

**STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND
CONSTRUCTOR (Lump Sum)**

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ARTICLE 1 AGREEMENT

Contract Number: [] Project ID: []

This Agreement is

between

OWNER

(Name, legal status and address)

[]
[]
[]

and

CONSTRUCTOR

(Name, legal status and address)

[]
[]
[]



for construction and services in connection with the following

PROJECT

(Name and address or location)

[]
[]
[]

Design Professional is

(Name, address and other information)

[]
[]
[]

The Owner's Designated Representative:

(Name, address and other information)

[]
[]
[]
[]

The Constructor's Designated Representative: *(Name, address and other information)*

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[]
[]
[]

The Design Professional's Designated Representative: *(Name, address and other information)*

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ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.1 Constructor represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.

2.1.2 Neither Constructor nor any of its agents or employees shall act on behalf of or in the name of Owner.

2.1.3 In accordance with the specific requirements of the Contract Documents set forth below, the Owner agrees to furnish or approve, in a timely manner, information required by the Constructor and to make payments to the Constructor.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest; and (b) promptly disclose to the other Party any conflicts that may arise. Each Party warrants it has not and shall



not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, Subcontractors, Sub-subcontractors, Suppliers, or Others to secure preferential treatment.

2.3 DESIGN PROFESSIONAL

2.3.1 Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work excluding, however, (a) design services delegated to Constructor in accordance with §3.15, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by Constructor, its Subcontractors and Sub-subcontractors in connection with their construction operations.

2.3.2 Owner shall obtain from Design Professional either a license for Constructor and Subcontractors to use the design documents prepared by Design Professional or ownership of the copyrights for such design documents. Owner shall indemnify and hold harmless Constructor against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.3.3 The Constructor, 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 Design Professional and the Design Professional's subconsultants 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 Design Professional and the Design Professional's subconsultant.

2.3.4 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 Design Professional's or Design Professional's subconsultants' copyrights or other reserved rights.

2.4 DEFINITIONS

2.4.1 "Agreement" means this University System of New Hampshire/ConsensusDocs 200 Standard Agreement and General Conditions Between Owner and Constructor (Lump Sum), as modified, and exhibits and attachments as listed in ARTICLE 14.

2.4.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.4.3 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating a change in the scope of the Work, Contract Price, or Contract Time, including substitutions proposed by Constructor and accepted by Owner.

2.4.4 The "Contract Documents" consist of (a) this Agreement; (b) documents listed in §14.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.13.4; and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.

2.4.5 "Contract Price" is the amount indicated in §7.1 and represents full compensation for performance by the Constructor of the Work in conformance with the Contract Documents.

2.4.6 "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion in §6.1.1.



2.4.7 “Constructor” is the person or entity identified in ARTICLE 1. References to General Contractor or Contractor in the Contract Documents may be a reference to Constructor.

2.4.8 “Cost of the Work” means the costs and discounts specified in §8.3

2.4.9 “Date of Commencement” means the date of commencement as identified in the notice to proceed.

2.4.10 “Day” means a calendar day.

2.4.11 “Defective Work” is any portion of the Work that does not conform to the requirements of the Contract Documents.

2.4.12 “Design Professional” means the licensed architect or engineer, and its consultants, retained by Owner to perform design services for the Project.

2.4.13 “Final Completion” occurs on the date when Constructor's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Parties.

2.4.14 “Hazardous Material” is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, transportation, disposal, or cleanup.

2.4.15 “Interim Directive” is a written order containing Work instructions directed by Owner pursuant to §8.2 and that is signed by Owner after execution of this Agreement and before Substantial Completion. “

2.4.16 “Law” means federal, state, or local law, ordinance, code, rule, and regulations applicable to the Work with which Constructor must comply that are enacted as of the Agreement date.

2.4.17 “Others” means Owner’s other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, sub-subcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or individuals for whose acts any of them may be liable.

2.4.18 “Overhead” means (a) payroll costs, burden, and other reasonable compensation of Constructor’s employees in Constructor’s principal and branch offices; and (b) general and administrative expenses of Constructor’s principal and branch offices.

2.4.19 “Owner” is the person or entity identified in ARTICLE 1 and includes Owner’s Representative.

2.4.20 The “Parties” are collectively Owner and Constructor.

2.4.21 The “Project,” as identified in ARTICLE 1, is the building, facility, or other improvements for which Constructor is to perform Work under this Agreement. It may also include construction by Owner or Others.

2.4.22 “Related Party” means a parent, subsidiary, affiliate or other entity having common ownership or management with the Constructor; any entity in which any stockholder in, or management employee of, the Constructor owns any interest in excess of ten percent in the aggregate; or any



person or entity which has the right to control the business or affairs of the Constructor. The term "related party" includes any member of the immediate family of any person identified above.

2.4.23 The "Schedule of the Work" is the document prepared by Constructor that specifies the dates on which Constructor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner.

2.4.24 A "Subcontractor" is a person or entity retained by Constructor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.

2.4.25 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unapproved disruption. This date shall be confirmed by a Certificate of Substantial Completion signed by the Parties.

2.4.26 A "Sub-subcontractor" is a person or entity who has an agreement with a Subcontractor, another Sub-subcontractor, or Supplier to perform a portion of the Subcontractor's Work or to supply material or equipment.

2.4.27 A "Supplier" is a person or entity retained by Constructor to provide material or equipment for the Work.

2.4.28 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.29 "Work" means the construction and services necessary or incidental to fulfill Constructor's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.4.30 "Worksite" means the area of the Project location identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 CONSTRUCTOR'S RESPONSIBILITIES

Constructor shall use its diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. Such Work includes furnishing construction administration and management services.

3.1 GENERAL RESPONSIBILITIES

3.1.1 Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and shall include any Work reasonably inferable from the Contract Documents.

3.1.1.1 The Constructor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. If the Design Professional reasonably



believes that a material proposed by the Constructor, but not specified by brand name and grade or model designation, may not comply with all such requirements, the Design Professional may require the Constructor to produce, at the Constructor's expense, reasonable evidence of such compliance. This provision shall not require the Constructor 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 Constructor's expense.

3.1.1.2 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 Agreement, the Constructor shall furnish the product of the named manufacturer, except as follows:

3.1.1.2.1 Where the words "or equal" are used after such manufacturer's name, trade name or proprietary designation, Constructor's proposed substitutions will be accepted only if they are, in the opinion of the Design Professional, proved equal to the specified material or product through the submittal of comparative manufacturer's information or as otherwise provided in §3.1.1.1. The Constructor shall inform the Design Professional 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 Design Professional shall be required for the acceptance of any such substitution.

3.1.1.2.2 Where the words "or equal" are not used after such manufacturer's name, trade name or proprietary designation, Constructor proposed substitutions may be accepted or rejected whether or not they are or can be, in the opinion of the Design Professional, proved equal to the specified material or product through the submittal of comparative manufacturer's information or as otherwise provided in §3.1.1.1. The Constructor shall inform the Design Professional 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 Design Professional shall be required for the acceptance of any such substitution.

3.1.1.3 If the Constructor 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 Constructor shall inform the Design Professional 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 Design Professional shall be required for the acceptance of any such deviation.

3.1.1.4 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 Design Professional 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 Design Professional will not approve as equal to materials specified, proposed substitutions which, in the Design Professional's 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 Design Professional, 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.

3.1.1.5 Any additional cost, loss, or damage arising from the substitution of any materials or products for those originally specified shall be borne by the Constructor, notwithstanding approval or acceptance of such substitution by the Owner or the Design Professional, unless



such substitution was made at the written request or direction of the Owner or the Design Professional.

3.1.2 Unless the Contract Documents instruct otherwise, Constructor shall solely be responsible for and have control over the construction means, methods, techniques, sequences, procedures, site security and safety precautions, and for coordinating all portions of the Work under the Agreement.

3.1.3 Constructor shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits unless otherwise directed by the Owner.

3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 Constructor shall provide competent supervision for the performance of the Work. Before commencing the Work, or making a change in the supervisory personnel, the Constructor shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager so Owner may review their qualifications. If, for reasonable cause, Owner refuses to approve an individual, or withdraws its approval after giving it, Constructor shall name a different superintendent or project manager for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite. The superintendent shall represent the Constructor, and communications given to the superintendent shall be as binding as if given to the Constructor. The Parties shall use best efforts to confirm communications in writing.

3.2.2 Constructor shall be responsible to Owner for acts or omissions of the Constructor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Constructor or any of its Subcontractors and Suppliers.

3.2.3 Constructor shall permit only fit and skilled persons to perform the Work. Constructor shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, Constructor shall immediately reassign the person upon receipt of Owner's written notice to do so.

3.2.4 CONSTRUCTOR'S REPRESENTATIVE Constructor's Representative shall possess full authority to receive instructions from Owner and to act on those instructions.

3.2.5 The Constructor 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 Constructor 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, subject to the specific limitations or restrictions of a particular site.

3.3 COOPERATION WITH WORK OF OWNER AND OTHERS

3.3.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.3.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to



cooperate with Constructor and to assist with the coordination of activities and the review of construction schedules and operations. In accordance with §6.3, Contract Price and Contract Time may be equitably adjusted for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.3.3 With regard to the work of Owner and Others, Constructor shall: (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective; (b) afford Owner and Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Constructor's Work with theirs.

3.3.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, Constructor shall give Owner prompt written notification of any defects Constructor discovers in their work which will prevent the proper execution of the Work. Constructor's obligations in this subsection do not create a responsibility for the work of Owner or Others but are for the purpose of facilitating the Work. If Constructor does not notify Owner of defects interfering with the performance of the Work, Constructor acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Constructor of defects, Owner shall promptly issue an Interim Directive informing Constructor what action, if any, Constructor shall take regarding the defects.

3.4 CONTRACT DOCUMENT REVIEW

3.4.1 Before commencing the Work, Constructor shall examine and compare the drawings and specifications with information furnished in the Contract Documents, relevant field measurements made by Constructor, and any visible conditions at the Worksite affecting the Work.

3.4.1.1 Requests by the Constructor for additional information relative to the Contract Documents (RFIs) shall be submitted simultaneously to the Owner and Design Professional in writing, on a form prepared or approved by the Design Professional, 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 Constructor. If mutually agreed upon by the Design Professional, Constructor and Owner, "in writing" may include fax transmissions, electronic mail, or other documentable communication methods.

3.4.1.2 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 Constructor's current schedule of submittals requires a subsequent submittal which is dependent on the information requested. Unless another period of time is reasonably requested by the Design Professional and agreed to at the time of submittal, the Design Professional shall respond to each RFI within ten Business Days after receiving it.

3.4.2 Should Constructor discover any defects which shall include but not be limited to errors, omissions, or inconsistencies in the Contract Documents, Constructor shall promptly report them to Owner and Design Professional. It is recognized, however, that Constructor is not acting in the capacity of a licensed design professional, and that Constructor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations. Following receipt of written notice from Constructor of defects, Owner shall promptly inform Constructor what action, if any, Constructor shall take regarding the defects.



3.4.3 Constructor shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless Constructor knowingly fails to report a recognized problem to Owner or request supplementary instructions when a problem is identified. If Constructor proceeds with the Work without first obtaining such supplementary instructions, the Constructor shall correct work incorrectly done at the Constructor's expense.

3.4.4 Constructor may be entitled to adjustments of the Contract Price or Contract Time because of clarifications or instructions arising out of Constructor's reports described in this §3.4.

3.4.5 Nothing in §3.4 shall relieve Constructor of responsibility for its own errors, inconsistencies, or omissions.

3.5 WORKMANSHIP

3.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.5.2 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.

3.5.3 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.

3.5.4 Where the Work is to fit with existing conditions or work to be performed by Others, the Constructor shall join the Work fully and completely with such conditions or work, unless otherwise specified.

3.5.5 The Constructor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work

3.5.6 The Constructor shall study and compare all Drawings and verify all figures shown thereon before laying out or constructing the Work. The Constructor shall be responsible for errors in its work and the work of its Subcontractors that might reasonably have been avoided thereby. The Constructor 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 Design Professional shall not relieve the Constructor of these responsibilities

3.6 MATERIALS FURNISHED BY OWNER OR OTHERS

3.6.1 If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of Constructor to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Constructor shall be the responsibility of Constructor and may be deducted from any amounts due or to become due Constructor. Any defects discovered in such materials or equipment shall be reported at once to Owner. Following receipt of written notice from Constructor of defects, Owner shall promptly inform Constructor what action, if any, Constructor shall take regarding the defects.

3.7 TESTS AND INSPECTIONS



3.7.1 Constructor shall schedule all tests, inspections and approvals of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction at an appropriate time so as to not delay the progress of the Work. Constructor shall give proper notice to all required parties of such tests, approvals, and inspections. If feasible, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.7.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents, which shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Constructor and promptly delivered to Owner.

3.7.2 If Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Constructor shall arrange for the procedures and give timely notice to Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.7.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents, Constructor shall be responsible for costs of correction and retesting.

3.8 WARRANTY

3.8.1 Constructor warrants that all materials and equipment furnished shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Owner's request, Constructor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Constructor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. Constructor's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

3.8.2 With respect to any portion of Work first performed after Substantial Completion, Constructor's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.8.3 Constructor shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Constructor's liability for such warranties shall be limited to the one-year correction period as provided in the section below. After that period, Constructor shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 If before Substantial Completion and within one year after the date of Substantial Completion of the Work, any Defective Work is found, Owner shall promptly notify Constructor in writing. Unless Owner provides written acceptance of the condition, Constructor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Constructor or give Constructor an opportunity to test or correct Defective Work as reasonably requested by Constructor, Owner waives Constructor's



obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by Constructor.

3.9.3 If Constructor fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Constructor. If payments then or thereafter due Constructor are not sufficient to cover such amounts, Constructor shall pay the difference to Owner.

3.9.4 Constructor's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined in accordance with New Hampshire law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Constructor and allow Constructor an opportunity to correct the Work if Constructor elects to do so. If Constructor elects to correct the Work, it shall provide written notice of such intent within 14 Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Constructor does not elect to correct the Work, Owner may have the Work corrected by itself or others, and, if Owner intends to seek recovery of those costs from Constructor, Owner shall promptly provide Constructor with an accounting of actual correction costs.

3.9.5 If Constructor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Constructor shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Constructor's other obligations under the Contract Documents.

3.9.7 At Owner's option and with Constructor's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case, the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work. Such adjustment shall be effected whether or not final payment has been made.

3.10 CORRECTION OF COVERED WORK

3.10.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered shall be uncovered for Owner's or Design Professional's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, Constructor shall pay the costs of uncovering and replacement.

3.10.2 If any Work is covered contrary to requirements in the Contract Documents, Owner may issue an Interim Directive to uncover the Work for Owner's observation and recover the Work all at Constructor's expense and with no Contract Time adjustment.

3.11 SAFETY



3.11.1 SAFETY PROGRAMS Constructor holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors of their safety responsibilities or the requirement to comply with the Law. Constructor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored onsite or offsite for use in the Work whether under the care, custody or control of the Constructor or the Constructor's Subcontractors or Sub-subcontractors; and (c) property located at the Worksite and adjacent to work areas, whether or not the property is part of the Worksite.

3.11.2 CONSTRUCTOR'S SAFETY REPRESENTATIVE Constructor shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by Constructor in writing to Owner, Constructor's project superintendent shall serve as its safety representative. Constructor shall report promptly in writing to Owner all recordable accidents and injuries occurring at the Worksite. When Constructor is required to file an accident report with a public authority, Constructor shall furnish a copy of the report to Owner.

3.11.3 The Constructor 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.

3.11.4 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Constructor, or anyone for whose acts Constructor may be liable, shall be promptly remedied by Constructor.

3.11.5 The Constructor 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.

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

3.11.7 The Constructor 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 Constructor has failed to provide or maintain adequate fire safety, the Constructor 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.

3.11.8 The Constructor shall at all times protect excavations, trenches, buildings, and materials from rainwater, 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.

3.11.9 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Constructor's safety program, may require by Interim Directive, Constructor to stop performance of the Work, take corrective measures satisfactory to Owner, or both. If Constructor does not adopt corrective measures, Owner may perform them and deduct their cost from the Contract Price. Constructor agrees to make no claim for damages, for an increase in the Contract Price or Contract Time based on Constructor's compliance with Owner's reasonable request.



3.12 EMERGENCIES

3.12.1 Prior to commencement of Work, Constructor shall work with the Owner to establish an emergency communication plan, and in an emergency affecting the safety of persons or property, Constructor shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price or Contract Time resulting from the actions of Constructor in an emergency situation shall be determined as provided in ARTICLE 8.

3.13 HAZARDOUS MATERIALS

3.13.1 Constructor shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate governmental agency.

3.13.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, Constructor shall be entitled to immediately stop Work in the affected area. Constructor shall promptly report the condition to Owner, Design Professional, and, if required, the governmental agency with jurisdiction.

3.13.3 Constructor shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.13.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Owner and shall be performed in a manner minimizing any adverse effect upon the Work.

3.13.5 If Constructor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Constructor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.

3.13.6 To the extent not caused by the actions or inactions or intentionally wrongful acts or omissions of Constructor, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless Constructor, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.13.7 MATERIALS BROUGHT TO THE WORKSITE

3.13.7.1 Safety Data Sheets (SDS) as required by Law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Constructor, Subcontractors, Owner, or Others, shall be maintained at the Worksite by Constructor and made available to Owner, Subcontractors, and Others.

3.13.7.2 Constructor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the



Worksite by Constructor if such materials or substances are required by the Contract Documents.

3.13.7.3 To the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Constructor, its agents, officers, directors, and employees, Constructor shall indemnify and hold harmless Owner, its agents, officers, directors, and employees, from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor.

3.13.8 Section 3.13 in its entirety shall survive the completion of the Work or Agreement termination.

3.14 SUBMITTALS

3.14.1 Constructor shall submit to Owner and Design Professional a submittal log with a proposed submittal schedule, all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required by §4.6.1. Constructor shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, Constructor shall prepare and deliver its submittals in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. Constructor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents.

3.14.2 The approval of any Constructor submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven Days following approval by Owner. Neither Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Constructor. If the Contract Documents do not contain submittal requirements pertaining to the Work, Constructor agrees upon request to submit in a timely fashion to Design Professional and Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Owner.

3.14.3 Unless another time period is reasonably requested by Design Professional and agreed to at the time of submittal, Design Professional shall respond to each submittal within 10 Business Days after receiving it.

3.14.4 Owner shall be responsible for reviewing and commenting on submittals with reasonable promptness to avoid causing delay.

3.14.5 Constructor shall perform all Work strictly in accordance with approved submittals and shall not perform any portion of the Work which require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by the Design Professional. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 8 are followed. Approval does not relieve Constructor from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.14.6 Record copies of the following, incorporating field changes and selections made during construction, shall be accessible at the Worksite and available to Owner upon request: drawings,



specifications, addenda, Change Order and other modifications, and required submittals including product data, samples, and shop drawings.

3.14.7 Constructor shall prepare and submit to Owner and Design-Professional:

- Final marked-up as-built drawings as submitted to the Design Professional;
- Updated electronic data, in accordance with §4.6.1; or
- Other documentation required by the Contract Documents that specifies how various elements of the Work were actually constructed or installed.
- Operations and maintenance manuals
- Warranty information
- All inspection reports

3.15 DESIGN DELEGATION

3.15.1 If the Contract Documents specify that Constructor is responsible for the design of a particular system or component to be incorporated into the Project, then Owner shall provide all required performance and design criteria. Constructor shall not be responsible for the adequacy of such performance and design criteria.

3.15.2 As required by the Law, Constructor shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of Constructor's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by Constructor's design professional.

3.16 WORKSITE CONDITIONS

3.16.1 WORKSITE VISIT Constructor acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.16.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Constructor shall stop affected Work after the concealed or unknown condition is first observed and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Constructor is to proceed. Constructor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in ARTICLE 8.

3.16.3 The Owner maintains possession of the premises and any improvements made by the Constructor. Under the Contract Documents, the Owner grants the Constructor the right to enter and use the premises. Constructor shall confine its apparatus, the storage of materials, and the operations of the Constructor's workers to limits indicated by law, ordinance, the Contract Documents and permits and/or directions of the Owner and shall not unreasonably encumber the premises with the Constructor's materials or equipment.



3.16.4 The Constructor shall remove snow or ice within the limits of the Worksite indicated in the Contract Documents that might result in damage or delay.

3.16.5 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 Constructor 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 Design Professional, and reimbursement to the Owner for the cost of utilities used during construction.

3.17 PERMITS AND TAXES

3.17.1 Constructor is responsible for general oversight of all trades required to obtain permits directly and shall assist Owner in obtaining the primary building permit and special permits for permanent improvements. Owner shall provide appropriate documentation for all subcontractor permit applications.

3.17.1.1 The owner shall be responsible for all fees related to the primary building permit.

3.17.1.2 The Constructor and/or its subcontractors shall be responsible for all fees related to trade permits.

3.17.2 Constructor shall give authorities having jurisdiction all notices required by Law, schedule all required inspections by the authority having jurisdiction and, except for permits and fees that are the responsibility of Owner pursuant to §4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Constructor shall provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.17.3 Constructor shall pay applicable taxes for the Work provided by Constructor.

3.17.4 If, in accordance with Owner's direction, Constructor claims an exemption for taxes, Owner shall indemnify and hold Constructor harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Constructor as a result of any such claim.

3.18 CUTTING, FITTING, AND PATCHING

3.18.1 Constructor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.18.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

3.19 CLEAN UP

3.19.1 Constructor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Constructor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Constructor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.



3.19.2 If Constructor fails to commence compliance with cleanup duties within two Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any amounts due or to become due to Constructor in the next payment period.

3.19.3 Immediately prior to Substantial Completion, the Constructor 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 Constructor at the Constructor's expense.

3.20 ACCESS TO WORK Constructor shall facilitate the access of Owner, Design Professional, and Others to Work in progress.

3.21 COMPLIANCE WITH THE LAW Constructor shall comply with the Law at its own cost. Constructor shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Constructor, its employees, subcontractors, suppliers, and agents for failure to comply with the Law, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Owner is received.

3.21.1 The Contract Price or Contract Time shall be equitably adjusted by Change Order for additional costs or time needed resulting from any change in Law, including increased taxes, enacted after the date of this Agreement.

3.22 CONFIDENTIALITY Constructor shall treat as confidential and not disclose to third persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Constructor or which Constructor may acquire in performing the Work. To the extent necessary to perform the Work, Constructor's confidentiality obligations do not apply to disclosures to Subcontractors, Sub-subcontractors, and Suppliers. Owner shall Treat as Confidential information all of Constructor's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

3.23 CONSTRUCTION UPDATES The Constructor 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 Constructor, which the Constructor believes may result in a change of completion date.

3.24 ROYALTIES, PATENTS, AND COPYRIGHTS Constructor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Constructor and incorporated in the Work. Constructor shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify, and hold Constructor harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner or Design Professional.

3.25 RELIANCE ON TEST RESULTS



3.25.1 The constructor is entitled to rely reasonably on the accuracy of test boring or soil test information provided by the Owner 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.

3.25.2 If the Constructor finds that subsurface conditions at any specific test location differ from the information in the tests provided by the Owner, the Constructor shall immediately notify the Owner and Design Professional in writing and shall not further disturb the noted conditions until authorized to do so by the Owner.

3.25.3 No claims for extra cost or extension of time shall be allowed unless such notification is given by the Constructor, the Design Professional determines that the information contained in the test results was incorrect, and the Design Professional determines that the claim is justified by the discrepancy.

3.25.4 Claims based on interpolation, extrapolation or any other assumptions by the Constructor as to subsurface conditions between test locations shall not be allowed.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION At the written request of Constructor, Owner shall provide Constructor with evidence of Project financing. Evidence of such financing shall be a condition precedent to Constructor's commencing or continuing the Work. Constructor shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Constructor the following:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law;

4.3.3 any other information or services requested in writing by Constructor which are required for Constructor's performance of the Work and under Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of Constructor pursuant to §3.17.1, Owner shall secure, with the assistance of the Constructor, and pay for the Project building permit, approvals, easements, assessments, and development fees.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION The Owner shall furnish to the Constructor within 15 Days after receipt of a written request, information necessary and relevant for the Constructor 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.



4.6 CONTRACT DOCUMENTS

4.6.1 ELECTRONIC DOCUMENTS Owner requires that Owner, Design Professional, and Constructor exchange documents and data in electronic or digital form. Before any such exchange, Owner, Design Professional, and Constructor shall agree on and follow a protocol for the exchange of electronic communications, governing all exchanges. At a minimum, the protocol shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE Owner's Representative shall be fully acquainted with the Project and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. If Owner changes its Representative or its Representative's authority, Owner shall immediately notify Constructor in writing.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior approval of Constructor, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between Constructor and Others regarding respective responsibilities for clean up at the Worksite, Owner may implement appropriate cleanup measures after giving notice and allocate the cost among those responsible during the following pay period.

4.10 OWNER'S RIGHT TO STOP THE WORK If the Constructor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by §3.9 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 §3.3.

4.11 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to Constructor, Owner shall either (a) promptly remedy the damage or loss and assume affected warranty responsibilities, (b) accept the damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If Constructor incurs costs or is delayed due to such loss or damage, Constructor may seek an equitable adjustment in the Contract Price or Contract Time under this Agreement.

4.12 The Owner's review and approval of the Constructor's documents or submittals shall not relieve the Constructor of responsibility for compliance with the Construction Documents unless (a) the Constructor has notified the Owner in writing of the deviation prior to approval by the Owner or, (b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Construction Documents

ARTICLE 5 SUBCONTRACTS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK



5.1.1 Promptly after executing this Agreement, Constructor shall provide Owner and, if directed, Design Professional with a written list of the proposed Subcontractors and significant Suppliers. If Owner has a reasonable objection to any proposed Subcontractor or Supplier, Owner shall notify Constructor in writing. Failure to promptly object shall constitute acceptance.

5.1.2 If Owner has reasonably and promptly objected, Constructor shall not contract with the proposed Subcontractor or Supplier, and Constructor shall propose another acceptable Subcontractor or Supplier to Owner. An appropriate Change Order shall reflect any increase or decrease in the Contract Price or increase or decrease in Contract Time because of the substitution.

5.1.3 Constructor shall not change a Subcontractor or Supplier previously selected if the Owner makes reasonable objection to such substitute.

5.2 **BINDING OF SUBCONTRACTORS AND SUPPLIERS** Constructor agrees to bind every Subcontractor and Supplier (and require each Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Document's applicable provisions to that portion of the Work. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Professional 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 Constructor that the Constructor, by the Contract Documents, has against the Owner. Where appropriate, the Constructor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.

5.2.1 The Constructor shall require all Subcontractors and Sub-subcontractors to carry the insurance required by Article 10 for all their activities in connection with the Work or the Constructor shall provide all such coverage under the Constructor's own insurance policies. The Constructor 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 Constructor shall certify that Subcontractors or Sub-subcontractors not on this list are insured by the Constructor.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by Constructor to Owner, subject to the prior rights of any surety, provided that:

5.3.1.1 this Agreement is terminated by Owner pursuant to §11.2 or §11.3; and

5.3.1.2 Owner accepts such assignment after termination by notifying Constructor and Subcontractor or Constructor and Supplier in writing and assumes all rights and obligations of Constructor pursuant to each subcontract or supply agreement.

5.3.2 If Owner accepts such an assignment, and the Work has been suspended for more than 30 consecutive Days, following termination, if appropriate, Subcontractor's or Supplier's compensation shall be equitably and reasonably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 **DATE OF COMMENCEMENT** The Date of Commencement is the date of commencement as stated in a notice to proceed.

6.1.1 **SUBSTANTIAL/FINAL COMPLETION** Substantial Completion of the Work shall be achieved on [____]. Unless otherwise specified in the Certificate of Substantial Completion, Constructor shall



achieve Final Completion on []. The deadlines for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence with regard to the obligations of the Contract Documents. By executing the Agreement, the Constructor confirms that the Contract Time is a reasonable period for performing the Work

6.1.3 Unless instructed by Owner in writing, Constructor shall not knowingly commence the Work before the effective date of Constructor's required insurance.

6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting its first application for payment, Constructor shall submit to Owner, and if directed, to Design Professional, a Schedule of the Work showing the dates on which Constructor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner. Except as otherwise directed by Owner, Constructor shall comply with the approved Schedule of the Work. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work, and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. Constructor shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Parties.

6.2.2 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved Schedule of the Work. Owner may require Constructor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. If Constructor consequently incurs costs or is delayed, or both, Constructor may seek an equitable adjustment in the Contract Price or Contract Time under ARTICLE 8.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Constructor, Constructor shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of Constructor include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §11.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Constructor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics and pandemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Constructor shall submit any requests for equitable extensions of Contract Time in accordance with ARTICLE 8. The Constructor shall have the burden of demonstrating such impact and shall furnish to the Owner such documentation relating thereto as the Owner may reasonably require.

6.3.2 In addition, if Constructor incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Constructor shall be entitled to an equitable adjustment in the Contract Price.



6.3.3 No claim for delay will be allowed on account of failure of the Design Professional to furnish instructions, or return Shop Drawings, Product Data, Samples and the like, unless the Design Professional has failed to respond within 10 Business Days in accordance with the requirements of the Standard Agreement between Owner and Design Professional and not then unless the Constructor's latest construction schedule demonstrates that the claimed failure has caused an equivalent extension of the critical path.

6.3.4 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Constructor shall provide written notice to Owner within five Business Days of the cause of such delays after Constructor first recognizes the delay. The Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.3.5 This Paragraph 6.3 does not preclude recovery of damages for delay by either Party under other provisions of the Contract Documents.

6.4 NOTICE OF DELAY CLAIMS If Constructor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, Constructor shall give Owner written notice of the claim in accordance with §8.4. If Constructor causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs. Owner shall process any such claim against Constructor in accordance with ARTICLE 8.

6.5 MONITORING PROGRESS Constructor shall establish a process for monitoring actual progress against the Schedule of Work. Constructor will provide written reports to Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual progress as compared to the Schedule of Work, including recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met. The Constructor shall also keep, and make available to the Owner and Design Professional, a daily log containing a record for each Day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, safety issues, and other information required by the Owner.

6.6 LIQUIDATED DAMAGES

6.6.1 SUBSTANTIAL COMPLETION Liquidated damages based on Substantial Completion date shall/ shall not apply.

6.6.1.1 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. Constructor shall pay Owner \$[] as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

6.6.2 FINAL COMPLETION Liquidated damages based on the Final Completion date shall/ shall not apply.

6.6.2.1 Owner will suffer damages which are difficult to determine and accurately specify if the Final Completion date, as may be amended by subsequent Change Order, is not attained. Constructor shall pay Owner \$[] as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Final Completion date. These liquidated damages are in lieu of all liability for any extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining Final Completion date.



6.6.3 Other applicable liquidated damages shall be included as Agreement exhibit.

ARTICLE 7 PRICE

7.1 LUMP SUM Lump sum is the Contract Price of \$[] subject to adjustment as provided in this Agreement.

7.2 ALTERNATES The Contract price is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

7.3 ALLOWANCES

7.3.1 All allowances stated in the Contract Documents shall be included in the Contract Price. While Owner may direct the amounts of, and the particular Suppliers or Subcontractors to supply specific allowance items, if Constructor reasonably objects to a Supplier or Subcontractor, it shall not be required to contract with them. Owner shall select allowance items in a timely manner so as not to delay the Work.

7.3.2 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite, less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Constructor's Overhead and profit for the allowances is included in the Contract Price, not in the allowances. If incurred costs are greater or less than the allowances, a Party may seek an equitable adjustment in the Contract Price or Contract Time under ARTICLE 8.

7.4 UNIT PRICES

7.4.1 Unit prices provided in the bid document shall represent the exact amount per unit to be paid to the Constructor (in the case of additions or increases) or refunded to the Owner (in the case of decreases). No additional adjustment will be allowed for Overhead, profit, insurance, or other direct or indirect expenses of the Constructor or subcontractors.

7.4.2 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit
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ARTICLE 8 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

8.1 CHANGE ORDER

8.1.1 Constructor may request or Owner may order changes in the Work or the timing or sequencing of the Work that impact the Contract Price or the Contract Time. All such changes in the Work that



affect Contract Time or Contract Price shall be formalized in a Change Order and processed in accordance with this article.

8.1.2 For changes in the Work, the Parties shall negotiate an appropriate adjustment to the Contract Price or the Contract Time in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld.

8.1.3 NO OBLIGATION TO PERFORM Constructor shall not be obligated to perform changes in the Work without a Change Order or Interim Directive.

8.2 INTERIM DIRECTIVES

8.2.1 Owner may issue an Interim Directive directing a change in the Work before agreeing on an adjustment to Contract Price or Contract Time or directing Constructor to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Constructor shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

8.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directive. As the directed Work is performed, Constructor shall submit its costs for such Work with its application for payment beginning with the next application for payment within 30 Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner, the Parties shall resolve the disputed amount, subject to the requirements of ARTICLE 12. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

8.2.3 When the Parties agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of a Change Order. The Change Order shall include all outstanding Interim Directives on which The Parties have reached agreement on Contract Price or Contract Time issued since the last Change Order.

8.3 DETERMINATION OF COST

8.3.1 An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

8.3.2 unit prices set forth in this Agreement or as subsequently agreed;

8.3.3 a mutually accepted, itemized lump sum; or

8.3.4 COST OF THE WORK Cost of the Work as defined by this §8.3.4 plus 10% for Overhead and 5% for profit. "Cost of the Work" shall include the following costs reasonably incurred to perform a change in the Work:

8.3.4.1 Wages of construction workers directly employed by the Constructor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

8.3.4.2 Salaries of Constructor's employees when stationed at the field office to the extent necessary to complete the applicable Work and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;



8.3.4.3 Cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Constructor's standard personnel policy, insofar as such costs are paid to employees of Constructor who are included in the Cost of the Work in §8.3.4.1 and §8.3.4.2;

8.3.4.4 Subject to the Owner's prior written approval, reasonable transportation, travel, and hotel expenses of Constructor's personnel incurred in connection with the Work;

8.3.4.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling;

8.3.4.6 Payments made by Constructor to Subcontractors for performed Work;

8.3.4.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of Constructor;

8.3.4.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Constructor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rentals from unrelated third parties shall be reimbursed at actual cost. Rentals from Constructor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to 85% of the value of the piece of equipment;

8.3.4.9 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval;

8.3.4.10 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Constructor is liable;

8.3.4.11 Permits, fees, licenses, tests, and royalties including:

8.3.4.11.1 Royalty and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Constructor resulting from such suits or claims and payments of settlements made with the Owner's consent.

8.3.4.12 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work for a one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages or corrective work did not arise from Constructor's acts or failure to act;

8.3.4.13 Water, power, and fuel costs necessary for the Work;

8.3.4.14 Cost of removal and legal disposal of all nonhazardous substances, debris, and waste materials;

8.3.4.15 Costs directly incurred to perform a change in the Work which are reasonably inferable from the Contract Documents for the changed Work;



8.3.4.16 Costs incurred due to an emergency affecting the safety of persons or property;

8.3.5 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Constructor, all cash discounts shall accrue to Constructor. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work;

8.3.6 COST REPORTING Constructor shall maintain complete and current records that comply with generally accepted accounting principles and calculate the Cost of Work. Owner shall be afforded access to Constructor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to requested payment for Cost of the Work. Constructor shall preserve all such records for a period of five years after the final payment or longer where required by Law;

8.3.7 COST AND SCHEDULE ESTIMATES Constructor shall use reasonable skill and judgment in the preparation of a cost estimate or schedule for a change to the Work but does not warrant or guarantee their accuracy.

8.3.8 Cost of the Work pursuant to §8.3.4 is determined net of savings from the change. Constructor's Overhead and profit shall be added to any net increase in Cost of the Work. Overhead and profit shall be applied to any net decrease. Constructor shall maintain a documented, itemized accounting evidencing expenses and savings.

8.3.9 If unit prices are set forth in the Contract Documents or the Parties subsequently agree, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to either Party, the Parties shall agree to an equitable adjustment of such unit prices.

8.3.10 If the Parties disagree as to whether work required by Owner is within the scope of the Work, Constructor shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

8.4 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the Contract Price or the Contract Time, Constructor shall give Owner written notice of the claim within 14 Days after the occurrence giving rise to the claim or within 14 Days after Constructor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, Constructor shall submit written documentation of its claim, including appropriate supporting documentation, within 21 Days after giving notice, unless the Parties mutually agree upon a longer period of time. Owner shall respond in writing denying or approving Constructor's claim no later than 14 Days after receipt of Constructor's claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

8.5 INCIDENTAL CHANGES Owner may direct Constructor to perform incidental changes in the Work, upon concurrence with Constructor that such changes do not involve adjustments in the Contract Price or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing an Interim Directive.

8.6 VALIDATION OF PRICES To facilitate checking 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 no case will a change involving over



\$5,000.00 be approved without such itemization. No claim for delay shall be valid unless such itemization has been submitted in a timely manner.

ARTICLE 9 PAYMENT

9.1 SCHEDULE OF VALUES Before the first Application for Payment, the Constructor shall submit to the Owner 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 Owner may require. Upon approval by the Owner, this schedule shall be used as the basis for reviewing the Constructor's Applications for Payment and shall be revised if later found by the Owner to be inaccurate.

9.2 PROGRESS PAYMENTS

9.2.1 APPLICATIONS Constructor shall submit to Owner, and if directed, Design Professional a monthly application for payment no later than the first Day of the calendar month for the preceding calendar month. Constructor's applications for payment shall be itemized and supported by Constructor's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall be notarized and based on the approved schedule of values submitted by the Constructor in accordance with the Contract Documents, and include payment requests on account of properly authorized Change Orders or Interim Directives. The Design Professional will, within seven Business Days of receipt of the Constructor's application for payment, either issue to the Owner a certificate for payment or notify the Constructor the Design Professional's reason for withholding payment. Owner shall pay the amount otherwise due on any payment application, as certified by the Design Professional no later than 22 Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §9.2.4. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule shall be used as a basis for reviewing the Constructor's Applications for Payment.

9.2.1.1 Each Application for Payment or periodic estimate requesting payment shall be accompanied by (1) a waiver of liens from each Subcontractor on account of prior payments 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. Such waiver or certificate shall be in a form acceptable to the Owner.

9.2.1.2 Each application for payment shall be accompanied by a cost report which includes the schedule of values and change order report.

9.2.1.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Constructor on account of that portion of the Work.

9.2.1.4 When reviewing Constructor's Applications for Payment, the Design Professional shall be entitled to rely on the accuracy and completeness of the information furnished by the Constructor and shall not be deemed to represent that the Design Professional has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with §9.2.1 or other supporting data; that the Design Professional has made exhaustive or continuous on-site inspections; or that the Design Professional has made



examinations to ascertain how or for what purposes the Constructor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

9.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite when approved by the Owner in writing, including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by Constructor of bills of sale and proof of required insurance, or such other documentation satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.

9.2.3 LIEN WAIVERS AND LIENS

9.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS Partial lien waivers and affidavits will be required by Owner as a prerequisite for payment, Constructor shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. Constructor shall not be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

9.2.3.2 REMOVING LIENS If Owner has made payments in the time required by this ARTICLE 9, Constructor shall, within 30 Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Constructor fails to take such action on a lien, Owner may cause the lien to be removed at Constructor's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 12 relating to the subject matter of the lien.

9.2.4 RETAINAGE Until the Work is 50% complete, the Owner will pay 90% of the amount due the Constructor on account of each such progress payment. At the time the Work is 50% complete and thereafter, if its manner of completion and progress are satisfactory, the Owner may 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 10% retainage will continue to be withheld, and the Owner will release such retainage within 30 Days after the date of issuance of a Certificate of Final Completion by the Design Professional.

9.2.4.1 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.

9.2.4.2 Owner may reduce the amount to be retained at any time.

9.2.4.3 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, Constructor may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

9.2.5 PAYMENTS TO SUBCONTRACTORS AND MATERIAL SUPPLIERS The Constructor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount



paid to the Constructor 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 Constructor on account of such Subcontractor's portion of the Work. By appropriate agreement with each Subcontractor, the Constructor shall require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Constructor shall make payments to material suppliers in a similar manner.

9.2.5.1 The Owner and Constructor shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Constructor shall execute subcontracts in accordance with those agreements.

9.2.5.2 Unless required by law, neither the Owner nor the Design Professional shall have an obligation to pay nor to see the payment of money to a Subcontractor or material supplier.

9.3 ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Constructor is responsible under this Agreement:

9.3.1 Constructor's repeated failure to perform the Work as required by the Contract Documents;

9.3.2 Except as accepted by the insurer providing Builder's Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by Constructor to Owner or to others to whom Owner may be liable;

9.3.3 Constructor's failure to properly pay either Subcontractors or Suppliers following receipt of payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Constructor in accordance with this Agreement;

9.3.4 rejected or Defective Work not corrected in a timely fashion;

9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;

9.3.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work;

9.3.7 uninsured third-party claims involving Constructor, or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Constructor furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

9.3.8 failure to maintain specified record documents relating to the Work; and

9.3.9 damage to the Owner or another contractor.

No later than seven Days after receipt of an application for payment, Owner shall give written notice to Constructor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Constructor in order to receive payment. When the above reasons for disapproving or nullifying an



application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

9.5 PAYMENT DELAY If for any reason not the fault of Constructor, Constructor does not receive a progress payment from Owner within seven Days after the time such payment is due, then Constructor, upon giving seven Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Constructor has been received. If Constructor incurs costs or is delayed resulting from shutdown, delay, and start-up, Constructor may seek an equitable adjustment in the Contract Price or Contract Time under ARTICLE 8.

9.6 SUBSTANTIAL COMPLETION

9.6.1 Constructor shall notify Owner and, if directed, Design Professional, when it considers Substantial Completion of the Work or a designated portion to have been achieved. Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work.

9.6.1.1 The Constructor's notification of substantial completion shall include (a) a list of items to be completed or corrected, and (b) all permits, certificates, and special warranties required by the Contract Documents, endorsed by the Constructor and in a form reasonably acceptable to the Owner.

9.6.1.2 If Owner and its Design Professional determine that the Work or designated portion has not reached Substantial Completion, and the Constructor's notice and supporting documents are not generally complete or correct, the Owner and its Design Professional will promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use as well as return the submitted documents to the Constructor for revision and resubmittal, describing in general the additions or corrections required. Constructor shall promptly complete all items on the list.

9.6.1.3 If the Owner and its Design Professional find on a preliminary review of the Constructor's resubmittal that the resubmitted notice and supporting documents are still not generally complete and correct, the Constructor shall again correct and resubmit them and shall in addition reimburse the Owner for the cost of any change in the Design Professional's services resulting from such second and any subsequent preliminary reviews.

9.6.1.4 If the Owner and its Design Professional find during a preliminary review or subsequent review of resubmitted documents that the Constructor's notice and supporting documents are substantially complete and correct, the Owner and Design Professional will proceed as stated in §9.6.2.

9.6.2 Promptly on receipt from the Constructor of a notice, list, permits, certificates and special warranties mentioned in the first sentence of §9.6.1.1 which the Owner and Design Professional determine on the basis of a preliminary review to be generally complete and correct, the Design Professional 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.

9.6.3 When Substantial Completion of the Work or a designated portion is achieved, Constructor shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and



the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. In the absence of a delineation of responsibilities between Owner and Construction Manager, Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. The Certificate of Substantial Completion shall also list any items to be completed or corrected and establish the time for their completion or correction. The Certificate of Substantial Completion shall be submitted by Constructor to Owner and, if directed, to Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

9.6.4 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

9.6.5 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Constructor the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion, less a sum equal to 200% of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by Constructor in a mutually agreed upon timeframe. Owner shall pay Constructor monthly the amount retained for unfinished items as each item is completed.

9.7 PARTIAL OCCUPANCY OR USE

9.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. Constructor shall not unreasonably withhold consent to partial occupancy or use. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Constructor 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.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon notification from Constructor that the Work is complete and ready for final inspection and acceptance, Owner with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

9.8.2 When Final Completion has been achieved, Constructor shall prepare for Owner's written acceptance a final application for payment stating that to the best of Constructor's knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

9.8.3 Final payment of the balance of the Contract Price shall be made to Constructor no later than 30 Days after Constructor has submitted a complete and accurate application for final payment, including submissions required under §9.8.4, and a Certificate of Final Completion has been executed by the Parties.

9.8.3.1 The amount of the final payment shall be calculated as follows:



9.8.3.1.1 Take the sum of the Cost of the Work substantiated by the Constructor's final accounting

9.8.3.1.2 Subtract amounts, if any, for which the Owner withholds, in whole or in part, a final Certificate for Payment as provided in §9.3 or other provisions in the Contract Documents.

9.8.3.1.3 Subtract the aggregate of previous payments made by the Owner.

9.8.4 Final payment is due upon Constructor's submission to Owner of the following:

9.8.4.1 An affidavit declaring any indebtedness connected with the Work to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

9.8.4.2 As-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

9.8.4.3 Release of any liens, conditioned on final payment being received;

9.8.4.4 Consent of any surety;

9.8.4.5 Any outstanding known and unreported accidents or injuries experienced by Constructor or its Subcontractors at the Worksite; and

9.8.4.6 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 10.

If the Constructor 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 Constructor, as a condition of final payment and at the Constructor's expense, to furnish a bond satisfactory to the Owner to indemnify the Owner against such liens.

9.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Constructor, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, Constructor shall submit to Owner, and if directed, Design Professional, the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by §9.8.

9.8.6 OWNER RESERVATION OF CLAIMS The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

9.8.6.1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;

9.8.6.2 failure of the Work to comply with the requirements of the Contract Documents; or

9.8.6.3 terms of warranties required by the Contract Documents



9.8.7 CONSTRUCTOR ACCEPTANCE OF FINAL PAYMENT Unless Constructor provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of all claims by the Constructor arising out of or related to the Agreement or the Work.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1 INDEMNITY

10.1.1 To the fullest extent permitted by New Hampshire law, Constructor shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Design Professional, and Others as required by the contract (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Constructor, Subcontractors, Suppliers, Sub-subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.1.2 To the fullest extent permitted by New Hampshire law, Owner shall indemnify and hold harmless Constructor, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or Others, but only to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Owner, Design Professional, or Others.

10.1.3 NO LIMITATION ON LIABILITY The limits and types of insurance set forth in ARTICLE 10 are the minimum required amounts and in no way limit the liability of the Constructor or subcontractors. In any and all claims against the Indemnitees by any employee of Constructor, anyone directly or indirectly employed by Constructor or anyone for whose acts Constructor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Constructor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.2 INSURANCE

10.2.1 Before starting the Work and as a condition precedent to payment, Constructor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Constructor shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Constructor's Employers' Liability, Business Automobile Liability, and CGL policies, shall be written with at least the following limits of liability:

10.2.1.1 Employers' Liability Insurance

- (a) \$500,000 bodily injury by accident per accident.
- (b) \$500,000 bodily injury by disease policy limit.
- (c) \$500,000 bodily injury by disease per employee.

10.2.1.2 Business Automobile Liability Insurance \$1,000,000 per accident.



10.2.1.3 Commercial General Liability Insurance (must be location and project specific)

- (a) \$1,000,000 per occurrence.
- (b) \$2,000,000 general aggregate.
- (c) \$2,000,000 products/completed operations aggregate.
- (d) \$1,000,000 personal and advertising injury limit.

10.2.1.4 Excess/Umbrella Liability Insurance

- (a) \$2,000,000 per occurrence
- (b) \$2,000,000 general aggregate
- (c) \$2,000,000 products/completed operations aggregate limit

10.2.2 Employers' Liability, Business Automobile Liability, and CGL coverage required under §10.2.1 may be provided by a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies.

10.2.3 Constructor shall maintain in effect all insurance coverage required under §10.2.1 with insurance companies licensed to do business in the State of New Hampshire or on the New Hampshire Insurance Department's approved List of Non-Admitted Carriers and with an AM Best rating of at least A-, XIII. If Constructor fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Constructor or terminate this Agreement.

10.2.4 To the extent commercially available to Constructor from its current insurance company, insurance policies required under §10.2.1 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, 5 Chenell Drive, Suite 301, Concord, NH 03301, at least seven days prior to termination for nonpayment of premium, and at least 30 days prior to termination or change for any other cause.

10.2.4.1 Before commencing the Work and upon renewal or replacement of the insurance policies, Constructor shall furnish Owner with certificates of insurance (Acord 25 form) until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §10.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Constructor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

10.2.4.2 Any 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.

10.2.5 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. The insurance of the Constructor and its Subcontractors (both primary and excess) shall apply on a primary and non-contributory basis to any insurance carried by the additional insureds.

10.3 PROPERTY INSURANCE (Provided by Owner)

10.3.1 Builders Risk coverage 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. Renovation coverage shall also 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 an agreed amount/no coinsurance basis. Coverage shall be written on a "Special Form" basis for the full value of the Insured Structure. The policy or policies shall be in the name of the Owner. The Contractor, Subcontractors, Sub-subcontractors and others employed on the premises will be added as loss payee(s) as their interests may appear with respect to all work in place and stored on the site. The Contractor shall cover or cause to be covered all Materials off site or while in transit. Where allowable by law, the policy or policies 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.

10.3.2 It will be the decision of the Owner regarding the deductible or any increase in coverage such as Flood or Earthquake, however, the Owner will be responsible for the Direct Physical Damage to the property if insured or not.

10.3.3 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §10.3.1 shall be responsible for the deductible amounts or coinsurance payments.

10.3.4 Where allowable by law, the Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, sub-subcontractors, and design professionals for damages caused by risks covered by the property insurance provided under §10.3.1, except such rights as they may have to the proceeds of the insurance. Constructor shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Constructor, Subcontractor, Supplier, Sub-subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.4 RISK OF LOSS The Constructor shall be responsible for loss or damage to all personal property brought on the Worksite.

10.5 POLLUTION LIABILITY INSURANCE Constructor is/ is not required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered.

10.5.1 If applicable: in the following amounts: \$ per occurrence, and \$ in aggregate shall apply for one year after Final Completion. The policy shall cover Constructor's liability during construction, removal, storage, encapsulation, transport, and disposal of hazardous waste and contaminated soil, and asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere or any water body, whether it be gradual or sudden and accidental. The policy shall not have exclusions for mold or asbestos.

10.6 ADDITIONAL GENERAL LIABILITY COVERAGE Owner shall/ shall not require Constructor to purchase and maintain additional liability coverage. If required, Constructor shall provide:



10.6.1 OCP. Constructor shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Constructor by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, Constructor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.

10.7 BONDS Performance and Payments bonds are/ are not required. 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. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the bonds shall each be 100% of the original Contract Price. Constructor shall endeavor to keep its surety advised of changes potentially impacting the Contract Time and Contract Price, though Constructor shall require that its surety waives any requirement to be notified of any alteration or extension of time.

10.8 PROFESSIONAL LIABILITY INSURANCE To the extent Constructor is required to procure design services in accordance with §3.15, Constructor shall require its design professional to obtain professional liability insurance for claims arising from the negligent performance of design services under this Agreement, with a company reasonably satisfactory to Owner, including coverage for all professional liability caused by any consultants to Constructor's design professional, written for not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate with the retention or deductible not to exceed \$25,000. Constructor's design professional shall be responsible for payment of any applicable retention or deductible. The Professional Liability Insurance shall contain a retroactive date providing prior acts coverage sufficient to cover all Services performed by the Constructor's design professional for this Project. Coverage shall be continued in effect for eight years following Substantial Completion.

ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

11.1 SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1 OWNER SUSPENSION Should Owner order Constructor in writing to suspend, delay, or interrupt the performance of the Work for the convenience of Owner and not due to any act or omission of Constructor or any person or entity for whose acts or omissions Constructor may be liable, then Constructor shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by Owner.

11.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all the Work does not constitute a suspension of Work under this section.

11.2 TERMINATION BY OWNER FOR CONVENIENCE

11.2.1 Upon Constructor's receipt of Owner's written notice from Owner, Owner may, without cause, terminate this Agreement. Constructor shall immediately stop the Work, follow Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

11.2.2 If Owner terminates this Agreement for convenience, Constructor shall be paid: (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs



incurred resulting from termination, but not including Overhead or profit on Work not performed; and (c) reasonable attorneys' fees and costs related to termination.

11.2.3 If Owner terminates this Agreement, Constructor shall:

11.2.3.1 execute and deliver to Owner all papers and take all action required to assign, transfer, and vest in Owner the rights of Constructor to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;

11.2.3.2 exert reasonable effort to reduce to a minimum Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

11.2.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and

11.2.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

11.3 TERMINATION BY OWNER FOR CAUSE The Owner may terminate the contract if the Constructor:

11.3.1 refuses or fails to supply enough properly skilled workers or proper materials;

11.3.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Constructor and the Subcontractors

11.3.3 disregards laws, ordinances, rules, or regulations or orders of a public authority having jurisdiction; or

11.3.4 is otherwise in material breach of a provision of the Contract Documents

11.3.5 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 Constructor and the Constructor's surety, if any, seven Days' written notice, terminate employment of the Constructor and may, subject to any prior rights of the surety:

11.3.5.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Constructor;

11.3.5.2 accept assignment of subcontracts pursuant to §5.3; and

11.3.5.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Constructor, the Owner shall furnish to the Constructor a detailed accounting of the costs incurred by the Owner in finishing the Work.

11.3.6 When the Owner terminates the Agreement for one of the reasons stated in §11.3.1 through §11.3.4, the Owner shall be entitled to collect from the Constructor all direct, indirect, and consequential damages suffered by the Owner on account of the Constructor's default, including without limitation additional services and expenses of the Design Professional and attorney's fees and expenses made necessary thereby. The Owner shall be entitled to hold all amounts due the Constructor at the date of termination until all the Owner's damages have been established, and to apply such amounts to such damages. In no case shall the Constructor be entitled to receive further payment until the Work is finished.



11.3.7 If Constructor files a petition under the Bankruptcy Code, this Agreement shall be governed by the applicable provisions of the Bankruptcy Code.

11.4 CONSTRUCTOR'S RIGHT TO TERMINATE

11.4.1 Seven Days after Owner's receipt of written notice from Constructor, Constructor may terminate this Agreement if the Work has been stopped for a 30-Day period through no fault of Constructor for any of the following reasons:

11.4.1.1 under court order or order of other governmental authorities having jurisdiction;

11.4.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Constructor, materials are not available; or

11.4.1.3 suspension by Owner for convenience pursuant to §11.1.

11.4.2 In addition, upon seven Days' written notice to Owner and an opportunity to cure within three Days, Constructor may terminate this Agreement if Owner:

11.4.2.1 assigns this Agreement over Constructor's reasonable objection; or

11.4.2.2 fails to pay Constructor in accordance with this Agreement and Constructor has stopped Work in compliance with §9.5; or

11.4.2.3 otherwise materially breaches this Agreement.

11.4.3 Upon termination by Constructor in accordance with this section, Constructor is entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs.

11.5 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 12 DISPUTE MITIGATION AND RESOLUTION

12.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Constructor shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If Constructor continues to perform, Owner shall continue to make payments in accordance with this Agreement.

12.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five Business Days to endeavor to reach resolution. If the dispute remains unresolved after 15 Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.



12.3 **MEDIATION** If direct discussions pursuant to §12.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The Parties shall mutually agree upon the mediator and the mediation process. The mediation shall be convened within 30 Business Days of the matter first being discussed and shall conclude within 45 Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

12.4 **BINDING DISPUTE RESOLUTION** If the matter is unresolved after submission of the matter to mediation, the Parties shall submit the matter to litigation in either the state or federal court having jurisdiction of the matter in the location of the Project. **THE PARTIES EXPRESSLY AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL FOR ANY CLAIM ARISING OUT OF OR RELATED TO THE AGREEMENT, PROJECT, OR WORK.**

12.5 **COSTS** The parties shall pay their own costs and attorneys' fees of any binding dispute resolution procedures unless otherwise determined by the adjudicator.

12.6 **MULTIPARTY PROCEEDING** All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

12.7 **LIEN RIGHTS** Nothing in this article shall limit any rights or remedies not expressly waived by Constructor that Constructor may have under lien laws.

ARTICLE 13 MISCELLANEOUS

13.1 **EXTENT OF AGREEMENT** Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

13.2 **ASSIGNMENT** Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Constructor or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Constructor than this Agreement. If such assignment occurs, Constructor shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

13.3 **GOVERNING LAW** The Agreement shall be governed by the laws of the State of New Hampshire

13.4 **SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.5 **NOTICE** Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in



the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

13.6 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

13.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.8 OWNER'S RIGHT TO AUDIT

13.8.1 Constructor shall grant the Owner and its designated representative the right to audit, during the performance of the Work and for a period of three years after Final Payment, all books, records, correspondence and notes maintained by the Constructor and any of its Subcontractors with respect to Services performed under this Agreement. A similar provision shall be incorporated by Constructor in all subcontracts entered into in connection with this Agreement.

13.8.2 Owner shall provide the Constructor 30 Days prior written notice of its intent to audit Constructor's or any Subcontractor's records. Constructor shall have the opportunity to audit itself prior to the proposed audit by Owner.

13.8.2.1 Should any overcharge to Owner be found by Constructor's audit, Constructor shall pay Owner an amount equal to the amount overcharged.

13.8.2.2 If Owner's audit reveals that the amounts charged to Owner by Constructor exceeded the actual amounts to which Constructor was entitled for Work, then Constructor shall pay Owner an amount equal to the amount overcharged.

13.8.2.3 If the Owner's audit reveals that the Constructor is entitled to additional sums, Owner shall promptly reimburse Constructor for the amount due.

13.8.3 During such inspections and audits, Owner shall have the right, at its expense, to take extracts and make copies of Constructor's records as it deems necessary to support its accounting report. Owner agrees to keep confidential all information and copies obtained pursuant to this section other than with respect to required disclosures in connection with disputes between the parties or as otherwise required by law, court order or governmental process.

13.8.4 The exercise by Owner, at any time of the right to audit Constructor's or any Subcontractor's records and accounts, or the acceptance by Owner of any audit statement or the receipt and/or deposit of payments by Owner or Constructor, or any payment tendered by or on behalf of Constructor or Owner shall be without prejudice to any duties, rights or remedies of Owner, Constructor or any Subcontractor.

13.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION Constructor shall abide by all applicable federal, state, and local laws respecting non-discrimination in employment and non-segregation of facilities, including the requirements set out at 41 CFR §§ 60-1.4, 60-300.5(a), and 60-741.5(a), which equal opportunity clauses are hereby incorporated by reference. The latter two regulations prohibit discrimination against qualified protected veterans and qualified individuals based on disability. These regulations also require affirmative action by covered vendors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. Additionally, Constructor will not discharge or in any other manner discriminate against employees or applicants



because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant.

ARTICLE 14 CONTRACT DOCUMENTS

These documents are on file, in electronic format, with the USNH Procurement Services Office, 121 Technology Drive, Suite 121, Durham, NH 03824-4716.

14.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- (a) Drawings: []
- (b) Specifications: []
- (c) Addenda: []
- (d) Owner Provided information: []
- (e) Other: []

14.2 INTERPRETATION OF CONTRACT DOCUMENTS

14.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, Constructor shall perform the Work as though fully described on both.

14.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Constructor shall immediately submit the matter to Owner for clarification. Subject to an equitable adjustment in Contract Time or Contract Price pursuant to ARTICLE 8, or a dispute mitigation and resolution, Owner's clarifications are final and binding.

14.2.3 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 Design Professional.

14.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

14.3 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to §14.2.2 the drawings (large scale governing over small scale), specifications, and addenda issued and acknowledged before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to §3.13.4 or designated as a Contract Document in §14.1; (f) other Contract Documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that is strictest shall control.

Signatures Follow on Next Page



This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature.)

Each party is signing the Agreement on the date stated under the party's signature.

FOR THE UNIVERSITY SYSTEM
OF NEW HAMPSHIRE

OWNER
«Name
Title
Campus»

Date:

OWNER
«Name
Title
Campus»

Date:

OWNER
Catherine A. Provencher
Vice Chancellor for Financial Affairs &
Treasurer
University System of New Hampshire»

Date:

CONTRACTOR
«Name
Title
Company»

Date:

END OF DOCUMENT.

