

*University System of New Hampshire*  
*General Conditions of the Contract for Construction*

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## **ARTICLE 1 GENERAL PROVISIONS**

### **1.1 BASIC DEFINITIONS**

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

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. 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 Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor.

#### **1.1.3 THE WORK**

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

#### **1.1.4 THE PROJECT**

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

#### **1.1.5 THE DRAWINGS**

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

#### **1.1.6 THE SPECIFICATIONS**

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

#### **1.1.7 THE PROJECT MANUAL**

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

#### **1.1.8 TERMINOLOGY**

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

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

## **1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

- 1.2.1** The intent of the Contract Documents is to include, in a manner consistent with other elements of the design, all items necessary for the proper execution and completion of the Work by the Contractor. All Work shown in, described in, or reasonably inferable from the Contract Documents to produce the indicated results shall be performed by the Contractor as part of this Contract unless noted 'N.I.C.' or otherwise specifically excluded. If there is any disagreement within the Contract Documents regarding the quality or quantity of Work and/or materials, the order of precedence of such documents shall be as follows: (1) Change Orders or Construction Change Directives, beginning with most recent; (2) Agreement; (3) Addenda, beginning with most recent; (4) these General Conditions as modified herein; (5) Specifications; (6) Drawings. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
- 1.2.2** Arrangement of the Drawings and organization of the Specifications into divisions, sections, and articles shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The 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.
- 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.2.4** All indications or notations that apply to one or a number of similar situations, materials, or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.
- 1.2.5** Codes, standards and published requirements or recommendations cited in the Contract Documents shall be current versions as of the date on which general bids were received, unless otherwise indicated
- 1.2.6** Work for which no explicit quality of 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 surrounding work and of the construction of the Project generally.
- 1.2.7** All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturers' written instructions, unless specifically indicated otherwise in the Contract Documents.
- 1.2.8** The Drawings are generally made to scale, but all working dimensions shall be taken from the figured dimensions, or by actual measurements taken at the job, and in no case by scaling. Whether or not an error is believed to exist, deviation from the Drawings and the dimensions given thereon shall be made only after approval in writing from the Architect.
- 1.2.9** The Contractor is entitled to rely reasonably on the accuracy of test boring or soil test information in the Contract Documents at, and only at, the specific locations of such borings or tests. The Owner does not hold such information to be an accurate or approximate indication of subsurface conditions at any other points. If the Contractor in the course of excavation finds that subsurface conditions at any specific test location differ from the information in the Contract Documents, the Contractor shall immediately so notify the Owner and Architect in writing, and shall no further disturb the noted conditions until authorized to do so by the Architect. No claim for extra cost or extension of time shall be allowed unless such notification is given by the Contractor, the Architect determines that the information contained in the Contract Documents was incorrect, and the Architect determines that the claim is justified by the discrepancy. Claims based on interpolation, extrapolation or any other assumptions by the Contractor as to subsurface conditions between test locations shall not be allowed.
- 1.2.10** Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall join the Work fully and completely with such conditions or work, unless otherwise specified.

## **1.3 CAPITALIZATION**

**1.3.1** Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses in the document

## **1.4 INTERPRETATION**

**1.4.1** 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.

## **1.5 EXECUTION OF CONTRACT DOCUMENT**

**1.5.1** The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or the Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon written request.

**1.5.2** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

## **1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER INSTRUMENTS OF SERVICE**

**1.6.1** The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect’s consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect or the Architect’s consultants; and, unless otherwise indicated, the Architect and the Architect’s consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor’s record set, shall be returned or suitably accounted for to the Architect, on written request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect’s consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect’s consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect’s consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ copyrights or other reserved rights.

## **ARTICLE 2 OWNER**

### **2.1 GENERAL**

**2.1.1** The Owner is the person or entity identified as such in the Agreement; and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

**2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

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

- 2.2.1** The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.
- 2.2.2** Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities
- 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and if applicable a legal description of the site. The Contractor shall be entitled to rely reasonably on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work
- 2.2.4** Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

### **2.3 OWNER'S RIGHT TO STOP THE WORK**

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

### **2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

- 2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional amounts charged to the Contractor are both subject to prior approval of the Architect, which shall not be unreasonably withheld. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **3.1 GENERAL**

- 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents, supplementary instructions, and submittals approved pursuant to Paragraph 3.12.
- 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by either activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

- 3.2.1** Before starting each portion of the Work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare with each other all architectural, structural, mechanical, fire protection, electrical the various Drawings and other Contract Documents relating to such portion with the intent both to ascertain their accuracy and completeness, to such portion with the intent both to ascertain their accuracy and completeness, and to ensure that the Work of all trades can be constructed as shown thereon while clearing any obstructions and maintaining proper clearances for the Work of other trades. In performing these studies and comparisons, the Contractor shall recognize and take account of the fact that the mechanical, fire protection and electrical drawings, and any other drawings so noted, are diagrammatic and may not be drawn to scale. The Contractor shall promptly notify the Architect as provided in Subparagraph 3.2.3 of any errors, omissions or inconsistencies found in the course of the studies and comparisons required by this Subparagraph 3.2.1; however, responsibility for any such errors, omissions or inconsistencies shall remain with the Architect.
- 3.2.2** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing any activities affected thereby.
- 3.2.3** The Contractor shall not proceed with any Work with respect to which errors, omissions or inconsistencies have been found by the studies and comparisons required by Subparagraphs 3.2.1 and 3.2.2, but shall immediately notify the Architect thereof in writing, and shall request supplementary instructions as provided in Subparagraph 3.2.4. If the Contractor proceeds with the Work without first obtaining such supplementary instructions, the Contractor shall correct work incorrectly done at the Contractor's expense.
- 3.2.4** Requests by the Contractor for additional information relative to the Contract Documents (RFIs) shall be submitted simultaneously to the Owner and Architect in writing, on a form prepared or approved by the Architect, and shall include a detailed statement indicating the specific drawings or specifications in need of clarification and the nature of the clarification requested, such as supplementary drawings or specifications, or review and approval of product data, samples or sketches submitted by the Contractor. If mutually agreed upon by the Architect, Contractor and Owner, "in writing" may include fax transmissions, electronic mail, or other documentable communication methods.
- 3.2.5** RFIs shall be submitted in a timely manner so as to cause no delay in the progress of the Work, and to allow adequate time for review and response prior to the date on which the Contractor's current schedule of submittals requires a subsequent submittal which is dependent on the information requested. Unless another period of time is reasonably requested and agreed to at the time of submittal, the Architect shall respond to each RFI within not more than four working days after receiving it.
- 3.2.6** If the Contractor fails to comply with the requirements of Paragraphs 3.2.4 and 3.2.5, or if information requested in an RFI is clearly and unequivocally provided in the Contract Documents, the Contractor shall reimburse the Owner for such costs and damages as would otherwise have been avoided, including but not limited to the cost of any Change in the Architect's Services.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

- 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall solely responsible for and have control over construction means, methods, techniques, sequences, procedures, safety precautions, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.
- 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.
- 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 3.3.4** The Contractor shall study and compare all Drawings and verify all figures shown thereon before laying out or constructing the Work. The Contractor shall be responsible for errors in its work and the work of its

Subcontractors that might reasonably have been avoided thereby. The Contractor shall establish and be responsible for the accuracy of all lines, grades, measurements, levels, column lines, wall and partition lines required by the various Subcontractors in laying out their Work, and shall protect and preserve all permanent bench and other markers. Checking of the figures or layout by the Architect shall not relieve the Contractor of these responsibilities.

### **3.4 LABOR AND MATERIALS**

- 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 3.4.2** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- 3.4.3** The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. If the Architect reasonably believes that a material proposed by the Contractor, but not specified by brand name and grade or model designation, may not comply with all such requirements, the Architect may require the Contractor to produce, at the Contractor's expense, reasonable evidence of such compliance. This provision shall not require the Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the Contract Documents to be performed at the Contractor's expense.
- 3.4.4** If a manufacturer's name, trade name or proprietary designation is used in the Contract Documents in connection with materials or products to be furnished under this Contract, the Contractor shall furnish the product of the named manufacturer, except as follows:
- .1** Where the words "or equal" are used after such manufacturer's name, trade name or proprietary designation, Contractor proposed substitutions will be accepted only if they are, in the opinion of the Architect, proved equal to the specified material or product through the submittal of comparative manufacturer's information or as otherwise provided in Subparagraph 3.4.3. The Contractor shall inform the Architect in writing of the proposed substitution and request approval thereof prior to or at the time the material or product is submitted for approval. Written approval by the Architect shall be required for the acceptance of any such substitution.
  - .2** Where the words "or equal" are not used after such manufacturer's name, trade name or proprietary designation, Contractor proposed substitutions may be accepted or rejected whether or not they are or can be, in the opinion of the Architect, proved equal to the specified material or product through the submittal of comparative manufacturer's information or as otherwise provided in Subparagraph 3.4.3. The Contractor shall inform the Architect in writing of the proposed substitution and request approval thereof prior to or at the time the material or product is submitted for approval. Written approval by the Architect shall be required for the acceptance of any such substitution.
- 3.4.5** If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor shall inform the Architect in writing as to the nature of such deviations at the time the material is submitted for approval, and shall request written approval of the deviation from the requirements of the Contract Documents. Written approval by the Architect shall be required for the acceptance of any such deviation.
- 3.4.6** The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to produce a coordinated design in relation to the overall appearance of the building. The Architect will judge the design and appearance of proposed substitutes based on their appropriateness in relation to the overall design of the project, as well as for their intrinsic merits. The Architect will not approve as equal to materials specified, proposed substitutions which, in the Architect's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Contractor shall, if required by the Architect, furnish the

substituted material in any color, finish, texture or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

- 3.4.7** Any additional cost, loss, or damage arising from the substitution of any materials or products for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Owner or the Architect, unless such substitution was made at the written request or direction of the Owner or the Architect.

### **3.5 WARRANTY**

- 3.5.1** The Contractor warrants that the materials and equipment furnished under the Contract will be new and of recent manufacture unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect resulting from abuse, improper operation, or modifications by the Owner at any time, inadequate or improper maintenance, or normal wear and tear and normal usage by the Owner after issuance by the Architect of a Certificate of Substantial Completion for the damaged or defective work. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- 3.5.2** The warranty required by this Paragraph 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

- 3.5.3** The Contractor shall procure and deliver to the Architect, no later than the Date of Substantial Completion, all warranties required by the Contract Documents.

### **3.6 TAXES**

- 3.6.1** For the Work provided by the Contractor, the Contractor shall pay sales, consumer, use, and similar taxes that are legally enacted when bids are received and negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Owner is an institution exempt from sales tax; Bidders shall take this in consideration in calculating their bid amount. Tax Exemption Number will be furnished to the selected Contractor.

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

- 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay all required permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

- 3.7.2** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall be responsible for scheduling all tests and inspections required by authorities having jurisdiction.

- 3.7.3** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

- 3.7.4** If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **3.8 ALLOWANCES**

- 3.8.1** The Contractor shall include in the Contract Sum all allowances states in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner

may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**3.8.2** Unless otherwise provided in the Contract Documents:

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

**3.8.3** Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

**3.9 SUPERINTENDENT**

**3.9.1** The Contractor shall employ a competent superintendent and necessary assistants, who shall be at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

**3.9.2** The Contractor shall coordinate and supervise the work performed by Subcontractors to ensure that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors at all times shall afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of their work and the storage of materials.

**3.9.3** The Contractor shall arrange for and attend job meetings with the Architect and such other persons as the Architect may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent, or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meetings if the representative's presence is requested by the Architect. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, Change Orders, time schedules, and manpower. Any notices required under the Contract may be served on such representatives.

**3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**3.10.1** The Contractor shall, within thirty days unless otherwise specified after being awarded the Contract, prepare and submit for the Owner's and Architect's information and review a Contractor's construction schedule for the Work. The schedule shall include the same breakdown as the Schedule of Values required by Paragraph 9.2, shall conform to all time limits and other schedule requirements current under the Contract Documents, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Unless objected to in writing by the Owner or Architect within fourteen days, the Contractor's Schedule shall be the Baseline Schedule for the Work, and the Contractor shall sign, date, and transmit copies thereof designated "Baseline Schedule," to the Architect and Owner. In addition, the Contractor shall maintain one copy thereof similarly designated, signed, and dated at the Contractor's field office throughout the Work for reference.

**3.10.2** The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

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

**3.10.4** The Contractor's schedule shall be prepared and maintained using Primavera, Microsoft Project, or equivalent computer software, shall clearly show the critical path of the entire Project, and shall show long lead time items and critical material and equipment delivery dates.

**3.10.5** The Contractor shall revise the construction schedule at appropriate intervals as required by the conditions of the Work and Project. At a minimum, an up-to-date schedule shall be submitted with each Requisition for Payment, and within seven days following receipt of information by the Contractor, which the Contractor believes may result in a change of completion date.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**3.11.1** The contractor shall maintain at the site for the Owner one record copy of the Drawings, specifications, addenda, change orders, baseline schedule, current schedule, schedule of submittals, and other documents related to the project as directed by the Architect, in good order and marked currently to record changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect 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 the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor 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 the Contractor to illustrate materials or equipment for some portion of the Work.

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

**3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given in the Contract Documents and the intent of the Contract Documents as defined in Subparagraph 1.2.1. Review by the Architect is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals not required by the Contract Documents may be returned by the Architect without action.

**3.12.5** The contractor shall review for compliance with the Contract Documents, approve and submit to the Architect 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 the Owner or of separate contractors. Submittals not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

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

**3.12.7** The Contractor shall perform no portion of the Work for which the contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

- 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.
- 3.12.9** The Contractor shall specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.
- 3.12.10** No claim for delay shall be allowed on account of failure of the Architect to furnish instructions, or return Shop Drawings, Product Data, Samples and the like, unless the Architect has failed to comply with the requirements of Subparagraph 3.2.5 and not then unless the Contractor's latest construction schedule demonstrates that the claimed failure has caused an equivalent extension of the critical path.

### **3.13 USE OF SITE**

- 3.13.1** The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times with the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine the contractor's apparatus, the storage of materials, and the operations of the Contractor's workmen to limits indicated by law, ordinances, the contract Documents, and permits and/or directions of the Architect and shall not unreasonably encumber the premises with the Contractor's materials or equipment.

### **3.14 CUTTING AND PATCHING**

- 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **3.15 CLEANING UP**

- 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from the about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. Immediately prior to the Architect's inspection for Substantial Completion, the Contractor shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed, and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust marks, and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken, or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense.
- 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

### **3.16 ACCESS TO WORK**

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

### **3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

**3.17.1** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **3.18 INDEMNIFICATION**

**3.18.1** To the fullest extent permitted by law, and to the extent claims, damages, losses or expenses are not covered by insurance purchased by the Contractor in accordance with Paragraph 11.1, the Contractor shall indemnify and hold harmless the Owner and Owner's agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from or caused by the negligent acts, errors or omissions of the Contractor, a sub-contractor, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

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

## **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

### **4.1 ARCHITECT**

**4.1.1** The Architect 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 "Architect" means the Architect or the Architect's authorized representative.

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

**4.1.3** If the employment of the Architect is terminated, the Owner may employ, at its option, a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

### **4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

**4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**4.2.2** The Architect, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with, to observe and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect

will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the contract Documents, except as provided in Subparagraph 3.3.1.

- 4.2.3** The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
- 4.2.4** Communications Facilitating Contract Administration. Except as otherwise provided in the contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.
- 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- 4.2.6** The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Subparagraph 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- 4.2.7** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given in the contract Documents and the intent of the Contract Documents as defined in Subparagraph 1.2.1. In the absence of specific written notice from the Contractor as provided in Paragraph 3.2.4. the Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect'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 within the intended scope of the submittal, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor unless otherwise specifically provided by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3.3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.
- 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive, review, approve, and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- 4.2.10** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

- 4.2.11** The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. As the Architect judges desirable, the Architect may issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be effected by field order, or other notice to the Contractor, and provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or instructions without additional cost or extension of Contract Time. If the Contractor claims additional cost or time because of such additional drawings or instructions, it shall give the notice provided in Subparagraph 4.3.7. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized as failure by the Architect to furnish such interpretations until 15 days after written request is made for them.
- 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of and reasonable inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, and will not show partiality to either.

### **4.3 CLAIMS AND DISPUTES**

- 4.3.1 Definition.** 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 the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 4.3.2 Time Limits on Claims.** All Claims by either party must be initiated within 21 days following occurrence of the event underlying such Claim, or within 21 days after the claimant first recognizes the condition underlying the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party. After a Change Order has been implemented, no additional Claim based on the same scope of Work will be considered.
- 4.3.3 Continuing Contract Performance.** Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- 4.3.4 Claims for Concealed or Unknown conditions.** If concealed or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents are encountered at the site, then notice by the observing party shall be given to the other party promptly before such conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially so as to cause an increase or decrease in the cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment in the contract Sum or Contract Time, or both be made by Change Order. If the Architect determines that the conditions at the site do not differ materially and that no change in the Contract Sum or Contract Time is justified the Architect shall so notify the Owner and Contractor in writing, stating the reasons for such determination. Claims by either party in opposition to such determination must be initiated within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.
- 4.3.5 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.6.
- 4.3.6** If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not

at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

#### **4.3.7 Claims for Additional Time**

**4.3.7.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall not be valid unless it is submitted in accordance with time limits established by Paragraph 4.3.2, includes an estimate of cost and of probable effect of delay in the progress of the Work, and demonstrates the specific impact of the Claim on the critical path shown on the Contractor's current construction schedule. The Contractor shall have the burden of demonstrating such impact, and shall furnish to the Architect such documentation relating thereto as the Architect may reasonable require. In the case of a continuing delay, only one Claim is necessary.

**4.3.7.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

**4.3.7.3** Claims for additional time shall be valid only to the extent that in aggregate they extend the Date of Substantial Completion past the date on which the Owner requires such Substantial Completion, as stated in Paragraph 13.10, unless such date is specifically changed by Change Order or Construction Change Directive.

**4.3.8 Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**4.3.9** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**4.3.10 Waiver of Claims: Final Payment.** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interest or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

**4.4.1 Decision of Architect.** Claims, including those alleging an error or omission by the Architect but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

**4.4.2** The Architect will review Claims and, within ten days of the receipt of the Claim, take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim because one or both of the parties failed to submit supporting data in response to a written request by the Architect as provided in Clause 4.4.2(1) and Subparagraph 4.4.4, or because the Owner has declined to authorize retention of persons with special knowledge or expertise in response to the Architect's request as provided in Subparagraphs 4.4.3 and 4.4.4.

- 4.4.3** In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.
- 4.4.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the claim in whole or in part.
- 4.4.5** The Architect will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.
- 4.4.6** When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.
- 4.4.7** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- 4.4.8** If a claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

#### **4.5 MEDIATION**

- 4.5.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.
- 4.5.2** The parties shall endeavor to resolve their Claims by mediation, which shall be in accordance with the Construction Industry Mediation rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
- 4.5.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- 4.5.4** Any unresolved claims between Owner and Contractor, Owner and Architect, contractor and Architect, Contractor and its Surety, or contractor and its Subcontractors or suppliers shall be submitted for mediation as provided in this Paragraph 4.5, and any or all of the parties named above shall at the Owner's request be joined or consolidated therein.

#### **4.6 ARBITRATION**

- 4.6.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.5.
- 4.6.2** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.
- 4.6.3** A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.
- 4.6.4** Any unresolved claims between Owner and Contractor, Owner and Architect, Contractor and Architect, Contractor and its Surety, or Contractor and its Subcontractors or suppliers shall be submitted for arbitration as provided in this Paragraph 4.6, and any or all of the parties named above shall at the Owner's request be joined or consolidated therein.
- 4.6.5** **Claims and Timely Assertion of Claims.** The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.
- 4.6.6** **Judgment on Final Award.** 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.

## **ARTICLE 5 SUBCONTRACTORS**

### **5.1 DEFINITIONS**

- 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **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, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.
- 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract time shall be increased or decreased by the difference, if any, occasioned by such change, and an

appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

- 5.2.4** The Contractor shall not change a Subcontractor, person, or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

### **5.3 SUBCONTRACTUAL RELATIONS**

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

### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

- 5.4.1** Each subcontract agreement for a portion of the work is assigned by the Contractor to the Owner provided that:
- .1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
  - .2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.
- 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

- 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.
- 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall

participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall revise the construction schedule as deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the Owner until subsequently revised.

**6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract.

## **6.2 MUTUAL RESPONSIBILITY**

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

**6.2.2** If proper execution and results of a portion of the Contractor's Work depends upon construction or operations by the Owner or a separate contractor, the Contractor shall promptly report to the Architect all apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results, if any, prior to proceeding with that portion of the Work,. Failure of the contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonable discoverable.

**6.2.3** The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

**6.2.4** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5. If such separate contractor sues or initiates an arbitration proceeding against the Owner because of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment, award, or settlement against the Owner arises therefrom the Contractor shall pay or satisfy it.

**6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

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

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1 GENERAL**

**7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by change Order, construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires signature by the Owner and may or may not be agreed to by the Architect and/or Contractor as provided in Subparagraph 7.4.1.

- 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.
- 7.1.4** The Contractor's itemized accounts for all expenditures or savings for additions to or deductions from, the Work shown on the Drawings and/or described in the Specifications shall at all times be open to inspection by the Owner and Architect.
- 7.1.5** Proposed changes in the Work requested during the construction period shall be priced by the Contractor and submitted to the Architect for review, in such form as the Architect may require, within ten (10) days following Contractor's receipt of the request. The proposal shall indicate the quantity and unit cost of each item of materials, and the number of hours of work and hourly rate for all labor costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials shall be shown if required by the Architect. The Contractor shall promptly revise and resubmit such proposal if the Architect determines that it is not in compliance with the requirements of this Architect, in order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor shall obtain and furnish to the Architect bona fide proposals from recognized suppliers for furnishing any material included in such Work. Such proposals shall be furnished at the Contractor's expense. The Contractor shall state in the proposal any extension of time required for the completion of the Work if the change or extra work is ordered.
- 7.1.6** In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and Subcontracts, in the manner prescribed in Subparagraph 7.3.6. In no case will a change involving over \$1,000.00 be approved without such itemization. No claim for delay shall be valid unless such itemization has been submitted in a timely manner.
- 7.1.7** For all changes in the Work involving an increase in the Contract Sum, the allowance for combined overhead and profit included in the total cost to the Owner shall not exceed the following percentages of the aggregate cost of the net added Work defined in Clauses 7.3.6.1, 7.3.6.2, 7.3.6.3, 7.3.6.4 and 7.3.6.5:
- .1** for Work performed by the Contractor; ten (10) percent of the Contractor's net cost.
  - .2** for Work performed by Subcontractors; ten (10) percent of the Subcontractor's or Subcontractors' combined net cost, plus five (5) percent of the total amount paid the Subcontractor or Subcontractors as Contractor's overhead and profit.
  - .3** for Work performed by Sub-subcontractors: seven and one half (7½) percent of the Sub-subcontractor's or Sub-subcontractors' combined net cost, plus five (5) percent of the total amount paid the Sub-subcontractor or Sub-subcontractors as the Subcontractor's or Subcontractors' combined overhead and profit, plus five (5) percent of the total amount paid the Subcontractor or Subcontractors as the Contractor's overhead and profit.

## **7.2 CHANGE ORDERS**

- 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, contractor, and architect, stating their agreement upon all of the following:
- .1** change in the Work;
  - .2** the amount of the adjustment, if any, in the Contract Sum; and
  - .3** the extent of the adjustment, if any, in the Contract Time.
- 7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

## **7.3 CONSTRUCTION CHANGE DIRECTIVES**

- 7.3.1** A Construction Change Directive is a written order prepared by the Architect or Owner, and signed by the Owner and Architect, or by the Owner alone, directing a change in the Work prior to agreement on adjustment, if any, in the contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the General scope of

the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

- 7.3.2** A Construction Change Directive shall be used in the absence of total agreement by Architect and/or contractor on the terms of a Change Order.
- 7.3.3** If the Construction change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
- .1** mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - .2** unit prices stated in the contract Documents or subsequently agreed upon;
  - .3** cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
  - .4** as provided in Subparagraph 7.3.6
- 7.3.4** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the contract Sum or Contract Time.
- 7.3.5** A Construction Change Directive signed by the Contractor indicates the agreement of the contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- 7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect based on reasonable expenditures and savings attributable to the change. In the case of an increase in the Contract sum, the adjustment shall include an allowance for overhead and profit not exceeding the limits stated in Paragraph 7.1.7. In such case and under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:
- .1** costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
  - .2** costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
  - .3** rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
  - .4** costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
  - .5** additional costs of supervision and field office personnel directly attributable to the change.
- 7.3.7** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured based on net increase, if any, with respect to that change.
- 7.3.8** Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

**7.3.9** When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### **7.4 MINOR CHANGES IN THE WORK**

**7.4.1** The Architect will have authority to order minor changes in the Work not involving reduction in the Contract scope, adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents as defined in Paragraph 1.2.1. Such changes shall be effected by written order, which shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

### **ARTICLE 8 TIME**

#### **8.1 DEFINITIONS**

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

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

**8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

**8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### **8.2 PROGRESS AND COMPLETION**

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

**8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. 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 the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### **8.3 DELAYS AND EXTENSIONS OF TIME**

**8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act of or neglect by the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control or delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

**8.3.2** Claims relating to time shall be invalid unless made in strict accordance with applicable provisions of Paragraph 4.3.

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **9.1 CONTRACT SUM**

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

### **9.2 SCHEDULE OF VALUES**

**9.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect for approval a schedule of values allocating the Contract Sum to various portions of the Work. This schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. Upon approval by the Architect, this schedule shall be used as the basis for reviewing the Contractor's Applications for Payment and shall be revised if later found by the Architect to be inaccurate.

### **9.3 APPLICATIONS FOR PAYMENT**

**9.3.1** At the times established in the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, in the format and quantity requested by the Architect, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

**.1** As provided in Subparagraph 7.3.8 such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**.2** Such applications may not include requests for payment related to changes in the Work that have been properly authorized by Construction Change Directives or by interim determinations of the Architect, but not yet included in Change Orders.

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

**9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. Upon submittal of an Application for Payment, the Contractor further warrants that all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**9.3.4** If requested by the Owner, each Application for Payment or periodic estimate requesting payment shall be accompanied by (1) a waiver of liens on account of prior payments from each Subcontractor or (2) a certificate from each Subcontractor stating that the Subcontractor has been paid all amounts due the Subcontractor on the basis of the previous periodic payment to the Contractor, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Contractor shall furnish the Contractor's own written explanation to the Owner through the Architect. Such waiver or certificate shall be in a form acceptable to the Owner.

### **9.4 CERTIFICATES FOR PAYMENT**

**9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

**9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of all reasonably apparent conditions of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and professional judgment the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

- .1** defective Work not remedied;
- .2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;
- .4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5** damage to the Owner or another contractor;
- .6** reasonable evidence that the Work will not be completed within the Contract Time, retainage currently held by the Owner would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7** persistent failure to carry out the Work in accordance with the Contract Documents, or,
- .8** failure to maintain specified record documents relating to the Work.

**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

## **9.6 PROGRESS PAYMENTS**

**9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

- .1** On or about the twenty first (21st) day of each calendar month, the Owner will make a partial payment to the Contractor on the basis of a duly certified and approved estimate of the Work performed during the preceding calendar month, provided such estimate is submitted not later than the first day of each

month. Until the Work is fifty (50) percent complete, the Owner will pay ninety (90) percent of the amount due the Contractor on account of each such progress payment. At the time the Work is fifty (50) percent complete and thereafter, if its manner of completion and progress are satisfactory, the Owner may, at its sole discretion, make any of the remaining progress payments in full, subject to presentation by the Contractor of written consent of surety for such reduction in retainage. The initial ten (10) percent retainage will continue to be withheld, and the Owner will release such retainage within thirty (30) days after the date of issuance of a Certificate of Final Completion by the Architect.

- .2 The full Contract retainage may be reinstated at any time if the manner of completion of the Work and its progress do not remain satisfactory to the Owner, or if the Surety withholds or revokes its consent, or for other good and sufficient reasons.

**9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the 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 the Contractor on account of such Subcontractor's portion of the Work. By appropriate agreement with each Subcontractor, the Contractor shall require each Subcontractor to make payments to Sub-subcontractors in a similar manner

**9.6.3** Except as may otherwise be required by law, neither the Owner or Architect shall have an obligation to pay nor to see to the payment of money to a Subcontractor.

**9.6.4** Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2 and 9.6.3.

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

**9.6.6** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

## **9.7 FAILURE OF PAYMENT**

**9.7.1** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

## **9.8 SUBSTANTIAL COMPLETION**

**9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, and only minor items which can be corrected or completed without any material interference with the Owner's use of the Work remain to be corrected or completed.

**9.8.2** When the Contractor considers that the Work, or a portion thereof designated in the Contract Documents for separate completion, is substantially complete and the premises comply with Subparagraphs 3.15.1, the Contractor shall so notify the Architect and Owner in writing, and shall submit to the Architect together with such notice (1) a list of items to be completed or corrected, and (2) all permits, certificates, and special warranties required by the Contract Documents, endorsed by the Contractor and in a form reasonably

acceptable to the Architect. Promptly after receiving such notice, list, permits, certificates, and special warranties, the Architect will conduct a preliminary review to determine whether or not they are generally complete and correct. If the Architect finds on the basis of this review that the Contractor's notice and supporting documents are not generally complete or correct, the Architect will return them to the Contractor for revision and resubmittal, describing in general the additions or corrections required. If the Architect finds on a preliminary review of the Contractor's resubmittal that the resubmitted notice and supporting documents are still not generally complete and correct, the Contractor shall again correct and resubmit them and shall in addition reimburse the Owner for the cost of any change in the Architect's services resulting from such second and any subsequent preliminary reviews. When the architect finds on the basis of a preliminary review that the Contractor's notice and supporting documents are substantially complete and correct, the Architect will proceed as stated in Paragraph 9.8.3.

- 9.8.3** Promptly on receipt from the Contractor of a notice, list, permits, certificates and special warranties mentioned in the first sentence of Paragraph 9.8.2 which the Architect determines on the basis of a preliminary review to be generally complete and correct the Architect will perform a detailed inspection to determine that the requirements of the Contract Documents for Substantial Completion of the Work or designated portion thereof have been met. Upon making such determination will prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion of the Work, such Certificate shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance; shall list the remaining items to be completed or corrected, and shall fix the time within which the Contractor shall complete or correct all such items, warranties required by the contract Documents shall commence upon the Day of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion.
- 9.8.4** Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.
- 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **9.9 PARTIAL OCCUPANCY OR USE**

- 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage. When such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.10 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them 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. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.
- 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **9.10 FINAL COMPLETION AND FINAL PAYMENT**

**9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that on the basis of the Architect's observations of all reasonably apparent conditions at the site and inspections of all relevant documents, and to the best of the Architect's knowledge, information and professional judgment, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect the following:

- .1** an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied,
- .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 canceled or allowed to expire until prior written notice has been given to the Owner as required in Article 11,
- .3** a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,
- .4** consent of surety, if any, to final payment and,
- .5** 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 the Owner.

If the Contractor fails to furnish such releases or waivers as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, the Owner may require the contractor, as a condition of final payment and at the Contractor's expense, to furnish a bond satisfactory to the Owner to indemnify the Owner against such liens.

**9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2** failure of the Work to comply with the requirements of the contract Documents; or
- .3** terms of warranties required by the Contract Documents.

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

## **10.2 SAFETY OF PERSONS AND PROPERTY**

**10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

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

**10.2.2** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.

**10.2.3** The 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 sites and utilities.

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

**10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the contractor is responsible under clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the contractor's obligations under Paragraph 3.18.

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

**10.2.7** The Contractor shall not load or permit any part of the construction or site to be loaded in such a manner as to endanger its safety.

**10.2.8** The Contractor shall at all times be responsible for maintaining fire safety on the site, including prompt removal of all combustible rubbish, provision of fire extinguishing apparatus, and other measures and/or services specified herein or required by the State Fire Marshal or other authority having jurisdiction. If such authority determines that the Contractor has failed to provide or maintain adequate fire safety, the Contractor shall provide at its own expense any compensatory services, equipment, or devices required by the authority having jurisdiction including, but not limited to, maintaining a continuous fire watch.

**10.2.9** The Contractor shall at all times protect excavations, trenches, buildings, and materials from rain water, ground water, ice, snow, back-up or leakage of sewers, drains, or other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping, and other equipment necessary to this end.

**10.2.10** The Contractor shall remove snow or ice within the limits of the Work indicated in the Contract Documents that might result in damage or delay.

**10.2.11** During the progress of the Work and at all times prior to the Date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Contractor shall provide temporary heat, ventilation, and enclosure adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or Work in progress, or to materials stored on the premises. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided in the Contract Documents. The use of the permanent heating system for temporary heat shall be subject to the prior written approval of the Owner and architect, and reimbursement to the Owner for the cost of utilities used during construction.

### **10.3 HAZARDOUS MATERIALS**

**10.3.1** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**10.3.2** On receipt of such report from the Contractor the Owner shall obtain the services of a licensed laboratory to which the Contractor and Architect make no reasonable objection to verify the presence or absence of the material or substance reported by the contractor and, in the event such material or substance is found to be present, to determine whether or not it has been rendered harmless. If the licensed laboratory determines that such material or substance is present and has not been rendered harmless, the Owner shall obtain the services of qualified persons or entities to which the Contractor and Architect make no reasonable objection to perform the task of removal or safe containment of such material or substance. The Work in the affected area shall resume when the licensed laboratory verifies that the material or substance has been removed or rendered harmless. If appropriate, the Contract Time shall be extended and the Contract Sum shall be increased in the amount of the Contractor's reasonable shutdown, delay, and start-up costs, if any. Such adjustments shall be accomplished as provided in Article 7 and Paragraph 8.3.

**10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the negligence, gross negligence, or intentional act of a party seeking indemnity.

**10.4** The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

**10.5** If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the contractor for all cost and expense thereby incurred.

### **10.6 EMERGENCIES**

**10.6.1** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1 GENERAL INSURANCE REQUIREMENTS**

- 11.1.1** The Contractor shall not commence the Work, nor shall the Contractor permit any Subcontractor or Sub-subcontractor to commence any part of the Work, until the insurance required by this Article 11 has been obtained and such insurance has been approved by the Owner. Insurance required under this article shall be carried during the life of the Contract and for not less than one year thereafter
- 11.1.2** The Contractor shall require all Subcontractors and Sub-subcontractors to carry the insurance required by this Article 11 for all of their activities in connection with the Project, or the Contractor shall provide all such coverage under the Contractor's own insurance policies. The Contractor shall provide to the Owner a list of all Subcontractors and Sub-subcontractors who are providing their own insurance as required by these documents and Contractor shall certify that Subcontractors or Sub-subcontractors not on this list are insured by the Contractor.
- 11.1.3** Certificates of Insurance on Acord 25 form or other comparable form shall be filed with the Owner for all policies. Any such Certificate found incomplete or not according to form will be rejected as unsatisfactory. Rejected Certificates and copies of policies shall be corrected as necessary and resubmitted until approved.
- 11.1.4** All required insurance shall be provided by a company licensed to do business in the State of New Hampshire or on the New Hampshire Insurance Department's approved List of Non-Admitted Carriers.
- 11.1.5** The University System of New Hampshire, its trustees, officers, agents, and employees shall be listed as additional insureds on all certificates and policies, except workers' compensation and professional liability.
- 11.1.6** Every policy shall contain an endorsement stating that the insurance company will not cancel the policy, or allow it to expire, or change any coverage therein without first mailing by registered mail written notice of such action to the Treasurer of the University System, Myers Financial Center, 27 Concord Road, Lee, NH 03861-6624, at least seven (7) days prior to termination for nonpayment of premium, and at least thirty (30) days prior to termination or change for any other cause.
- 11.1.7** The Contractor agrees to assist in every manner possible in reporting and investigation of any accident, and to cooperate with all interested insurance carriers in handling any claim, by securing and giving evidence, and obtaining attendance of witnesses, as required for the settlement of any claim, arbitration or suit.
- 11.1.8** Title to all buildings and equipment not comprising part of the Work shall remain with the University System of New Hampshire, and property insurance therefore will be the responsibility of the University System. The Contractor shall be responsible for loss or damage to all personal property brought on University System premises.
- 11.1.9** The Contractor shall assume full responsibility and liability for losses, expenses, damages, demands and claims in connection with any injury or alleged injury, including death, or damage or alleged damage to property, sustained or alleged to have been sustained in connection with or arisen out of the performance of the Work by the contractor, its agents, employees, Subcontractors and Sub-subcontractors, including losses, expenses, damages, demands and claims sustained by the University System, its trustees, officers, agents and employees. In addition, the Contractor shall indemnify and hold harmless the University System, its trustees, officers, agents and employees from any and all such losses, expenses, damages, demands and claims.

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## 11.2 REQUIRED COVERAGE

Insurance limits may vary by project.

Insurance (X indicates required coverage)		Limits of Liability	
<b>a. Commercial General Liability (must be location and project specific)</b>			
X	Premises-Operations	General Aggregate	\$2,000,000
X	Products/Completed Operations	Products-Comp. Ops Agg.	\$2,000,000
X	Explosion, Collapse and Underground Hazard	Personal & Advertising Injury	\$1,000,000
X	Contractual Insurance	Each Occurrence	\$1,000,000
X	Broad Form Property Damage	Fire Damage (any one fire)	\$50,000
X	Independent Contractors	Medical Expense (any one person)	\$5,000
X	Personal Injury with Advertising Injury		
<b>b. Other - Liability</b>			
X	Contractors Pollution Legal Liability (must be location and project specific)	per Occurrence	\$3,000,000
		Aggregate	\$3,000,000
X	Owner's Protective Liability	per Occurrence	\$2,000,000
		Aggregate	\$6,000,000
<b>c. Excess Liability</b>			
X	Umbrella Form or Other Form	Each Occurrence	\$10,000,000
		General Aggregate	\$10,000,000
<b>d. Automobile Liability</b>			
X	Owned	Bodily Injury and Property Damage Combined Single Limit	\$1,000,000
X	Hired		
X	Non-owned		
<b>e. Workers' Compensation</b>			
X	Workers' Compensation		Statutory
X	Employer's Liability	Each Accident	\$500,000
		Disease, Policy Limit	\$500,000
		Disease, Each Employee	\$500,000
<b>f. Property</b>			
	Builder's Risk/Or Comparable Coverage in an Installation Floater	Replacement Cost	by Owner
	Renovation Risk		
<b>g. Architect &amp; Engineer Professional Liability</b>			
X	Professional Liability	Each Claim	\$3,000,000
		Aggregate	\$3,000,000

### **11.3 OWNER'S PROTECTIVE LIABILITY INSURANCE**

**11.3.1** Owner's Protective Liability coverage, if required by Subparagraph 11.2 above, shall be in the name of and for the benefit of The Owner.

### **11.4 PROPERTY INSURANCE (provided by Owner)**

**11.4.1** Builders Risk coverage or comparable coverage if required by Subparagraph 11.2 shall insure all parts of the Work comprising new buildings, structures, paths, roadways, utility and landscape structures, utility distribution systems and the like, and all additions to or extensions of existing buildings, structures and systems. If the Contract Work also includes renovation within an existing structure, then this portion of the Work shall also be insured and so described and endorsed to the policy. Coverage shall be written on an "All Risk" basis for the full value of the Work. The policy or policies shall be in the names of the Owner and Contractor, as their interests may appear, shall provide for inclusion as insureds of all other contractors, Subcontractors, Sub-subcontractors and others employed on the premises, and shall stipulate that the insurance company or companies shall have no right of subrogation against any of the insureds for any portion of the Work. Coverage shall be on all Work in place, stored on the Site, stored off the Site as provided in Subparagraph 9.3.2, or in transit.

**11.4.2** Renovation Risk coverage, if required by Subparagraph 11.2 above, shall insure all parts of existing buildings, structures, paths, roadways, utility and landscape structures, utility distribution systems and the like within or in connection with which the Work is performed, on a flat or no coinsurance basis. In addition the "other insurance" clause shall be deleted. Coverage shall be written on an "All Risk" basis. The policy or policies shall be in the names of the Owner and Contractor, as their interests may appear, shall provide for the inclusion as insureds all other contractors, Subcontractors, Sub-subcontractors and others employed on the premises, and shall stipulate that the insurance company or companies shall have no right of subrogation against any of the insureds for portion of the Work. Coverage shall be on all Work in place, stored on the Site, stored off the Site as provided in Subparagraph 9.3.2, or in transit.

**11.4.3** Property insurance shall be on an "All-Risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**11.4.4** Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**11.4.5** If during the period between the date of commencement of construction and one year after the Date of Substantial Completion of the Work the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after the end of such period property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during such period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.6 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**11.4.6 Mutual Waivers of Subrogation.** The Owner and Contractor mutually waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the Subcontractors, Sub-subcontractors,

agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise, separate policies shall provide this waiver of subrogation by endorsement or otherwise.

This waiver of subrogation shall not apply to any of the following claims by the Owner: (1) a claim for any uninsured loss or damage in connection with any part of the Work regardless of when the claim accrues, (2) a claim for reimbursement of any deductible amount applied to any first party property claim by the Owner under any policy of insurance for any loss or damage to the Work regardless of when the claim accrues, and (3) any claim seeking recovery of the amount of any self insured retention maintained by the Owner with respect to any loss or damage to the Work regardless of when the claim accrues.

- 11.4.7** A loss insured under this property insurance shall be adjusted by the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.8. The Owner shall pay the Contractor, their just share of insurance proceeds, from which the Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.
- 11.4.8** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6. If after such loss no other special agreement is made and unless the Owner terminated the Contract for convenience, replacement of damaged property shall be performed by the Contractor, after notification of a Change in the Work in accordance with Article 7.
- 11.4.9** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraph 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

## **11.5 PERFORMANCE BOND AND PAYMENT BOND**

- 11.5.1** The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising there under as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The surety company providing these bonds shall be licensed to do business in the State of New Hampshire and listed on the Federal Register for the Department of the Treasury as an approved surety company.
- 11.5.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **12.1 UNCOVERING OF WORK**

- 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.
- 12.1.2** If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect may with the Owner's approval request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall be, by appropriate Change Order, at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless

the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## **12.2 CORRECTION OF WORK**

### **12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

- .1** The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, and any cost, loss, or damages to the owner resulting therefrom, shall be at the Contractor's expense.

### **12.2.2 AFTER SUBSTANTIAL COMPLETION**

- .1** In addition to the Contractor's obligations under Paragraph 3.5, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, 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, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4.
- .2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of such subsequently executed Work.
- .3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

**12.2.3** The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither correct by the Contractor nor accepted by the Owner.

**12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the contract Documents.

**12.2.5** Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 related only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## **12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 GOVERNING LAW**

**13.1.1** The Contract shall be governed by the law of the State of New Hampshire.

### **13.2 SUCCESSORS AND ASSIGNS**

**13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the contract Documents. Except as provided in Subparagraph 13.2.2, neither party to the contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**13.2.2** The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **13.3 WRITTEN NOTICE**

**13.3.1** 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.

### **13.4 RIGHTS AND REMEDIES**

**13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available there under shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**13.4.2** No action or failure to act by the Owner, Architect, or Contractor 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 there under, except as may be specifically agreed in writing.

### **13.5 TESTS AND INSPECTIONS**

**13.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may observe such procedures.

**13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where test and inspections are to be made so that the Architect may observe such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

**13.5.3** If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**13.5.4** The Contractor shall obtain and deliver promptly to the Architect any occupancy permits, certificates of final inspection of any part of the Contractor's Work, and operating permits for any mechanical apparatus,

such as elevators, escalators, boilers, air compressors, etc. which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Architect shall be a condition precedent to Substantial Completion of the Work.

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

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

### **13.6 INTEREST**

**13.6.1** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### **13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**13.7.1** As between the Owner and Contractor:

- .1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial 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 date of Substantial Completion unless otherwise provided in Certificate of Substantial Completion.
- .2 Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, 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 date of issuance of the final Certificate for Payment unless otherwise provided in said certificate; and
- .3 After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

### **13.8 LIMITATION OF LIABILITY**

**13.8.1** No Trustee, officer, director, or employee of the Owner shall ever be personally or individually liable with respect to this Contract or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the Owner ever succeeds to the Contractor's rights and obligations under a Subcontract.

### **13.9 EQUAL OPPORTUNITY**

**13.9.1** Neither the Contractor nor any Subcontractor shall discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to the following; employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates or pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth policies of non-discrimination.

**13.9.2** The Contractor and all Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

### **13.10 REQUIRED COMPLETION DATE**

**13.10.1** In order to meet its educational, financial, or other obligations, the Owner requires substantial completion of the Work by **{as indicated on Proposal Form}**, subject to change by Change Order or Construction Change Directive.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14.1 TERMINATION BY THE CONTRACTOR**

**14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3** because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Document.

- 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
- 14.1.3** If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including overhead and profit as provided in Paragraph 7.1.7.
- 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

## **14.2 TERMINATION BY THE OWNER FOR CAUSE**

- 14.2.1** The Owner may terminate the contract if the Contractor:
- .1** persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
  - .2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
  - .3** persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
  - .4** is otherwise guilty of substantial breach of a provision of the contract Documents.
- 14.2.2** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor 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 the Contractor;
  - .2** accept assignment of subcontracts pursuant to Paragraph 5.4; and
  - .3** finish the Work by whatever reasonable method the Owner may deem expedient,. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Owner shall be entitled to collect from the Contractor all direct, indirect, and consequential damages suffered by the Owner on account of the Contractor's default, including without limitation additional services and expenses of the Architect made necessary thereby. The Owner shall be entitled to hold all amounts due the contractor at the date of termination until all of the Owner's damages have been established, and to apply such amounts to such damages. In no case shall the Contractor be entitled to receive further payment until the Work is finished.

**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may e, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

**14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

**14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption as provided in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include reimbursement of profit that the Contractor reasonably demonstrates would have been earned on other Work if the Suspension had not occurred. No adjustment shall be made to the extent:

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

**14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**14.4.1** At any time, the Owner may terminate the Contract for the Owner's convenience and without cause.

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

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

**14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred due to such termination, with reimbursement of profit that the Contractor reasonably demonstrates would have been earned on other work if the termination had not occurred.