with the Contract Documents;
- (d) require the Subcontractor to furnish such certificates and waivers as Owner may request; and
- (e) agree to be bound by the Contract Documents, including, but not limited to, the indemnification provisions set forth in Section 3.17 above.

**§5.3.3** Contractor shall not enter into a subcontract with any proposed Subcontractor for the performance of any portion of the Work unless Contractor has obtained Owner's written approval of the proposed Subcontractor. With each request for approval by Owner of a proposed Subcontractor, Contractor shall furnish to 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 Contractor's recommendation with respect to the proposed Subcontractors; and
- .6 such other information with respect to the proposed Subcontractor as Owner may reasonably request.

## **§5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTORS**

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

- .1 assignment is effective only after termination of the Contract by Owner for cause pursuant to Section 15.2 and only for those subcontract agreements which Owner accepts by notifying the Subcontractor in writing; and

- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

## **ARTICLE VI**

### **RELATED ACTIVITIES OF OWNER OR OF SEPARATE CONTRACTORS**

#### **§6.1 OWNER'S RIGHT TO PERFORM RELATED ACTIVITIES AND TO AWARD SEPARATE CONTRACTS**

**§6.1.1** Owner reserves the right to perform activities related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other activities at the Project site. If Contractor claims that delay or additional cost is involved because of such action by Owner, Contractor shall make such Claim as provided elsewhere in the Contract Documents.

**§6.1.2** Owner shall provide for coordination of the activities of Owner's own forces and of each separate contractor engaged by Owner with the Work of Contractor, who shall cooperate with them. Contractor shall participate with Owner's other separate contractors and Owner in reviewing their progress schedules when directed to do so. Contractor shall make any revisions to the progress schedule deemed necessary by Owner after a joint review and mutual agreement. The progress schedules shall then constitute the schedules to be used by Contractor, any separate contractors engaged by Owner, and Owner until subsequently revised.

#### **§6.2 MUTUAL RESPONSIBILITY**

**§6.2.1** Contractor shall afford Owner and separate contractors engaged by Owner reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate Contractor's activities with theirs as required by the Contract Documents.

**§6.2.2** If part of Contractor's Work depends for proper execution or results upon activities by Owner or a separate contractor engaged by Owner, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Consultant and Owner apparent discrepancies or defects resulting from the activities of Owner or a separate contractor that would impede Contractor in achieving proper execution and results. Failure of Contractor so to report shall constitute an acknowledgment that the results of Owner's or Owner's separate contractors completed or partially completed activities are fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

**§6.2.3** Costs caused by defects or improperly timed activities shall be borne by the party responsible therefor.

**§6.2.4** Contractor shall promptly remedy damage caused by Contractor to property of Owner or Owner's separate contractors as provided in Section 11.2.5.

### **§6.3 OWNER'S RIGHT TO CLEAN UP**

**§6.3.1** If a dispute arises among Contractor, Owner's separate contractors and Owner as to the responsibility under their respective contracts for maintaining the Project site and surrounding area free from waste materials and rubbish as described in Section 3.14, Owner may clean up and allocate the cost among those responsible as Owner determines to be just.

## **ARTICLE VII INSTALLATION**

### **§7.1 WORKING HOURS AND OVERTIME WORK**

**§7.1.1** Unless otherwise provided in the Contract Documents, installation shall be performed during such hours as may be agreed to in writing by Owner.

### **§7.2 DELIVERY AND STAGING FACILITIES**

**§7.2.1** Based upon the mutually agreed-upon Performance Schedule, Owner shall be responsible for providing that all delivery and staging facilities and the route used within the Project site from point of delivery to final placement shall be free of unanticipated obstacles or other trades which might unreasonably impede Contractor during the delivery and installation of the FF&E, but shall not be responsible for correcting obstacles which were reasonably anticipatable at the time of the execution of the Contract, as provided in Section 3.2.2.

**§7.2.2** Unless otherwise provided, Contractor shall select the route to be used within the Project site from point of delivery to final placement, but Contractor shall not use a route against which Owner or Consultant makes reasonable objection.

**§7.2.3** Prior to the execution of the Contract, Contractor shall have identified for Owner any special equipment or services which Contractor may require of Owner for proper delivery and installation of the FF&E.

**§7.2.4** Owner shall, within a reasonable time prior to delivery, provide Contractor with schedules for the use of elevators and unloading facilities. Unless otherwise provided, Owner shall provide and pay for use of elevators and unloading facilities.

### **§7.3 INSPECTION AND ACCEPTANCE OF WORK**

**§7.3.1** Owner shall inspect the Work upon delivery at mutually agreeable times. Such inspections are for the sole purpose of identifying the FF&E and of verifying quantities thereof in order to provide a basis for payment to Contractor. Such inspections shall not be construed as final or as constituting acceptance of or taking charge or control over the FF&E. If Owner becomes aware of defects, damage, deficiencies or failure to conform to the Contract Documents, Owner shall promptly notify Contractor, and Contractor shall have an opportunity to remedy the same at Contractor's own expense within a reasonable time not to exceed the Contract Time.

**§7.3.2** Notwithstanding any otherwise applicable provision of law or any such inspections or payment on account of FF&E delivered, receipt shall not be construed as acceptance of FF&E unless specifically accepted in writing by Owner.

#### **§7.4 OWNER'S RIGHT TO REVOKE ACCEPTANCE**

**§7.4.1** If Work which has been used or occupied by Owner is found to have defects, damage or deficiencies, or fails to conform to the Contract Documents, for a cause not attributable to Owner or Owner's agents or employees, Contractor shall promptly remedy the same at Contractor's expense.

**§7.4.2** This Section 7.4 shall not be construed as a limitation on remedies otherwise available under the Contract Documents or applicable law.

#### **§7.5 CUTTING AND PATCHING OF WORK**

**§7.5.1** Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

**§7.5.2** Contractor shall not damage or endanger the Project site or a portion of the Work or fully or partially completed construction of Owner or separate contractors or any furniture, furnishings and equipment of Owner or separate contractors by cutting, patching or otherwise altering such construction of furniture, furnishings and equipment. Contractor shall not cut or otherwise alter such construction of Owner or any furniture, furnishings and equipment of separate contractors except with the written consent of Owner and of such separate contractor; which consent shall not be unreasonably withheld. Contractor shall not unreasonably withhold from Owner or a separate contractor Contractor's consent to cutting or otherwise altering the Work.

#### **§7.6 LABOR JURISDICTION**

**§7.6.1** Contractor shall become fully informed of the conditions relating to delivery, installation and labor under which Contractor's Work will be performed. Contractor shall employ such labor and such means and methods of carrying out Contractor's Work as are required by such conditions. Contractor shall, at the time of execution of the Agreement, specify the labor and the means and methods of carrying out the Work which Contractor intends to employ.

#### **§7.7 PLACEMENT AND ASSEMBLY**

**§7.7.1** If Owner requires changes, whether temporary or permanent, in the placement or assembly of any FF&E from that indicated in the Contract Documents, Contractor shall give written notice thereof to Owner prior to the performance of such Work, including the additional cost, if any, to be incurred in connection with such change, and, after approval thereof by Owner, Owner shall reimburse Contractor for such additional costs, and an appropriate Change Order shall be issued in accordance with Article 8.

## **ARTICLE VIII CHANGES IN THE WORK**

### **§8.1 CHANGES**

**§8.1.1** 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 party desiring a change in the Work shall submit a request therefor to the other party and Consultant. Contractor shall submit any request for a change as soon as practicable after determining the need for such change to allow for adequate consideration of such request by Owner and Consultant and to minimize any delay in the progress of the Work that might result therefrom. Promptly after receipt of any such request, Consultant shall submit the same to Contractor for an itemized quotation of any resulting changes in the Contract Sum, the Contract Time or any schedules previously furnished by Contractor to Owner. The submission of a request to Contractor for a quotation with respect to a proposed change in the Work shall not constitute a directive to Contractor to perform the proposed change. No change in the Work, whether by way of alteration, addition, the substitution of any FF&E 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, substitution 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 8, which 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 alteration, additions, substitutions or other changes to the Work, and no claim that Owner has been unjustly enriched by any such alteration, addition, substitution or other changes to 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 unless set forth in a Change Order.

**§8.1.2** A Change Order shall be based upon written agreement executed by Owner and Contractor.

**§8.1.3** Changes in the Work provided for in a Change Order shall be performed under the applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order.

### **§8.2 CHANGE ORDERS**

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

- .1** the change in the Work;
- .2** the amount of the adjustment in the Contract Sum, if any; and
- .3** the extent of the adjustment in the Contract Time, if any.

**§8.2.2** If a proposal by a party for a Change Order is accepted by the other party, Consultant shall initiate preparation of the Change Order, which shall describe the changes to the

Work and any changes to the Contract Sum or Contract Time resulting therefrom. After execution of the Change Order by Contractor and Owner, the Change Order shall become effective. No work shall proceed without the execution by Owner and Contractor of a written Change Order with respect thereto.

### **§8.3 SUBSTITUTIONS**

**§8.3.1** Substitutions by Contractor for items defined by the Contract Documents, including products, materials, equipment and processes, shall be done only with the written approval of Consultant and Owner.

**§8.3.2** Substitutions requested by Contractor more than thirty (30) days after the date of the Agreement will be considered by Consultant and Owner only:

- .1** when the specified item is not available or delivery would delay progress of the Work; or
- .2** when Consultant and Owner decide the substitution would be in the interest of Owner.

**§8.3.3** Requests for substitution shall be accompanied by evidence that the substituted item:

- .1** is equal in quality and serviceability to that specified;
- .2** will only cause change in other Work as defined in the request;
- .3** will be acceptable to Consultant and Owner in artistic effect; and
- .4** will not involve any change in the Contract Sum or Contract Time unless it is itemized in an accompanying proposed Change Order.

**§8.3.4** Requests for substitution shall be accompanied by drawings, specifications, samples, performance data and other information requested by Consultant or Owner. The burden of proof is on Contractor that the substitution will satisfy all requirements of the Contract Documents.

## **ARTICLE IX TIME**

### **§9.1 DEFINITIONS**

**§9.1.1** Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Performance Schedule for Final Completion of the Work.

**§9.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of Contractor or of persons or entities for whom Contractor is responsible.

**§9.1.3** The date of Final Completion is the date when (1) the progress of the Work has achieved the state of completion described in Section 10.8 below and (2) the progress of the Work has been certified by Consultant and approved by Owner as having achieved Final Completion in accordance with Section 10.8.

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

**§9.1.5** In the event that 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 Owner’s reasonable control, Owner shall be excused without liability with respect to such performances or nonperformance for the duration of such cause or condition.

## **§9.2 PROGRESS AND COMPLETION**

**§9.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§9.2.2** Contractor shall not, except by agreement or instruction of Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 12 to be furnished by Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by Owner, Contractor shall notify Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic’s liens and other security interests.

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

## **§9.3 DELAYS AND EXTENSIONS OF TIME**

**§9.3.1** If Contractor is materially delayed at any time in progress of the Work by an act or neglect of Owner or Consultant, or of an employee of either, or of a separate contractor employed by Owner, or by Change Orders, or by unavoidable labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond Contractor’s control (other than inability to pay), or by unexpected abnormal weather conditions with respect to which Contractor has given Owner written notice as required in Section 4.3.7, or by delay authorized by Owner pending arbitration, then the Contract Time shall be extended by Change Order for such reasonable time as Consultant, with Owner’s approval, may determine.

**§9.3.2** Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

**§9.3.3** This Section 9.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.



## **ARTICLE X PAYMENTS AND COMPLETION**

### **§10.1 CONTRACT SUM**

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

### **§10.2 SCHEDULE OF PRICES**

**§10.2.1** The Schedule of Prices required in Section 3.2 of the Agreement shall be prepared in such form and supported by such data to substantiate its accuracy as Consultant or Owner may require and certified by Contractor as fairly representing the prices of the items of FF&E included in the Work. If unit prices are stated in the Contract Documents or subsequently agreed upon, they shall be identified in the Schedule of Prices. This Schedule of Prices, unless objected after approved by Consultant and Owner, shall be used as a basis for reviewing Contractor's Invoices.

### **§10.3 INVOICES**

**§10.3.1** At the time established in the Agreement, Contractor shall submit to Consultant an itemized Invoice for operations completed in accordance with the Contract Documents. Each Invoice shall be in compliance with the requirements of Section 5.1 of the Agreement. Contractor shall furnish a copy of each Invoice to Owner concurrently with the submission thereof to Consultant. Consultant shall not certify any payment based thereon if objected to by Owner for good cause. The submission by Contractor to Owner and Consultant of an Invoice shall constitute a representation by Contractor to Owner and Consultant 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.

**§10.3.1.1** Such Invoices may not include requests for payment of amounts Contractor does not intend to pay to a Subcontractor because of a dispute or other reason.

**§10.3.2** Contractor warrants that title to the various items of FF&E shall pass to Owner upon the occurrence of the following:

- .1** Title to items of FF&E that are to be delivered by or on behalf of Contractor to the Project site or to an off-site location agreed upon in writing by Owner, but not installed by Contractor, shall pass upon delivery thereof to the Project site or such off-site location in compliance with procedures satisfactory to Owner to establish Owner's title to such FF&E and otherwise to protect Owner's interest, which protection shall include (i) applicable insurance coverages, including, without limitation, insurance against loss or damage thereto in an amount at least equal to the replacement value thereof, (ii) satisfactory storage and transportation arrangements, and (iii) in any event, a satisfactory inspection thereof by Owner; and

- .2 Title to items of FF&E that are to be delivered by or on behalf of Contractor to the Project site and installed by Contractor, shall pass to Owner after installation by Contractor and the satisfactory inspection thereof by Owner. Prior to the passing of title to such FF&E to Owner, Contractor shall maintain insurance against loss or damage to such FF&E in an amount at least equal to the replacement value thereof.

**§10.3.3** Unless otherwise provided for in the Control Documents, payment shall be made on account of FF&E upon the passing of title thereto to Owner and the satisfaction of the other requirements with regard to payment set forth herein and in the other Contract Documents.

**§10.3.4** Contractor warrants that upon submittal of an Invoice, all Work for which Invoices have been previously issued and payments received from Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, Sub-subcontractors, or other persons or entities making a claim by reason of having provided labor or any FF&E relating to the Work.

#### **§10.4 APPROVAL FOR PAYMENT**

**§10.4.1** Consultant will, within seven (7) days after receipt of Contractor's Invoice (or such earlier date as may be agreed to in an agreement between Owner and Consultant), either issue to Owner a written approval thereof, with a copy to Contractor, for such amount as Consultant believes is properly due, or notify Contractor and Owner in writing of Consultant's reasons for withholding approval in whole or in part as provided in Section 10.5.1.

**§10.4.2** The issuance of an approval will constitute a representation by Consultant to Owner, based on Consultant's observations at the Project site, the data comprising the Invoice and all reasonably apparent conditions relating to the Work, that the Work has progressed to the point indicated and that, to the best of Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to any specific qualifications expressed by Consultant. The issuance of an approved by Consultant will further constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of an approval by Consultant will not be a representation that Consultant has (1) made exhaustive or continuous inspections to check the quality or quantity of the Work, (2) reviewed the fabrication, shipment, delivery or installation means, methods, techniques sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and other data requested by Owner to substantiate Contractor's right to payment or (4) made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

In addition to and not in derogation of the provisions above, the issuance of an approval by Consultant shall constitute a recommendation to Owner by Consultant in respect to the amounts to be paid to Contractor. Such recommendation shall be non-binding on Owner, and Owner shall be entitled to refuse to make payment on any approval by Consultant as provided in Section 10.6.1 hereof.

**§10.4.3** The Work will not be considered to have achieved Final Completion until all the following conditions have been met:

- .1 completion of punch list items;
- .2 receipt of training sessions or manuals as specified in the Contract Documents;
- .3 receipt of operating manuals or documentation of mechanical equipment;
- .4 satisfactory repair of any damage made to Owner's property by Contractor during execution of the Work;
- .5 receipt of affidavits of payment and releases of liens in form and content satisfactory to Owner, executed by Contractor and all Subcontractors and materialmen, evidencing that all indebtedness connected with this Work has been paid; and
- .6 other specific requirements as stated in the Contract Documents.

## **§10.5 DECISIONS TO WITHHOLD APPROVAL**

**§10.5.1** Consultant or Owner may decide not to approve payment and may withhold approval of an Invoice in whole or in part, to the extent reasonably necessary to protect Owner, if in Consultant's or Owner's opinion the representations to Owner required by Section 10.4.2 cannot be made. If Consultant is unable to approve payment in the amount of the Invoice, Consultant will notify Contractor and Owner as provided in Section 10.4.1. If Contractor and Consultant cannot agree on a revised amount, Consultant will promptly issue an approval for the amount for which Consultant is able to make such representations to Owner. Consultant may also decide not to approve payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of an approval previously issued, to such extent as may be necessary in Consultant's opinion to protect Owner from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of Contractor to make payments properly to Subcontractors or 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 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 Contractor's obligations in accordance with the Contract Documents; or

.8 failure to maintain any specified records or documents relating to the Work.

**§10.5.2** When the above reasons for withholding approval are removed, approval will be made for amounts previously withheld.

**§10.5.3** If Contractor disputes any determination by Consultant with regard to all or any part of an Invoice, Contractor shall nevertheless expeditiously continue to prosecute the Work.

**§10.5.4** Owner shall not be deemed to be in breach of these Contract Documents by reason of the withholding of any payment pursuant to any provision of the Contract Documents, provided the Work in question shall have been rejected by Consultant or Owner.

## **§10.6 PROGRESS PAYMENTS**

**§10.6.1** After Consultant and Owner have approved an Invoice, Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify Consultant. Notwithstanding the foregoing, Owner may refuse to make payment on any Invoice (including, without limitation, the final Invoice) for any default under the Contract Documents, including but not limited to, those defaults set forth in clauses 10.5.1.1 through 10.5.1.8 hereof. Owner shall not be deemed in default by reason of withholding payment while any such defaults remain uncured.

**§10.6.2** Contractor shall promptly pay each Subcontractor, upon receipt of payment from Owner, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained, from payments to Contractor on account of such Subcontractor's portion of the Work. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner. Contractor shall furnish evidence of such payment to Owner and Consultant.

**§10.6.3** Neither Owner nor Consultant shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

**§10.6.4** Payment to suppliers shall be treated in a manner similar to that provided in Sections 10.6.1, 10.6.2 and 10.6.3.

**§10.6.5** The approval of an Invoice, a progress payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work by Owner.

## **§10.7 INTENTIONALLY OMITTED**

## **§10.8 FINAL COMPLETION**

**§10.8.1** Final Completion will occur when the Work has been fully and finally completed and the Contract fully performed. The Work will not be considered to have achieved Final Completion until all systems included in the Work are operational as designed, the instruction of Owner's personnel in the operation of such systems is complete, all designated or required permits, inspections and certifications have been delivered to Owner, together with a keying

schedule, master, submaster and special keys, delivery to Consultant, for its review, of written warranties in duplicate, delivery to Consultant of printed or typewritten operating, service, maintenance, cleaning instruction for all Work, together with parts lists and special tools for mechanical and electrical work, delivery to Owner of a Conditional Waiver and Release on Final Payment in the form attached as Attachment IV to the Agreement from Contractor and all final finishes included in the Work have been completed. As a condition to achieving Final Completion, Contractor shall acquaint Owner with various features and operations of the facility and equipment contained therein. Orientation walk-throughs shall be scheduled by Contractor, each upon not less than seventy-two (72) hours' prior written notice thereof to Owner and Consultant, at such times and with such frequency in order for Contractor to acquaint employees of Owner working on different shifts with the features and operations of the facility and equipment contained therein. The seventy-two (72) hour written notice period is intended to allow all interested parties an opportunity to be represented at the walk-through.

## **§10.9 PARTIAL OCCUPANCY OR USE**

**§10.9.1** Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by Owner. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided 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, 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.

**§10.9.2** Immediately prior to such partial occupancy or use, Owner, Contractor and Consultant 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.

**§10.9.3** 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.

**§10.9.4** Owner may occupy the Project or a specified area of the Project regardless of whether the Contract Time has expired.

**§10.9.5** It shall be understood that Owner's occupancy or use of such space or spaces on the Project site shall not constitute Owner's final acceptance of any Work, materials or equipment, nor relieve Contractor from its obligations to complete the Work, nor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of any Work, material or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents.

**§10.9.6** If the Project has not been completed in accordance with the Performance Schedule stipulated in the Contract Documents, Owner, at its election, may occupy any portion of the Project, and nothing thereby shall release Contractor from any of its agreements or obligations under the Contract Documents.

## **§10.10 FINAL PAYMENT**

**§10.10.1** Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance and upon receipt of a final Invoice, Consultant and Owner will promptly make such inspection and, when Consultant and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, Consultant will promptly issue a final approval stating that to the best of Consultant's knowledge and professional judgment, information and belief, and on the basis of Consultant's observations of all reasonably apparent conditions at the site and review of all relevant documents, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due Contractor and noted in said final approval is due and payable. Consultant's final approval will constitute a further representation that conditions listed in Section 10.10.2 as precedent to Contractor's being entitled to final payment have been fulfilled.

**§10.10.2** Neither final payment nor any remaining retained percentage shall become due until Contractor submits to Consultant (1) an affidavit that payrolls, bills for FF&E, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner, (3) a written statement that the insurance will be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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 Owner and (6) satisfaction of all of the other requirements set forth herein or in any of the other Contract Documents, including the delivery to Owner of all such lien releases from Contractor and all Subcontractors and materialmen as Owner may require. If a Subcontractor refuses to furnish a release or waiver required by Owner, Contractor may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§10.10.3** If Final Completion of the Work is materially delayed through no fault of Contractor or by issuance of Change Orders affecting final completion, and Consultant so confirms, Owner may, upon application by Contractor and approval by Consultant and compliance by 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 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. Such payment shall be made under terms and conditions governing final payment and such other terms and conditions as may be satisfactory to Owner, except that it shall not constitute a waiver of claims.

**§10.10.4** Acceptance of final payment by Contractor, a Sub-contractor or Sub-subcontractor 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 Invoice. Such waivers shall be in addition to any other waivers provided for in the Contract Documents.

## **ARTICLE XI PROTECTION OF PERSONS AND PROPERTY**

### **§11.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§11.1.1** Contractor shall be responsible for initiating, maintaining and supervising all health and safety precautions and programs necessary or desirable in connection with the performance of the Contract, including, but not limited to, such actions as may be required by Owner, the Contract Documents or existing conditions on or about the site.

**§11.1.1.1** Contractor shall immediately advise Owner if Contractor becomes aware of the presence or suspected presence of asbestos, PCB's or other hazardous substances to the extent not accounted for in the description of the Work. Contractor shall not dispose of or release, or allow its Subcontractors to dispose of or release, any hazardous substances as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended from time to time, or under any other federal, state or local statutes, rules, regulations, codes or ordinances, or in such quantities or concentrations as could (i) constitute a hazard to health or the environment, (ii) be required to be cleaned up or otherwise remedied, or (iii) result in deed record recordation or other requirements by applicable public authorities in lieu of remediation.

**§11.1.1.2** The Contract Documents do not contemplate the handling, design, storage processing, treatment, transportation, disposal, containment, removal, abatement, encapsulation, or use of, asbestos, radon, polychlorinated biphenyl (PCB), or any other hazardous or toxic material. Contractor will immediately stop Work in the affected area and report the condition to Owner and Consultant in writing. Except by written agreement of Owner and Contractor, Contractor shall not thereafter resume Work at the site until 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.

### **§11.2 SAFETY OF PERSONS AND PROPERTY**

**§11.2.1** 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 Owner's safety program as posted on Owner's website and with such actions as may be required by Owner, the Contract Documents or existing conditions on or about the Project site, 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 FF&E to be incorporated therein, whether in storage on or off the Project site, under the care, custody or control of Contractor or Contractor's Subcontractors or Sub-subcontractors; and

- .3 other property at the Project site or adjacent thereto or located on the Campus, and not designated for removal, including property of Owner, separate contractors engaged by Owner or other persons, whether or not completed or installed.

**§11.2.2** It is the policy of 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. Contractor shall give notices required by, and comply with, applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the health and 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 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 Exhibit A and Exhibit B, respectively. (For additional information concerning such procedures, Contractor should contact Owner's Environmental Health & Safety Office at (713) 348-4444). Owner's health and safety regulations and policies shall not relieve 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 damage to property in connection with Contractor's performance of the Work under the Contract Documents. If Contractor receives notice of any health or safety violation in connection with the Work, Contractor shall promptly report such violation to Owner and Contractor shall pay all fines and penalties for which Contractor is responsible in connection therewith.

**§11.2.3** Contractor shall 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 owners and users of adjacent facilities of scheduled activities. To the extent implicated by the nature of the Work, 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, 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.

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

**§11.2.5** Contractor shall promptly remedy to Owner's satisfaction damage and loss referred to in Clauses 11.2.1.2 and 11.2.1.3 caused in whole or in part by Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under Clauses 11.2.1.2 and 11.2.1.3, except damage or loss attributable to acts or omissions of Owner or Consultant 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 Contractor. The foregoing obligations of Contractor are in addition to Contractor's obligations under Section 3.17.



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

**§11.2.7** Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to cause damage or create an unsafe condition.

### **§11.3 EMERGENCIES**

**§11.3.1** In an emergency affecting safety of persons or property, Contractor shall immediately notify Owner thereof and shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 8, provided the emergency did not result from any acts or omissions of Contractor or any Subcontractor. If Contractor fails or neglects to carry out the Work in accordance with the requirements of the Contract Documents and such failure results, in Owner's sole judgment, in a threat to persons or property, Owner may, in its sole discretion, (1) order Contractor to stop performance of the Work until satisfactory corrective action has been taken, or (2) Owner may commence and continue any remedial action it deems necessary or desirable, and Contractor shall be responsible and liable for any costs or expenses incurred in connection therewith. Prior to the commencement of the Work at the site, Contractor shall furnish to Owner, in writing, a telephone number at which Contractor can be reached twenty-four (24) hours per day, seven (7) days per week, in the event of the occurrence of an emergency.

## **ARTICLE XII INSURANCE AND BONDS**

### **§12.1 CONTRACTOR'S LIABILITY INSURANCE**

**§12.1.1** Contractor shall 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 Owner, the policies of insurance, including the coverages, terms and limits, set forth in Exhibit C hereto, 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 12. The forms of all such policies of insurance must be satisfactory to Owner. None of the requirements contained herein as to the types, limits, or Owner's approval of insurance coverages to be maintained by Contractor is intended to, and shall not in any manner, limit, qualify or quantify the liabilities and obligations assumed by Contractor under the Contract Documents or as otherwise provided by law. Each of such insurance coverages shall provide that (1) Owner is named as an additional insured (except for any worker's compensation insurance or professional liability insurance), (2) the coverage shall not be invalidated by any act, omission or negligence of Owner, (3) the coverage shall be on a "claims occurring" basis and not a "claims made" 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 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 Owner or its insurers.

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 3.16 and 3.17 above, and (2) independent contractor coverage for any Subcontractors. Prior to completion of the Work, Contractor shall provide at least thirty (30) days' prior written notice to Owner if any such policy of insurance shall be cancelled, terminated, reduced, restricted, limited or materially changed.

**§12.1.2** The insurance required by Section 12.1.1 shall be written for not less than the limits of liability specified in Exhibit C hereto, in any of the other 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.

**§12.1.3** Certificates of Insurance on form ACORD 25 (or such other form as may be required by Owner) (and, if required by Owner, certified copies of any related policies of insurance) acceptable to Owner shall be filed by Contractor with Owner prior to commencement of the Work. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Invoice as required by Section 10.10.2.

**§12.1.4** Contractor shall be responsible and liable for ensuring that any subcontract between Contractor and a Subcontractor shall require that such Subcontractor 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 Contractor under this Article 12 (or such other coverages as may be approved by Owner). 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 Contractor shall obtain and maintain, at 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 Owner upon request. The term "Subcontractor" for the purposes of this Article 12 shall include subcontractors of any tier.

## **§12.2 OWNER'S LIABILITY INSURANCE**

**§12.2.1** Owner shall be responsible for purchasing and maintaining such liability and property damage insurance as Owner, in its sole discretion, may elect.

## **§12.3 SUPPLY BOND, PERFORMANCE BOND AND PAYMENT BOND**

**§12.3.1** Owner shall have the right to require Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**§12.3.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## **ARTICLE XIII UNCOVERING AND CORRECTION OF WORK**

### **§13.1 UNCOVERING OF WORK**

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

**§13.1.2** If a portion of the Work has been covered which is not contrary to requirements specifically expressed in the Contract Documents and which neither Consultant nor Owner has specifically requested to observe prior to its being covered, Owner or Consultant (with Owner's consent) may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs unless the condition was caused by Owner or a separate contractor in which event Owner shall be responsible for payment of such costs.

### **§13.2 CORRECTION OF WORK**

**§13.2.1** Contractor shall promptly correct Work rejected by Consultant or Owner that fails to conform to the requirements of the Contract Documents at Contractor's expense, whether observed before or after Final Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for Consultant's services and expenses made necessary thereby.

**§13.2.2** If, within one year after the date of Final Completion of the Work, or by terms of an 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, Contractor, at Contractor's expense, shall correct it promptly after receipt of written notice from Owner to do so unless Owner has previously given Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Final Completion by the period of time between Final Completion and the actual performance of the Work. This obligation under this Section 13.2.2 shall survive any use or occupancy of the Work by Owner or any termination of the Contract. Owner shall give such notice promptly after discovery of the condition.

**§13.2.3** Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

**§13.2.4** If Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct it in accordance with Section 2.5. If Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from Consultant, Owner may remove it and may store the salvable FF&E at Contractor's expense. If Contractor does not pay costs of such removal and storage within ten (10) days after written notice, Owner may upon ten (10) additional days' written notice sell such FF&E at auction or at private

sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by Contractor, including compensation for Consultant's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Owner.

**§13.2.5** Contractor shall bear the cost of correcting destroyed or damaged property, including completed or partially completed construction, of Owner or Owner's separate contractors caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§13.2.6** Nothing contained in this Section 13.2 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Section 13.2.2 relates only to the specific obligation of 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 Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work. The corrective remedies set forth in this Section 13.2 are not exclusive and shall not deprive Owner of any action, right or remedy otherwise available to Owner for breach of any of the provisions of the Contract Documents.

### **§13.3 ACCEPTANCE OF NONCONFORMING WORK**

**§13.3.1** If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, 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 XIV MISCELLANEOUS PROVISIONS**

### **§14.1 GOVERNING LAW**

**§14.1.1** 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.

### **§14.2 SUCCESSORS AND ASSIGNS**

**§14.2.1** Owner and Contractor respectively bind themselves, their successors, assigns and legal representatives and, if Contractor is a partnership, its partners, in respect to covenants, agreements and obligations contained in the Contract Documents. Notwithstanding the foregoing, 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 Owner, and any attempted assignment thereof without the prior written consent thereto by Owner shall be void.

### **§14.3 WRITTEN NOTICE**

**§14.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice. Notwithstanding the foregoing, any notice to 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 Owner at 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.

### **§14.4 RIGHTS AND REMEDIES**

**§14.4.1** 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.

**§14.4.2** No action or failure to act by Owner, Consultant 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 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 in writing executed by the waiving party.

### **§14.5 TESTS AND INSPECTIONS**

**§14.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Contractor shall give Consultant and Owner timely notice of when and where tests and inspections are to be made so Consultant and Owner may observe such procedures. Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

**§14.5.2** If Consultant, Owner or public authorities having jurisdiction determine that portions of the Work require additional inspection, testing or approval not included under Section 14.5.1, Consultant will, upon written authorization from Owner, instruct Contractor to make arrangements for such additional testing, inspection or approval, by an entity acceptable to Owner, and Contractor shall give timely notice to Consultant and Owner of when and where tests and inspections are to be made so Consultant and Owner may observe such procedures. Owner shall bear such costs except as provided in Section 14.5.3.

**§14.5.3** If such procedures for testing, inspection or approval under Sections 14.5.1 and 14.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for Consultant's services and expenses.

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

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

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

## **§14.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**§14.6.1** As between Owner and Contractor:

- .1 Before Final Completion.** As to acts or failures to act occurring prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events on the later of Final Completion or the date the act or failure to act reasonably should have been discovered.
- .2 After Final Completion.** As to acts or failures to act occurring after Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events on the later of the date of any act or failure to act by Contractor pursuant to any warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by Contractor under Section 13.2, or the date of actual commission of any other act or failure to perform any duty or obligations by Contractor or Owner, or the date the act or failure to act reasonably should have been discovered.

## **§14.7 ATTORNEY'S FEES**

**§14.7.1** In the event Contractor or Owner defaults in any of their respective obligations under any of the Contract Documents and the non-defaulting party engages any 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.

## **§14.8 NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

**§14.8.1** Contractor and all Subcontractors and their respective employees shall (1) adhere to and comply with Owner's Equal Opportunity/Non-Discrimination/Affirmative Action Policy, a copy of which is available to Contractor on 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 Contractor and each Subcontractor in the form attached hereto as Exhibit D, and (2) be liable for any losses, fines or penalties sustained or suffered by Owner resulting from a violation thereof.

## **§14.9 JUDICIAL OR ADMINISTRATIVE MATTERS**

**§14.9.1** Contractor shall notify Owner in the event Contractor or any of its principals (1) is or has been judicially or administrative determined to have violated any criminal or civil law involving the procurement, management or expenditure of federal, state or local government funds or to have committed fraud, forgery, embezzlement, theft or bribery, (2) is presently debarred, suspended, declared ineligible or voluntarily excluded from any transactions 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 Contractor shall be liable for any losses, fines or penalties sustained or suffered by Owner resulting from any occurrence described in clauses (1), (2) or (3) of this Section 14.9.1.

## **§14.10 UNIVERSITY POLICIES, PROCEDURES AND GUIDELINES**

**§14.10.1** 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 possession or use of weapons on the Campus, entitled the "Weapons Policy", (3) to the use of carts on its Campus, (4) to procedures for fire prevention during and following the cutting and welding processes, (5) to smoking on the Campus, entitled the "Tobacco-free Campus", (6) to the use of unmanned aircraft systems, (7) to Campus planning guidelines and (8) to building design standards, copies of all of which policies are available to Contractor on Owner's website; and Contractor shall be liable for losses, fines or penalties sustained or suffered by Owner resulting from a violation of any of said policies.

## **§14.11 COMPLIANCE WITH LAW**

**§14.11.1** Contractor and all Subcontractors shall be responsible and liable for complying with all applicable federal, state and local statutes, rules, regulations, codes, ordinances, orders and other requirements in connection with the performance or furnishing of the Work. Without limiting the foregoing, Contractor and each Subcontractor specifically agree not to utilize any person in the performance or furnishing of the Work who is registered as a sex offender. Contractor shall be liable for losses, fines or penalties sustained or suffered by Owner resulting from a violation of this provision.

## **§14.12 LIMITATION OF OWNER'S PERSONAL LIABILITY**

**§14.12.1** 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 limitation, which shall be effective if Owner ever succeeds to Contractor's rights and obligations under a subcontract.

## **§14.13 SURVIVAL**

**§14.13.1** Notwithstanding anything in the Contract Documents to the contrary, the indemnification obligations of Contractor (as set forth in Sections 3.16 and 3.17 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.

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

**§14.14.1** 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.

## **§14.15 ENTIRE AGREEMENT; SEVERABILITY**

**§14.15.1** 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 provisions 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.

## **§14.16 PARAGRAPH AND SUBPARAGRAPH HEADINGS**

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



## **§14.17 COUNTERPARTS**

**§14.17.1** The Contract 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.

## **§14.18 ELECTRONIC TRANSMISSION**

**§14.18.1** The electronic transmission of the signature of any party to any of the Contract Documents 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 signature sent by facsimile transmission shall be re-executed by each signatory party in an original form.

## **§14.19 MECHANIC'S LIEN CLAIMS**

**§14.19.1** Contractor shall keep Owner and the Project and any other property owned by Owner 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 Owner or the Project by anyone claiming by, through or under Contractor, Contractor shall cause the same to be removed from the Project to the satisfaction of Owner within thirty (30) days of the filing thereof. In the event Owner receives any notice of a potential claim against Owner or the Project by anyone claiming by, through or under Contractor, Contractor shall, within ten (10) days after receipt of any such notice, furnish to Owner, for Owner's approval, a written statement of the actions to be taken by Contractor with respect to such potential claim, which actions must be satisfactory to Owner. Owner shall have all rights with respect thereto provided for in Sections 53.081 through 53.085 of the Texas Property Code. Pending the removal of any such lien or claim to Owner's satisfaction, Owner shall have the right to reduce any payments otherwise to become owing to 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.

## **§14.20 CONTRACTOR'S RECORDS**

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

## **ARTICLE XV TERMINATION OF THE CONTRACT**

### **§15.1 TERMINATION BY CONTRACTOR**

**§15.1.1** Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of Contractor or a Subcontractor, Sub-

subcontractor, or their agents or employees or any other persons performing portions of the Work under contract with Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of an emergency that requires all Work to be stopped; or
- .3 because Owner has not made payment on an Invoice approved by Owner and Consultant within the time stated in the Contract Documents and Contractor is not in breach or default of any of the requirements of the Contract Documents.

**§15.1.2** If one of the above reasons exists, Contractor may, upon fourteen (14) additional days' written notice to Owner and Consultant, terminate the Contract and recover from Owner payment for Work executed and for proven loss with respect to FF&E, tools and installation equipment and machinery, including reasonable overhead, but not loss of anticipated profit on Work not performed.

**§15.1.3** If the Work is stopped after commencement thereof for a period of [sixty (60) days] through no act or fault of Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with Contractor because Owner has persistently failed to fulfill Owner's obligations under the Contract Documents with respect to matters essential to the progress of the Work, Contractor may, upon fourteen (14) additional days' written notice to Owner and Consultant, terminate the Contract and recover from Owner as provided in Section 15.1.2. *[Note: Discuss timing.]*

## **§15.2 TERMINATION BY OWNER**

**§15.2.1** Owner may terminate the Contract if Contractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful and careful manner;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors 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 Contractor (unless such lien is the result of Owner's breach of its obligation to make payments required by the Contract Documents);
- .3 disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .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 a breach or default of a provision of the Contract Documents.

**§15.2.2** When any of the above reasons exist, Owner, upon its determination in its sole discretion that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of Owner and after giving Contractor and Contractor's surety, if any, seven (7) days' written notice, terminate the Agreement and the other Contract Documents and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever method Owner may deem expedient. Upon request of Contractor, Owner shall furnish to Contractor an accounting of the costs incurred by Owner in finishing the Work.

**§15.2.3** When Owner terminates the Contract for one of the reasons stated in Section 15.2.1, Contractor shall not be entitled to receive further payment until the Work is finished.

**§15.2.4** If the unpaid balance of the Contract Sum exceeds all of the costs to Owner of finishing the Work, including, without limitation, the costs to Owner of the services of Consultant, Owner's consultants and attorneys and any additional expenses made necessary thereby, and other damages incurred by Owner and not expressly waived, such excess shall be paid to Contractor. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Owner. The amount to be paid to Contractor or Owner, as the case may be, shall be certified by Consultant, upon application, and this obligation for payment shall survive termination of the Contract.

**§15.2.5** 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 with respect to Contractor under any debtor relief laws, (3) 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 Contractor's insolvency, Owner shall be entitled to request of 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 15.2.1 through 15.2.4 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the costs of which will be backcharged against the Contract Sum.

**§15.2.6** 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

and the effective date of termination. Contractor shall continue to execute the part of the Work not terminated. If any unperformed portion of the Work is so terminated, Owner shall incur no liability to Contractor by reason of such termination, except that 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, Owner and 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. Owner shall not be responsible for damages for losses of anticipated profits on Work not performed on account of any termination described in this Section 15.2.6.

### **§15.3 SUSPENSION BY OWNER FOR CONVENIENCE**

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

**§15.3.2** The Contract Sum and Contract Time shall be adjusted only by written Change Order signed by Owner and Contractor for increase in the cost and time caused by suspension, delay or interruption as described in Section 15.3.1, to the extent mutually agreed to by Owner and 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 Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### **§15.4 TERMINATION BY OWNER FOR CONVENIENCE**

**§15.4.1** In addition to Owner's right to remove any unfinished portion of the Work from the Contract pursuant to Section 15.2.6 above, Owner may, at any time, terminate the Contract for Owner's convenience and without cause.

**§15.4.2** Upon receipt of written notice from Owner of such termination for Owner's convenience, Contractor shall:

- .1 cease operations as directed by Owner in the notice;
- .2 take actions necessary, or that 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.

**§15.4.3** In case of such termination for Owner's convenience, Contractor shall be entitled to receive payment for Work executed in accordance with the Contract Documents, and

reasonable costs incurred by reason of such termination as described in detail in invoices and descriptions provided by Contractor and as approved by Consultant and Owner, along with reasonable overhead on the Work not executed.

**§15.4.4** In determining amounts due to Contractor under this Section 15.4, Owner shall be credited for payments previously made to Contractor for the terminated portion of the Work and any claims Owner has against Contractor under the Contract Documents, and for the value of materials, supplies, experiment and other items to be disposed of by Contractor that are covered under the Contract Sum.

**§15.4.5** In the event of a termination of the Contract, 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, including delivery of any Shop Drawings, Product Data, Samples and other submittals pursuant to Section 3.12 above.