

# AIA<sup>®</sup> Document A201<sup>®</sup> – 2017

## General Conditions of the Contract for Construction

*[Revised December 2024]*

for the following PROJECT:  
(Name and location or address)

[Redacted Project Name and Location]

THE OWNER:  
(Name, legal status and address)(Name and address)

Case Western Reserve University  
10900 Euclid Avenue  
Cleveland, Ohio 44106-7228

THE ARCHITECT:  
(Name, legal status)(Name and address)

[Redacted Architect Name and Address]

### TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS



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## 14 TERMINATION OR SUSPENSION OF THE CONTRACT

## 15 CLAIMS AND DISPUTES

### INDEX

(Topics and numbers in bold are Section headings.)

#### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

#### Access to Work

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

#### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

#### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

#### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

#### Allowances

**3.8**

#### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,  
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

#### Arbitration

8.3.1, 15.3.2, **15.4**

### ARCHITECT

**4**

Architect, Definition of

**4.1.1**

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,  
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,  
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,  
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,  
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,  
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,  
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,  
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,  
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

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

**5.2**

### Basic Definitions

**1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,  
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

#### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

#### Building Information Models Use and Reliance

**1.8**

Building Permit

3.7.1

## Capitalization

### 1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval  
13.4.4

Certificates of Insurance

9.10.2

### Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

**Change Orders**, Definition of

### 7.2.1

## CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

**Claims**, Definition of

### 15.1.1

Claims, Notice of

1.6.2, 15.1.3

## CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims

15.4.1

### Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

### Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

### Concealed or Unknown Conditions, Claims for 3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration

15.4.1

### Cleaning Up

**3.15**, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

**Commencement of the Work**, Definition of

### 8.1.2

## Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

## COMPLETION, PAYMENTS AND

## 9

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

## Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

### Consolidation or Joinder

### 15.4.4

## CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

**Construction Change Directive**, Definition of  
**7.3.1**

### Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

### Contingent Assignment of Subcontracts

**5.4**, 14.2.2.2

### Continuing Contract Performance

### 15.1.4

**Contract**, Definition of

### 1.1.2

## CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of

1.5.2, 2.3.6, 5.3

**Contract Documents**, Definition of

### 1.1.1

### Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

**Contract Sum**, Definition of

### 9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

**Contract Time**, Definition of

### 8.1.1

## CONTRACTOR

### 3

Contractor, Definition of

**3.1**, **6.1.2**

## **Contractor's Construction and Submittal Schedules**

**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees

2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

## **Contractor's Liability Insurance**

### **11.1**

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

## **Correlation and Intent of the Contract Documents**

### **1.2**

**Cost**, Definition of

### **7.3.4**

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

## **Cutting and Patching**

**3.14**, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

**Date of Commencement of the Work**, Definition of

### **8.1.2**

**Date of Substantial Completion**, Definition of

### **8.1.3**

**Day**, Definition of

### **8.1.4**

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

## **Decisions to Withhold Certification**

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

## **Delays and Extensions of Time**

**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

## **Digital Data Use and Transmission**

### **1.7**

Disputes

6.3, 7.3.9, 15.1, 15.2

## **Documents and Samples at the Site**

### **3.11**

**Drawings**, Definition of

### **1.1.5**

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2

## **Emergencies**

**10.4**, 14.1.1.2, **15.1.5**

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
10.4, 14.3, 15.1.6, **15.2.5**

**Failure of Payment**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4

**GENERAL PROVISIONS**

**1**

**Governing Law**

**13.1**  
Guarantees (See Warranty)

**Hazardous Materials and Substances**  
10.2.4, **10.3**  
Identification of Subcontractors and Suppliers  
5.2.1

**Indemnification**  
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

**Information and Services Required of the Owner**  
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,  
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,  
14.1.1.4, 14.1.4, 15.1.4

**Initial Decision**

**15.2**

**Initial Decision Maker, Definition of**  
1.1.8  
Initial Decision Maker, Decisions  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
Initial Decision Maker, Extent of Authority  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

**Injury or Damage to Person or Property**  
**10.2.8**, 10.4  
Inspections  
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 12.2.1, 13.4  
Instructions to Bidders  
1.1.1  
Instructions to the Contractor  
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

**Instruments of Service, Definition of**

**1.1.7**  
Insurance  
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**  
Insurance, Notice of Cancellation or Expiration  
11.1.4, 11.2.3

**Insurance, Contractor's Liability**

**11.1**  
Insurance, Effective Date of  
8.2.2, 14.4.2

**Insurance, Owner's Liability**

**11.2**

**Insurance, Property**  
**10.2.5**, 11.2, 11.4, 11.5

Insurance, Stored Materials  
9.3.2

**INSURANCE AND BONDS**

**11**  
Insurance Companies, Consent to Partial Occupancy  
9.9.1  
Insured loss, Adjustment and Settlement of  
11.5  
Intent of the Contract Documents  
1.2.1, 4.2.7, 4.2.12, 4.2.13

**Interest**

**13.5**

**Interpretation**  
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1  
Interpretations, Written  
4.2.11, 4.2.12  
Judgment on Final Award  
15.4.2

**Labor and Materials, Equipment**  
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,  
10.2.4, 14.2.1.1, 14.2.1.2  
Labor Disputes  
8.3.1  
Laws and Regulations  
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,  
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,  
15.4  
Liens  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8  
Limitations, Statutes of  
12.2.5, 15.1.2, 15.4.1.1  
Limitations of Liability  
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,  
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,  
11.3, 12.2.5, 13.3.1  
Limitations of Time  
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,  
15.1.2, 15.1.3, 15.1.5

**Materials, Hazardous**  
10.2.4, **10.3**  
Materials, Labor, Equipment and  
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,  
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2  
Means, Methods, Techniques, Sequences and  
Procedures of Construction  
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2  
Mechanic's Lien  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

**Mediation**  
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,  
15.4.1.1

**Minor Changes in the Work**  
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

## MISCELLANEOUS PROVISIONS

### 13

#### Modifications, Definition of

##### 1.1.1

#### Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

#### Mutual Responsibility

##### 6.2

#### Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

#### Notice

**1.6**, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance  
11.1.4, 11.2.3

#### Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

#### Notice of Testing and Inspections

13.4.1, 13.4.2

#### Observations, Contractor's

3.2, 3.7.4

#### Occupancy

2.3.1, 9.6.6, 9.8

#### Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

## OWNER

### 2

#### Owner, Definition of

##### 2.1.1

#### Owner, Evidence of Financial Arrangements

**2.2**, 13.2.2, 14.1.1.4

#### Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

#### Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

#### Owner's Insurance

##### 11.2

#### Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

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

**2.5**, 14.2.2

#### Owner's Right to Clean Up

##### 6.3

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

##### 6.1

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

##### 2.4

#### Owner's Right to Suspend the Work

14.3

#### Owner's Right to Terminate the Contract

14.2, 14.4

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

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

#### Partial Occupancy or Use

9.6.6, **9.9**

#### Patching, Cutting and

**3.14**, 6.2.5

#### Patents

3.17

#### Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

#### Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

#### Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

#### Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

#### Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

#### Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

## PAYMENTS AND COMPLETION

### 9

#### Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

#### PCB

10.3.1

#### Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

#### Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

## PERSONS AND PROPERTY, PROTECTION OF

### 10

#### Polychlorinated Biphenyl

10.3.1

#### Product Data, Definition of

**3.12.2**

#### Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

#### Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

#### Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

#### Project, Definition of

**1.1.4**

Project Representatives  
4.2.10

**Property Insurance**  
10.2.5, 11.2

**Proposal Requirements**  
1.1.1

**PROTECTION OF PERSONS AND PROPERTY**  
**10**

Regulations and Laws  
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,  
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work  
4.2.6, 12.2.1

Releases and Waivers of Liens  
9.3.1, 9.10.2

Representations  
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field**  
**Conditions by Contractor**  
**3.2**, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and  
Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples  
by Contractor  
3.12

**Rights and Remedies**  
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,  
12.2.4, 13.3, 14, 15.4

**Royalties, Patents and Copyrights**  
**3.17**

Rules and Notices for Arbitration  
15.4.1

**Safety of Persons and Property**  
**10.2**, 10.4

**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

**Samples**, Definition of  
**3.12.3**

**Samples, Shop Drawings, Product Data and**  
3.11, 3.12, 4.2.7

**Samples at the Site, Documents and**  
**3.11**

**Schedule of Values**  
**9.2**, 9.3.1

Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

**Separate Contractors**, Definition of  
**6.1.1**

**Shop Drawings**, Definition of  
**3.12.1**

**Shop Drawings, Product Data and Samples**  
3.11, 3.12, 4.2.7

**Site, Use of**  
**3.13**, 6.1.1, 6.2.1

Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing  
4.2.6, 12.2.1, 13.4

**Specifications**, Definition of  
**1.1.6**

**Specifications**  
1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations  
15.1.2, 15.4.1.1

Stopping the Work  
2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4

**Subcontractor**, Definition of  
**5.1.1**

**SUBCONTRACTORS**  
**5**

Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,  
9.6.7

**Subcontractual Relations**  
**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,  
9.9.1, 9.10.2, 9.10.3

Submittal Schedule  
3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**  
6.1.1, 11.3

**Substances, Hazardous**  
**10.3**

**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,  
15.1.2

**Substantial Completion**, Definition of  
**9.8.1**

Substitution of Subcontractors  
5.2.3, 5.2.4

Substitution of Architect  
2.3.3

Substitutions of Materials  
3.4.2, 3.5, 7.3.8

**Sub-subcontractor**, Definition of  
**5.1.2**

Subsurface Conditions  
3.7.4

**Successors and Assigns**  
**13.2**

## **Superintendent**

**3.9**, 10.2.6

## **Supervision and Construction Procedures**

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

## **Suppliers**

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

## **Surety**

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

## **Surety, Consent of**

9.8.5, 9.10.2, 9.10.3

## **Surveys**

1.1.7, 2.3.4

## **Suspension by the Owner for Convenience**

**14.3**

### **Suspension of the Work**

3.7.5, 5.4.2, 14.3

### **Suspension or Termination of the Contract**

5.4.1.1, 14

## **Taxes**

3.6, 3.8.2.1, 7.3.4.4

## **Termination by the Contractor**

**14.1**, 15.1.7

## **Termination by the Owner for Cause**

5.4.1.1, **14.2**, 15.1.7

## **Termination by the Owner for Convenience**

**14.4**

### **Termination of the Architect**

2.3.3

### **Termination of the Contractor Employment**

14.2.2

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

**14**

### **Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

## **TIME**

**8**

### **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

### **Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,

9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

## **Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

## **Title to Work**

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

### **Uncovering of Work**

**12.1**

#### **Unforeseen Conditions, Concealed or Unknown**

3.7.4, 8.3.1, 10.3

#### **Unit Prices**

7.3.3.2, 9.1.2

#### **Use of Documents**

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

#### **Use of Site**

**3.13**, 6.1.1, 6.2.1

#### **Values, Schedule of**

**9.2**, 9.3.1

#### **Waiver of Claims by the Architect**

13.3.2

#### **Waiver of Claims by the Contractor**

9.10.5, 13.3.2, **15.1.7**

#### **Waiver of Claims by the Owner**

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

#### **Waiver of Consequential Damages**

14.2.4, 15.1.7

#### **Waiver of Liens**

9.3, 9.10.2, 9.10.4

#### **Waivers of Subrogation**

6.1.1, **11.3**

#### **Warranty**

**3.5**, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

#### **Weather Delays**

8.3, 15.1.6.2

#### **Work, Definition of**

**1.1.3**

#### **Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

#### **Written Interpretations**

4.2.11, 4.2.12

#### **Written Orders**

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1



## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents ~~are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement)~~ and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, described in the Contract Documents or reasonably inferable by the Contractor to produce the results intended by the Contract Documents (except as specifically indicated in the Contract Documents to be the responsibility of others), whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.3.1 The Work shall include the obligation of the Contractor to visit the site before submitting a GMP proposal. Such site visit shall be for the purpose of familiarizing the Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, and physical characteristics of the site and surrounding areas.

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams-diagrams, as well as electronic versions of these documents.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. These may be included in a portion of the Drawings, other Contract Documents, or may exist independently.

#### § 1.1.7 Instruments of Service

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

### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 1.1.8 Intentionally Omitted.**

### **§ 1.1.9 Knowledge**

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor or Architect, as applicable, shall be interpreted to mean that which the Contractor, in its capacity as a contractor, or Architect, in its capacity as a design professional, as applicable, should know, recognize, and discover in exercising the care, skill, and diligence required by the Contract Documents. The expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor or architect familiar with the Project and exercising the care, skill, and diligence required of the Contractor or the Architect, as appropriate, by the Contract Documents.

### **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of a conflict or an inconsistency in or among the Contract Documents, or between the Contract Documents and applicable codes in effect at the time the Contract Sum is bid or negotiated, the Contractor shall, unless otherwise provided in writing by an Addendum or Change Order, provide the greatest quantity, highest quality, highest degree of safety, and most stringent material, equipment or Work. Notwithstanding the foregoing sentence, the parties acknowledge and agree that the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, nor is the Contractor responsible for the overall design of the Project.

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

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

The Contractor must give written notice to the Owner and the Architect within ten (10) days of discovering any of the above referenced conflicts. This written notice will be in the form of a request for information or other similar notice applicable to the Owner. Any field directives should be documented in writing and retained by the Contractor for the Owner's later review.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade.

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

~~§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective~~ Owner shall be deemed the owner of the Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's, Architect's or Architect's consultants' reserved rights.

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

## § 1.6 Notice

~~§ 1.6.1 Except as otherwise provided in Section 1.6.2, this Section 1.6, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.~~ given when delivered to the individual designated as the person holding the position for notice in the Contract Documents.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been ~~duly served~~ given only if delivered to the designated representative of the party (as identified in the Contract Documents) to whom the notice is addressed by certified or registered mail, three (3) business days after notice is sent, or by courier providing proof of delivery.

§ 1.6.3 Written notice under the Contract Documents may also be provided to any party by email to the email address(es) provided for the recipient in the notice provisions of the Contract Documents, provided that where written notice is required, the sender same day mails a copy of said notice to the recipient at the address for notice provided in the Contract Documents. Notice provided by email shall be deemed received on the day following the date of transmission. All written notice sent to the Owner, in order to be valid, must be sent to Office of Planning, Design and Construction, 10620 Cedar Avenue, Cleveland, Ohio 44106.

## § 1.7 Digital Data Use and Transmission

~~The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.~~ agree that Instruments of Service are to be delivered in digital form and shall establish the protocols for the development, use, transmission, and exchange of digital data, as necessary.

## § 1.8 Building Information Models Use and Reliance

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

## ARTICLE 2 OWNER

### § 2.1 General

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

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

## § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~Intentionally Omitted.

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~Intentionally Omitted.

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~Intentionally Omitted.

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

## § 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish copies of any surveys in its possession describing physical characteristics, legal limitations and utility locations for the site of the Project, and a copy of any legal description in its possession of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but insofar as the information is solely within the knowledge of the Owner and cannot be verified by the Contractor through any other source, and the Contractor shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.3.6 ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor will provide its Subcontractors with the Contract Documents. The Contract will be provided with an electronic version of the Contract Documents upon request.~~

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

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

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after ~~receipt of notice from~~ notice is sent by the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. If required to be licensed, the Contractor will supply the license number with this Agreement. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. An initial list of individuals who are authorized to make decisions for the Contractor and bind the Contractor to those decisions is attached.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. ~~Documents and submittals approved pursuant to Section 3.12.~~

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

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

§ 3.2.1 Execution of the Contract by the Contractor is a representation ~~that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and warranty that the Contractor has visited the site, evaluated the site, and identified any limitations upon the Work or special requirements, the anticipated labor supply needed and its cost, and the availability and cost of materials, tools, and equipment, and correlated personal observations with requirements of the Contract Documents.~~ The Contractor represents that the work to be performed on the job site will comply with all applicable laws, rules, ordinances, and regulations. Notwithstanding the foregoing sentence, the parties acknowledge and agree that the Contractor is not required to

ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, nor is the Contractor responsible for the overall design of the Project.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Execution of the Contract by the Contractor is also a representation and warranty that the Contractor has carefully reviewed the Contract Documents, they are complete and sufficient to enable it to perform the Work and fulfill its obligations, and the Contractor has no knowledge of any discrepancies, omissions, or conflicts within the Contract Documents. The Contractor agrees to immediately notify in writing the Owner and the Architect if it becomes aware of any such discrepancies, omissions, or conflicts. This notification should be in the form of a request for information, or similar written notice acceptable to the Owner.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity. Since the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall immediately report in writing to the Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require, reasonable form acceptable to the Owner.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall immediately report in writing to the Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner and Architect may require.

**§ 3.2.5** If the Contractor believes that additional cost or time is involved because of clarifications or instruments the Architect uses in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3 or 3.2.4, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3 or 3.2.4, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless the Contractor recognized, or in the exercise of ordinary care should have recognized, such error, inconsistency, omission, or difference, and failed to report it in writing to the Architect and the Owner.

§ 3.2.6 The Contractor shall give the Architect timely notice of any known additional Drawings, Specifications or instructions required to define the Work in greater detail, or to permit the proper progress of the Work. The Architect shall respond to such notices in a timely manner.

§ 3.2.7 The Contractor shall not knowingly proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but shall request additional Drawings, Specifications or instructions from the Architect as provided in subparagraph 3.2.6. If the Contractor knowingly proceeds with such Work without obtaining further Drawings, Specifications or instructions, the Contractor shall correct Work incorrectly done at the Contractor's own expense. If the Contractor fails to correct this Work, the Owner may elect to have the Work performed by itself or another entity, and deduct from the Contract Sum the cost of such Work.

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

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 Neither the Contractor nor its employees shall be deemed to be employees of the Owner, but shall be independent Contractors. Nothing in the Contract shall be construed as authority for the Contractor to make commitments that shall bind the Owner, or otherwise act on behalf of the Owner, except as the Owner may expressly authorize in writing. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. The Contractor shall be responsible for ensuring that each of its employees, agents, and subcontracted workers on the work site have proper contractor identification visible at all times.

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

§ 3.3.4 The Contractor shall develop procedures acceptable by the Owner for implementing, documenting, reviewing and processing field questions and responses, field variance authorizations and directives, minor changes and Change Orders. The Contractor shall review requests for changes submitted by Subcontractors, negotiate Subcontractor's proposal, submit recommendations to the Owner and, if they are accepted by the Owner in writing, prepare and submit Change Orders for the approval and signature of the Owner. All requests for information by the Contractor or any Subcontractor shall be submitted in good faith and shall contain the Contractor's or Subcontractor's, as applicable, proposed answer to the request. If the Contractor proposes a substitution from materials or equipment specified in the Contract Documents, then, if such substituted material or equipment is accepted by the Owner, the Contractor shall pay for any redesign or reengineering costs incurred to accommodate the substitution.

§ 3.3.5 If any of the Work is required to be inspected or approved by any public authority, then the Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be considered as an approval or acceptance of the Work or any part thereof.

§ 3.3.6 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work. The Contractor shall use its best efforts to maintain labor peace for the duration of the Project.

### **§ 3.4 Labor and Materials**

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Contractor cannot make substitutions during the submittal process, they must be made separately.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the ~~Work.~~ Contract requirements. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Owner reserves the right to require the Contractor to remove from the Project any of its personnel or any Subcontractors' personnel, for violating Owner's policies, rules, or regulations, or if the Owner objects to the employee's level of skill.

### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from ~~defects, except for those inherent in the quality of the Work the Contract Documents require or permit.~~ defects. Work, materials, or equipment not conforming to these ~~requirements may~~ requirements, including substitutions not properly authorized and approved, will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by ~~abuse, abuse by the Owner,~~ alterations to the Work not executed by the Contractor, improper or insufficient maintenance, ~~improper operation, operation by the Owner,~~ or normal wear and tear and normal usage. If required by the Owner or the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Owner is a tax-exempt non-profit corporation and will provide the Contractor with a tax-exempt certificate. The Contractor's Commercial Activities is considered to be part of the Contractor's overhead costs.

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

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

### § 3.7.4 ~~Concealed or Unknown Conditions~~

~~If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or~~



Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

#### **§ 3.7.4 Unforeseeable and Concealed or Unknown Conditions**

If unforeseeable conditions at the site are encountered that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, including but not limited to any Soils Report, or (2) unknown physical conditions of an unusual nature that (i) differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, or (ii) which could not have been reasonably observed or inferred by the Contractor based on prior inspections, tests, reviews, information provided by the Owner, or pre-construction services conducted by the Contractor, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree that the conditions are materially different or on an adjustment in the Contract Sum or Contract Time, the matter shall, upon written request of both the Owner and the Contractor, be referred to the Architect for initial determination, subject to further proceedings pursuant to Article 15. Notwithstanding anything in the Contract Documents to the contrary, no adjustment in the Contract Time or the Contract Sum shall be permitted in connection with a concealed or unknown condition that does not materially differ from those conditions disclosed or that reasonably should have been discovered by the Contractor's prior inspections, tests, reviews, and preconstruction services for the Project.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

**§ 3.7.6 Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum due to conditions described in Section 3.7.4, written notice as provided herein shall be given before proceeding to execute the Work. Such notice shall include, to the extent then known by the Contractor, full details and substantiating data to permit evaluation by the Owner and the Architect. If further or other information subsequently becomes known to the Contractor, it shall immediately be furnished to the Owner and the Architect in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 3.8 Allowances**

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

- 3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with ~~reasonable promptness~~, sufficient time to avoid delay in the Work.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent full time superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

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

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

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

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed current time limits ~~current~~ under the Contract Documents. The schedule shall be related to the entire Project to the extent required by the Contract Documents, provide for expeditious and practicable execution of the Work and shall be revised at appropriate intervals as required by the conditions of the Work and Project conditions, but no less than monthly, of the Work and Project, as well as at the Owner's request and promptly following any material changes with respect thereto.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

**§ 3.10.4** The Contractor shall keep accurate and detailed written records of the progress of the Work and shall submit monthly written progress reports to the Owner, including, but not limited to, information concerning the Work of each Subcontractor, the percentage of completion, Requests for Information ("RFIs"), the status of RFIs, the schedule and the number and amount of Change Orders. The Contractor shall also provide the required and actual staffing requirements necessary to complete the Work within the approved Project schedule. The format of the Contractor's monthly construction reports shall be approved by the Owner. Delivery of a monthly progress report shall be a condition precedent to the Owner's obligation to make payment to the Contractor. The Contractor shall notify the Owner in writing of any causes for and corrective action to any deviations to the approved Project schedule. The Contractor shall maintain at the Project site, on a current basis, records of all documents, including Shop Drawings, Samples, and Product Data.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate reflect and record field changes and selections made during construction, and one record copy of the approved Shop Drawings, Product Data, Samples, and similar required submittals, purchase orders, subcontracts, materials, equipment, applicable handbooks, commercial and technical standards and specifications, and any other related documents and revisions that arise out of the Contract Documents or the Work, all of which shall be the property of the Owner. The Contractor shall keep full and complete open book records at the Project Site and shall provide the records in total to the Owner upon completion of the Work and prior to the Contractor receiving final payment. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work or earlier termination of this Agreement, as a record of the Work as constructed.

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

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof. The Contractor shall stamp all Shop Drawings, Product Data, Samples and other submittals to verify the Contractor's review and approval thereof, which stamp shall constitute a representation by the Contractor to the Owner that the submitted item conforms with the Contract Documents and is coordinated with other related Work. In collaboration with the Architect, the Contractor

shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.12.11 The Contractor shall assemble for the Architect's approval three (3) complete copies in loose leaf binders, in the manner required by the Specifications, of all operating and maintenance data from all manufacturers whose equipment is or will be installed in the Work.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. § 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall schedule and coordinate the Work so as not to interfere with the normal use and security of the Owner's facilities.

§ 3.13.2 The Contractor shall sign for and be held responsible for all keys and other access devices issued to it by the Owner for the Owner's facilities. Should the Contractor fail to return the keys or other access devices on the specified date, the Contractor shall be responsible for all resulting costs in accordance with the Owner's policies, rules or regulations.

§ 3.13.3 The Contractor shall be responsible for obtaining parking permits from the Owner's Parking Office for all vehicles for which will be parked on campus. All costs for parking permits and for fines due to improperly parked vehicles are the responsibility of the Contractor. The Contractor shall not park in any area designated for vehicle parking unless given permission by the Owner to do so. It will be the responsibility of the Contractor to repair and/or reimburse the Owner for any damage to the Owner's property caused by the Contractor's vehicles.

### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the ~~premises and surrounding area~~ Project site and surrounding area in a clean and safe condition, free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

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

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall ~~indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~ be liable for and hereby agrees to defend, discharge, fully indemnify, and hold the Owner and the Owner's trustees, officers, employees, and agents harmless of, from, and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgements, costs, and expenses of every nature (including investigation costs and expenses, settlement costs, and attorney's fees and expenses incident thereto) sustained by or asserted against the Owner arising out of, resulting from, or attributable to the performance or non-performance of the Work (collectively "Indemnity Claim") including but not limited to any Indemnity Claim for:

.1 Any personal or bodily injury, illness or disease, including death at any time resulting therefrom including, but not limited to, employees of the Owner, the Contractor, any subcontractor, and any supplier;

.2 Any loss, damage, or destruction of any property or damage to the Owner's operations;

3 Any defects in material or equipment furnished hereunder, and/or

4 Any lien or charge of any type, nature, kind, or description which may at any time be filled or claimed against the Project, or any portion thereof, as a consequence of acts or omissions of Contractor, Contractor's agents, servants, employees, subcontractors, Sub-subcontractors, or any of them, and which are not due to Owner's failure to make payment when due per the terms of the Contract Documents.

Indemnity Claims shall not be applicable to the extent such result from the direct proximate cause of the Owner's negligence or willful misconduct, on a comparative fault basis.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. For purposes of this indemnity, the Contractor, Subcontractors and any Sub-subcontractors each waives against the Owner as a defense any immunity that may otherwise have or claim under the State Constitution or any laws, regulations, orders or benefits related to workers' compensation, as the same may be amended from time to time.

#### **ARTICLE 4 ARCHITECT**

##### **§ 4.1 General**

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

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

§ 4.1.3 Notwithstanding anything in the Contract Documents to the contrary, the Owner reserves the right to handle review and certification of Applications for Payment and inspections (including, without limitation, for purposes of establishing Substantial Completion and Final Completion) directly, rather than through Architect.

##### **§ 4.2 Administration of the Contract**

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. Payment, or otherwise with the Owner's concurrence from time to time during the one-year period for correction of Work. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all necessary communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. ~~Communications by and with~~ Direction of Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner, unless otherwise directed by Owner. The Contract Documents may specify other communication protocols.

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate ~~review~~ review without causing delay in the Work or in the activities of the Owner, Contractor or Separate Contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

§ 4.2.11 The Architect will ~~interpret and decide matters concerning performance under, and requirements of, initially interpret matters concerning requirements of~~ the Contract Documents on written request of ~~either both the Owner or~~ and Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretation until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and~~

decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~ Intentionally Omitted.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity ~~who~~ that has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

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

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner ~~or Architect~~ has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

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

### § 5.3 Subcontractual Relations

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



which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### § 5.4 Contingent Assignment of Subcontracts

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall ~~nevertheless remain not be~~ legally responsible for all of the successor contractor's obligations under the subcontract.

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

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, ~~and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.~~ forces or with Separate Contractors.

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

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

#### § 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Owner and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Owner and Architect of apparent discrepancies or defects prior to proceeding with the

Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents, specifically those set forth in Exhibit C of the Agreement. Owner shall not be obligated to pay for the costs associated with any changes in the Work, unless done so in accordance with the requirements set forth in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work-Work, not including a change in Contract Time or Contract Sum, may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as provided in Section 7.3, a change in the Contract Sum and the Contract Time shall be accomplished only by a Change Order. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by an alteration or addition to the Work, whether or not there is any unjust enrichment to the Work, shall be the basis of any claim for an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents. The Contractor specifically agrees that if it proceeds on an oral order to change the Work, it shall waive any claim for additional compensation or additional time for such work and the Contractor shall not be excused from compliance with the Contract Documents.

§ 7.1.4 All Change Orders shall be executed in writing and signed by the Owner, Contractor and Architect, and shall contain full particulars of the changes, and, as applicable, any adjustments to the Contract Sum, date of Substantial Completion or any other modification to the Contract. No changes to the scope of Work, date of Substantial Completion or Contract Sum shall be made except in accordance with a duly issued Change Order executed by the parties authorizing such changes. Except in the event of an emergency involving imminent threat of bodily injury or property damage, the Contractor shall neither seek, nor be entitled to receive, payment for an extra or additional work, unless the Contractor receives, prior to performing such work, a written direction to proceed with such extra or additional work, signed by an authorized agent of the Owner. The parties will promptly review and expedite Change Order proposals and shall promptly incorporate into a Change Order any undisputed amounts as to any additional work.

### § 7.2 Change Orders

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

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

**§ 7.2.2** Although Contract Sum can only be adjusted by valid Change Order from the Owner, the methods used in determining adjustments to the Contract Sum must be acceptable to the Owner and may include those listed in Section 7.3.3.

.1 The Owner may require itemized change orders and pricing certifications on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier, including detailed line item estimates showing materials take-offs, materials pricing by item and related labor-hour pricing information and extensions, by line item or by drawing, as applicable.

.2 No separate allowances for warranty expense will be allowed as a direct cost of a change order.

.3 Estimated material costs shall reflect the Contractor's reasonably-anticipated actual net cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available due to trade discounts, free material credits, and/or volume rebates. "Cash" discounts available on material purchased for change order work shall be credited to the Owner if the Owner provides such cash to the Contractor in time for the Contractor to take advantage of any such discounts. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot Pricing" quotations will not be considered sufficient substantiating detail.

.4 Estimated labor costs shall be based on the actual cost per hour paid for those workers who the Contractor reasonably anticipates will perform the change order Work.

.5 Labor burden allowable in change orders shall be defined as the employers' actual net cost of payroll taxes (e.g. FICA, Medicare, SUTA, FUTA), the employer's actual net cost of contractually-required union benefits and workers' compensation insurance or program coverage, after applying for the Owner's benefit all credits and adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk-pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, ad similar items. Contractor shall reduce its standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. The Owner, in its sole discretion may elect to permit the Contractor to use an estimated percentage for labor burden for pricing change orders, in which event the percentage used for labor burden to price change orders may be examined at the conclusion of the Project and an adjustment to the approved change order pricing will be made if it is determined that the actual aggregate labor burden percentage is more or less than the estimated percentage used.

**§ 7.2.3** The Owner's and Contractor's agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, the Contract Time, and the construction schedule, unless stated otherwise in the Change Order itself. Execution of a Change Order by the Contractor shall be deemed a waiver and release of any right to make a claim for additional time or money for Work to be performed under such Change Order except as otherwise set forth in the Change Order.

### **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, ~~an amount a reasonable allowance~~ for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect in writing of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect~~ Architect including any overhead and profit. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 Minor Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor

shall notify the Owner and Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Owner and Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

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

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

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

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

### **§ 8.2 Progress and Completion**

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

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

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

### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** ~~If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~Intentionally Omitted.

**§ 8.3.2** ~~Claims relating to time~~an increase in the Contract Time and/or Contract Sum shall be made in accordance with applicable provisions of Article 15. A copy of any Claim for extension of Contract Time or increase in the Contract Sum shall be delivered to the Owner, and the Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delays on the Owner.

**§ 8.3.3** ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~Should the Contractor contend that it is entitled to an increase in the Contract Time and/or, to the extent Section 8.3.4.1 is applicable, the Contract Sum, it shall, within seven (7) days of the occurrence of the cause of the delay, notify the Owner in writing of the existence of the delay, setting forth (1) the cause for the delay, (2) a description of the portion or portions of Work affected thereby, and (3) all details pertinent thereto. If it is impracticable to specify the length of such delay at the time the notice referred to in the preceding sentence is delivered, then the Contractor shall provide the Owner with periodic (not less than weekly) supplemental notices during the period over which the event continues. Such supplemental notices shall keep the Owner informed of any change, development, progress of other relevant information concerning the event of which the Contractor is aware. It is a condition precedent to the consideration or prosecution of any Claim for an extension of the Contract Time or Contract Sum that the foregoing procedures be strictly adhered to in such instance, and if the Contractor fails to comply in all respects, then the Contractor shall be deemed to have waived such Claim.

Within seven (7) days after the expiration of any such delay, the Contractor shall deliver to the Owner a subsequent written application for the specific number of days of extension of time requested, which, if accepted by the Owner, shall be memorialized in a Change Order. No extension of time shall be granted to the Contractor to the extent that, notwithstanding the existence of any circumstance beyond the Contractor's control, delay would have resulted from any event due to a concurrent unexcused delay of the Contractor.

Except to the extent prohibited by law or granted pursuant to Section 8.3.4.1, the Contractor agrees that whether or not any delay shall be the basis for an extension of the Contract Time, it shall have no Claim against the Owner for any increase in the Contract Sum, nor a Claim against the Owner for payment or allowance of any kind of damage, loss or expense resulting from delays, hindrances, obstructions or interferences with the Work. Except as otherwise set for the herein, the only remedy available to the Contractor will be an extension of time as permitted pursuant to this Article 8.

### **§ 8.3.4 DELAYS TO THE WORK**

**§ 8.3.4.1** If Contractor is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Contractor is responsible, then, pursuant to the terms of this Article 8.3, the Contractor may be entitled to an increase in the Contract Time and/or Contract Sum. Events that will entitle Contractor to an extension of the Contract Time(s) and/or Contract Sum include delays caused by changes ordered in the Work by the Owner, by the active interference of the Owner, industry wide labor disputes affecting multiple contractors and multiple construction projects, and fires or other unavoidable casualties beyond the Contractor's control and that could not have been anticipated by it.

Notwithstanding anything herein to the contrary, the Owner will not be liable for any damages associated with a delay in the Project, whether caused by any third party, the Contractor, any Subcontractor, or otherwise, where the Owner's actions or inactions are not a proximate cause of the delay.

If the Owner is the sole proximate cause of any delay based on its actions or inactions, the parties agree to resolve the issues caused by said delay in an amicable manner. Under no circumstance, however, will the Contractor or any Subcontractor be entitled to damages in excess of their actual proven and documented general condition expenses for the period of any delay.

Where a delay is the result of more than one proximate cause, and one of the proximate causes results from the Owner's actions or inactions, the parties agree to resolve the issues caused by said delay in an amicable manner. Under no circumstance, however, will the Contractor or any Subcontractor be entitled to damages from the Owner in excess of the Owner's proportionate share, based on its percentage of fault, of the Contractor's or Subcontractor's actual proven and documented general condition expenses for the period of any delay. Moreover, the Contractor, and any Subcontractors, must first seek recovery, through a final non appealable order or decision of an arbitrator, as applicable, from each person or entity that is also a proximate cause of any delay; provided, however, such decision shall not bind Owner as to any proportion of fault. The Contractor and any Subcontractors must offset the amount awarded from other proximate causers against any general condition expenses that may be owed by the Owner.

**§ 8.3.4.2** In regard to weather delays, the Contractor shall only be entitled to an extension of the Contract Time in accordance with this Section 8.3.4.2. The Contract Time shall be extended by Change Order for the number of calendar days lost on critical path activities due to inclement weather occurring in excess of the "Maximum Expected Days Lost" as shown on the following table. Actual weather experience will be recorded by the U.S. Department of Commerce, National Oceanic and Aeronautic Administration (USDC, NOAA) at Cleveland Hopkins Airport. Inclement weather exists when the critical path work to be performed that day is exterior work and one or more of the following occurs: the precipitation other than snow and ice exceeds 1/10 inch within a calendar day, when snow or ice accumulation exceeds 1.0 inch within a calendar day, when the maximum temperature for the calendar day is 32° F or below (excluding wind chill), or when combination of these occurs simultaneously. The Contract Time shall not be extended unless (1) there is actual inclement weather for a number of calendar days in excess of the "Maximum Expected Days Lost" for the Contract Time, and (2) the completion of the Work was in fact delayed because of such inclement weather for critical path activities. Notwithstanding the categorization of any delay (whether precipitation, snow/ice, or temperature), there shall be no duplication of any particular delay if such delay can be characterized as falling into more than one of these categories (e.g., the same calendar day shall not be considered two days of delay because both snow and low temperatures occurred on such calendar day).

#### Expected Number of Calendar Days of Inclement Weather

## Expected Weather Conditions

Month	Precipitation .10" or More	Snow/Ice Pellets 1.0" or More	Max. at 32°F Or Below	MAXIMUM EXPECTED DAYS LOST
January	10	4	16	14
February	9	4	13	12
March	9	3	5	9
April	8	1	Less Than ½	8
May	8	Less Than ½	0	8
June	8	0	0	8
July	8	0	0	8
August	7	0	0	7
September	7	0	0	7
October	8	Less Than ½	0	8
November	9	2	1	9
December	10	4	11	10
<b>YEAR</b>	<b>101</b>	<b>18</b>	<b>46</b>	<b>108</b>

**§ 8.3.4.3** The remedies described in this Article 8.3 will be Contractor's sole remedies for any delay in performance of the Work.

**§ 8.3.4.4** In the event the Owner determines that the performance of the Work, as of a milestone date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order in writing the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime; (2) supplying additional labor, equipment, and facilities; and (3) other similar measures (collectively "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Schedule.

- .1 To the extent that the Contractor caused the delay, the Contractor shall not be entitled to an adjustment in the Contract Time or Contract Sum in connection with Extraordinary Measures required by the Owner pursuant to this Section 8.3.4.4.
- .2 The Owner may exercise its rights under this Section 8.3.4.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any milestone date or completion date set forth in the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the~~ The Contractor shall submit a schedule of values to the Architect and Owner before the first Application for Payment, and, if necessitated by a Change Order, from time to time thereafter, allocating the entire Contract Sum to the various portions of the Work.

The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the ~~Architect~~ Architect or Owner. This schedule, unless objected to by the ~~Architect~~ Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and Owner and supported by such data to substantiate its accuracy as the Architect and the Owner may require, and unless objected to by the ~~Architect~~ Architect or Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 ~~At least ten days before the date established for each progress payment, By the deadline established by the Architect and Owner,~~ the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the most recently approved schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in ~~the~~ the Contract Documents. Each Application for Payment shall be certified as correct by the Contractor and shall be accompanied by an AIA G702 and G703 and waivers of lien from Subcontractors, Sub-subcontractors, materialmen and suppliers, and such other documentation as is required by the Specifications or other Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, ~~or by interim determinations of the Architect,~~ but not yet included in Change Orders.

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner ~~no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the~~ by incorporation in the construction and upon receipt of payment by the Contractor, and will be free and clean of all liens, claims, security interests or encumbrances, hereinafter referred to in in Article 9 as "liens". The Contractor further agrees that receipt of payment for any Application for Payment shall conclusively be deemed to waive all liens with respect to said Work to which the Contractor may then be entitled, provided that such waiver of lien rights shall not waive the Contractor's right to payment for such Work.

### § 9.4 Certificates for Payment

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount



certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## § 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 ~~repeated~~ material failure to carry out the Work in accordance with the Contract Documents.

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

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

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

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall not be obligated to make payment unless the Contractor has submitted all documents required by the Contract Documents to accompany the Application for Payment. Notwithstanding the foregoing, if the Contractor has not provided the documentation provided herein, then the Owner may withhold the amount as to which documentation has not been provided. The withholding of payment in accordance with the Contract Documents shall not be deemed to be a failure to make payment as required by the Contract Documents.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. The Owner may elect to make payments jointly to the Contractor and to the Subcontractor identified on the Contractor's Application for Payment. Payment by the Owner to the Contractor and a Subcontractor jointly shall not

create a contractual relationship with the Subcontractor, obligate the Owner to pay the Subcontractor directly in the future, or create contractual rights under the Contract in the Subcontractor against the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

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

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

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

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

§ 9.6.8 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, the~~ The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. ~~If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.~~

### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not either (a) notify the Contractor and the Architect of the existence of a Claim or (b) pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon ~~seven~~fourteen (14) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, which shall include receipt of all applicable permits and approvals necessary to permanently occupy or use the Work or designated portion thereof for its intended use. In order for the Work or designated portion thereof to be deemed substantially complete, only minor items to be completed or corrected prior to final payment ("Punch List Items"), as determined in Owner's reasonable discretion, shall remain, and Contractor shall have provided copies of all Operations and Maintenance Manuals and As-Built Drawings.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of ~~items to be completed or corrected prior to final payment. Punch List Items (the "Punch List").~~ Failure to include an item on ~~such list~~the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Documents, and the Owner may add items to the Punch List.

**§ 9.8.3** Upon receipt of the ~~Contractor's list, Punch List from the Contractor, as may be amended by the Owner, the~~ Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any ~~item, whether or not included on the Contractor's list, item~~ which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor ~~shall, before issuance of the Certificate of Substantial Completion, shall~~ complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the ~~Contract Documents. Documents, including, without limitation, Punch List Items, and the Owner shall be entitled to retain up to two~~ hundred percent (200%) of the amount required to correct such Work.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the ~~Project Work.~~ Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a ~~list~~ Punch List to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon ~~completion of all Punch List Items, and receipt of (1) the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of acceptance, and (2) a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. If the Architect cannot certify that the Work has been completed in accordance with the terms and conditions of the Contract Documents and is required to re-inspect the Work, then the Contractor shall pay to the Owner fees charged to the Owner for such re-inspection. The Owner shall not be obligated to make any payment to the extent the Contractor has not submitted the documents required by the Owner as provided hereunder. The Owner shall make payments otherwise due to the extent documentation required by the Owner has been provided with respect to specific Subcontractors, Sub-subcontractors or material suppliers.~~

§ 9.10.1.1 The Contractor shall achieve Final Completion no later than thirty (30) days after Substantial Completion.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) ~~documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and all warranties and guarantees required by the Contract Documents,~~ (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, ~~by the Owner,~~ and (7) all other documents required by the Contract and other Contract Documents to be delivered to the Owner prior to final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall ~~refund promptly pay~~ to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 The Contractor shall submit all documents outlined in 9.10.2 within 30 days of Final Completion as well as all outstanding submittals and Change Orders still in progress.

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

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment;

or

- .5 claims for indemnification pursuant to the Contract Documents.

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

§ 9.11 ACCOUNTING RECORDS: AUDIT RIGHTS. The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Contractor shall preserve these records for a period of five years after final payment, or for such longer period as may be required by law.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety and security precautions and programs in connection with the performance ~~of the Contract~~ of the Contract and shall require all of its employees and the employees of its subcontractors to conduct themselves in a safe and professional manner and in conformance with all work procedures, either endorsed or prohibited, and utilizing all personal protective devices discussed and included within OSHA and local Construction Safety Regulations. The Contractor shall take all necessary precautions for the safety of persons on or near the job site, and shall comply with all applicable laws, rules, regulations, and orders to prevent accidents or injuries to persons on or in the proximity of the job site. The Contractor shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving workers' safety, but the Contractor hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work, or initiating, maintaining, and supervising any safety precautions and programs in connection with the Work or the Project.

### § 10.2 Safety of Persons and Property

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

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

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

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

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

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

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

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

### **§ 10.2.9 PROTECTION OF PROJECT SITE AND ADJOINING PROPERTY**

**§ 10.2.9.1** The Contractor shall protect adjoining private or municipal property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passerby, as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents.

**§ 10.2.9.2** The Contractor shall maintain Work, materials and apparatus free from injury or damage from rain, wind, storms, frost or heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, then the Contractor shall cease Work and notify the Owner and the Architect of such cessation. The Contractor shall not permit open fires on the Project site.

**§ 10.2.9.3** In addition to its other obligations pursuant to this Article 10, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs and the property of third parties (including municipalities) resulting from the performance of the Work, whether by it or by its Subcontractors at any tier. The Contractor shall maintain streets in good repair and traversable condition.

### **§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, ~~including but not limited to substance that is deemed to be a hazardous material under local, state, or federal laws, including but not limited to lead paint, asbestos or polychlorinated biphenyl (PCB),~~ encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area ~~and area,~~ take reasonable precautions to avoid further contamination or spread or disturbance of any potentially hazardous material or substance, and shall immediately notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to ~~cause it to be verified that it has been rendered harmless.~~ Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. ~~the Owner and in the event of objection, the specific reasons thereof.~~ If either the Contractor or Architect has ~~an a reasonable~~ objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. If the absence of the material substance is verified, the Contractor shall immediately resume the Work without adjustment to the Contract Time or Contract Sum. When the material or substance has been ~~rendered harmless, remediated to a safe level in accordance with applicable local, state, and federal laws.~~ Work in the affected area shall resume upon written ~~agreement of the Owner and Contractor, notification from the Owner.~~ By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them Contractor and its employees from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from ~~performance of the Work in the affected area~~ hazardous or toxic materials encountered on the Project site and not introduced by the Contractor, Subcontractor, Sub-subcontractor or material supplier or any tier if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable

to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. If such damage, loss or expense is due in part, but not in whole, to the negligence of the party seeking indemnity, then the Owner's indemnity obligations hereunder shall be reduced by percentage equal to the percentage of such party's contributory negligence.

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

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

**§ 10.3.6** ~~If, without negligence on the part of the Contractor, Contractor or breach of any relevant provision of any Contract Documents,~~ the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all reasonable, out-of-pocket cost and expense thereby incurred.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency not due to the Contractor's negligence shall be determined as provided in Article 15 and Article 7.

### **ARTICLE 11 INSURANCE AND BONDS**

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

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies having an A.M. Best rating of A-, VII or better, approved by the Owner and lawfully authorized to issue insurance in the jurisdiction where the Project is located. ~~The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~ All policies of insurance that the Contractor and its Subcontractors are required to carry under this Agreement shall be primary to the Owner's insurance policies (including, without limitation, any property or builder's risk insurance procured or maintained by Owner), and any insurance or self-insurance procured or maintained by the Owner shall be in excess of the Contractor's and its Subcontractors' insurance and shall not contribute to it. All applicable policies of insurance shall provide for such primary and non-contributory coverage by endorsement and shall provide evidence of the same on all certificates of insurance. No act, error or omission by the Contractor, its Subcontractors, Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable shall impair or affect the rights of the Owner to receive and collect the proceeds under such policies.

**§ 11.1.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance, as well as additional insured and primary and non-contributory endorsements, acceptable to the Owner evidencing compliance with the requirements in this Article at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by this Article. The certificates and endorsements will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ 11.1.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor and the Contractor shall be responsible for the deductibles and self-insurance retentions under such policies for each loss. Notwithstanding

anything in the Contract Documents to the contrary, if the cause of any loss payment under any insurance maintained by the Owner applicable to the Project is the fault of Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, then Contractor shall be responsible for deductibles or self-insured retentions under the policy for each loss.

**§ 11.1.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies, including any property or builder's risk insurance procured or maintained by Owner, and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

#### **§ 11.1.1.4 Commercial General Liability Insurance.**

Commercial General Liability Insurance shall be on an occurrence form with the policy limits set forth in Section 11.1.5 and shall include:

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property (including explosion, collapse and underground coverage), elevators, independent contractors, and products liability;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

Contractor's Commercial General Liability policy required under this Section shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

The Contractor shall obtain an endorsement as part of the products-operations coverage under the Commercial General Liability policy defining as an occurrence and expressly covering damages caused by defective Work of a Subcontractor. The term "occurrence" shall be specifically defined in such endorsement to include acts, errors, or omissions that cause: (1) "bodily injury" and/or "property damage" resulting from "your work," whether or not included within the "products-completed operations hazard;" or (2) "property damage" included within the "products-completed operations hazard" to "your work," but only if the Work out of which the damage arises or arose was performed on the Contractor's behalf by a Subcontractor. An acceptable endorsement would be (i) Zurich Insurance's "Resulting Damage to Your Work" endorsement (U-BL-1344-C CW), (ii) Cincinnati Insurance Agency's



"Injury or Damage to or Resulting from Your Work and Injury or Damage Resulting from Your Product" endorsement (GA 4315 03 12), or (iii) a substantially similar endorsement approved in writing by the Owner prior to the commencement of the Work.

§ 11.1.1.5 To the extent allowed by law: (1) the Contractor waives all rights against the Owner and any of its contractors, agents, and employees for any damages, expenses, or other losses to the extent such are covered by any insurance products carried by Contractor, or that would have been covered had Contractor carried the insurance required by the Contract Documents, except to the rights it may have to such insurance proceeds; and (2) the policies of insurance purchased and maintained by Contractor shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to Contractor even though (1) Owner would otherwise have a duty of indemnification, contractual or otherwise, (2) Contractor did not pay the insurance premium directly or indirectly, or (3) whether or not Owner or Contractor had an insurable interest.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.2.1** The Contractor shall require all Subcontractors (including suppliers and the Contractor if it self-performs any portion of the Work) which are to provide labor and/or materials, the aggregate cost of which is expected to be equal to or in excess of Five Hundred Thousand Dollars (\$500,000), to furnish bonds covering faithful performance of their contracts or subcontracts, as applicable, and payment of obligations arising thereunder. Such bonds shall be in form and substance satisfactory to the Owner and be written by a U.S. Department of Treasury listed, A.M. Best, "A" rated underwriter, identify both the Owner and the Contractor as obliges thereunder, and shall be obtained through the Contractor's usual source, or such other source which, in the exercise of the Contractor's informed business judgment, will provide security of like quality. The cost of such bonds shall be included in the Cost of the Work. The amount of each bond shall be equal to One Hundred percent (100%) of the amount of the Subcontractor's contract or subcontract, or the value of the Contractor's portion of the Work.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall ~~promptly~~ furnish a copy of the bonds or shall authorize a copy to be ~~furnished~~ furnished at least three (3) days before the commencement of the Work at the Project site.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The Contractor shall deliver to Owner a copy of the Contractor's certificate of compliance evidencing the Contractor's compliance with the workers' compensation laws of the applicable jurisdiction and thereafter upon renewal or replacement of each required policy of insurance. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 11.1.5** The Contractor's Commercial and Automobile Liability Insurance, as required by Subparagraphs 11.1.1 and 11.1.2, shall be written for not less than limits of liability set forth in this section or otherwise required by law, whichever coverage is greater. Completed operations coverage shall remain in effect for a period of at least ten (10) years after the Final Completion of the Project, or for the entire duration of the statute of repose in the state where the work is done. The Contractor shall require each of its Subcontractors to maintain the insurance set forth in Subparagraph 11.1.1 in commercially reasonable amounts or as required by law, whichever is greater and shall name the Owner as an additional insured on its Commercial General Liability Policy. The Contractor shall also require each of its Subcontractors' insurance policies required in this Article to comply with the additional insured and primary and non-contributory provisions in this Article. If requested by the Owner, the Contractor shall provide the Owner with certificates of insurance and additional insured and primary and non-contributory endorsements for the insurance required in this Article for all of its Subcontractors performing Work in connection with this Agreement.

.1 Commercial General Liability: Employer's Liability or Ohio Stop Gap; Bodily Injury, Personal Injury, Property Damage - single limit \$1,000,000 per occurrence and \$2,000,000 annual aggregate,

with the general aggregate applying separately to the Project; Employer's Liability or Ohio Stop Gap: \$1,000,000.

- .2 Business Automobile Liability: Bodily Injury and Property Coverage: \$1,000,000 Combined Single Limit, including MCS-90 Endorsement for Motor Carrier Policies of Insurance for Public Liability for those materials covered under Section 29 and 30 of the Motor Carrier Act of 1980, or designated as hazardous by the Secretary of Transportation pursuant to Chapter 51 of Title 49 of the United States Code. This policy shall cover vehicles owned, and non-owned vehicles used, by the Contractor, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.
- .3 Umbrella Liability (including Employer's Liability or Ohio Stop Gap): Bodily Injury and Property Damage Combined: \$10,000,000 Each Occurrence: \$10,000,000 Aggregate.
- .4 Workers' Compensation: Statutory Coverage.
- .5 Aircraft Liability: If there are any aircraft operations, the Contractor shall consult and coordinate the appropriate insurance coverage with the Owner.
- .6 Professional Liability: To the extent any portion of the Work requires the performance of professional services, Contractor shall maintain Professional Liability insurance covering claims that arise out of any such services of Contractor and its Subcontractors and Sub-subcontractors. The Professional Liability insurance shall have limits of not less than Three Million Dollars (\$3,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate and shall be maintained throughout the duration of the Project until the expiration of any applicable statutes of repose. Such insurance shall have a retroactive date no later than the date when Contractor or its Subcontractors or Sub-subcontractors (as applicable) first performed professional services for the Project, whichever date is earlier. Without limiting the foregoing, coverage shall be maintained for at least three (3) years after Final Completion. If the policy is written on a "claims made" basis, then an extended reporting period of three (3) years after Final Completion shall be provided. Contractor shall require all Subcontractors and Sub-subcontractors engaged to provide professional design or engineering services to the Project to provide coverage of no less than \$3,000,000.

§ 11.1.6 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under this Article 11, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

## **§ 11.2 Owner's Insurance**

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.2.1.1 Owner's or Project Management Protective Liability Insurance. If requested by the Owner, the Contractor shall obtain, pay for in accordance with the Contract Documents, and maintain at all times during the prosecution of the Work under the Contract Owner's Protective Liability Insurance or Project Management Protective Liability Insurance written on a separate policy in the name of the Owner and issued by the same insurance company that provides the Contractor's Liability Insurance. Coverage shall be on an "occurrence" basis and shall insure the Owner for operations performed by the Contractor and the Subcontractors in the prosecution of the Work. If required by the Owner, the Contractor shall add additional named insureds. Limits of liability shall be \$1,000,000 Combined Single Limit for personal injury and property damage, and each occurrence, with \$1,000,000 aggregate. At the Owner's option, the Owner may purchase this insurance. If, however, the Owner instructs the Contractor to obtain this insurance, the Owner shall fully reimburse the Contractor for the cost of same. The policy or a binder shall be

delivered to the Owner before any Work begins. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.5.1 through 11.1.5.5.

**§ 11.2.1.2** To the extent damages are covered by the Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. **Required Property Insurance**

**§ 11.2.2.1** Unless this obligation is placed on the Contractor, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds, unless otherwise agreed upon by the parties. This insurance shall include the interests of mortgagees as loss payees. This insurance shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

**§ 11.2.2.2 Deductibles and Self-Insured Retentions.** If the insurance required by this Section 11.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions, except that the Contractor shall be responsible for deductibles or self-insured retentions under the policy for each loss to the extent the cause of the loss is the fault of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.

**§ 11.2.2.3 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ 11.2.2.4 Insurance for Existing Structures.** If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section 11.2.2, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties. Any deductible or self-insured retention relating to insurance for existing structures in this Section 11.2.2.4 is subject to the deductible and self-insured retention responsibility allocation provisions of Section 11.2.2.2.

**§ 11.2.2.5 Optional Extended Property Insurance.** The Owner shall purchase and maintain extended property insurance as the Owner, in its reasonable discretion, deems necessary.

**§ 11.2.2.6 Failure to Purchase Required Property Insurance.** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 11.2.2.1 or, if necessary, replace the insurance policy with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work as set forth in the Contract Documents. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against ~~(1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) of the other for damages caused by fire, or other causes of loss, to the extent those losses are covered and paid by property insurance required by the Agreement or other property insurance applicable to the Project subject to the deductible and self-insured retention responsibility allocation provisions of Section 11.2.2.2, except such rights as they have to proceeds of such insurance. The Contractor waives all rights against the Architect, the Architect's consultants, Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered and paid by property insurance required by the Agreement or other property insurance applicable to the Project, to the Project subject to the deductible and self-insured retention responsibility allocation provisions of Section 11.2.2.2, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance, except that the Contractor shall be responsible for deductibles or self-insured retentions under the policy for each loss to the extent the cause of the loss is the fault of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### ~~§11.5 Adjustment and Settlement of Insured Loss~~

#### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary in good faith and made payable to the Owner as fiduciary in good faith for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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

#### **§ 12.1 Uncovering of Work**

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

**§ 12.1.2** If a portion of the Work has been covered that ~~the Architect is not contrary to express requirements of the Contract Documents and that the Architect, the Owner or any governmental authority has not specifically requested to examine prior to its being covered, the Architect or the Owner may request in writing to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of ~~correction, correction~~ and replacement, shall be at the Contractor's expense.~~

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the ~~Architect~~ Architect, Owner or any governmental authority or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. ~~Costs of correcting such rejected~~ Increase to costs or time due to correcting such Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the ~~Contractor~~ Contractor, at its sole cost and expense, shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require~~

correction by the Contractor and to make a claim for breach of warranty. Such one-year period shall be extended for workmanship issues not discoverable within the one-year period for an additional five-year period. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law; Compliance With Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.1.2 The Contractor shall comply with all applicable federal, state, and local laws, rules, guidance, regulations and ordinances.

### § 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, ~~if and in such event,~~ the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate ~~the assignment such assignment and shall assist the Owner is~~ satisfying all other requirements of the lender.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by ~~law-law or equity,~~ This Subparagraph shall not be interpreted to permit the Contractor to recover any costs or damages that are otherwise limited, prohibited or waived by the Contract Documents.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.3.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents.

### § 13.4 Tests and Inspections

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

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

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

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

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

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

§ 13.4.7 No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

### § 13.5 Interest

Payments that are more than ninety (90) days past due and unpaid under the Contract Documents shall bear interest from the date payment is due ~~at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ the Prime Rate as set forth at KeyBank, NA. No interest is payable on amounts properly withheld or any amount that is less than ninety (90) days past due.

### § 13.6 Equal Employment Opportunity

§ 13.6.1 During the performance of this Contract, the Contractor shall maintain policies of employment as follows:

- .1 The Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national or ethnic origin, age, disability, sexual orientation, political affiliation, or veteran status. Actions which are subject to the foregoing prohibition shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor will take affirmative action to

ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, religion, national or ethnic origin, age, disability, sexual orientation, political affiliation, or veteran status. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by an appropriate agency of the Federal or State government setting for the requirements of these non-discrimination provisions.

- .2 The Contractor shall state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, sex, religion, national or ethnic origin, age, disability, sexual orientation, political affiliation, or veteran status.

§ 13.6.2 The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the Owner, advising the labor union or worker's representative of the Contractor's commitments under Section 2.02 of Executive Order No. 11246 of September 24, 1965 as amended and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

§ 13.6.3 The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

§ 13.6.4 The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965 as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records and accounts by an appropriate agency of the Federal Government and by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

§ 13.6.5 In the event of the Contractor's noncompliance with the Equal Opportunity conditions of this Contract or with any such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order No. 11246, or by rules, regulations or order of the Secretary of Labor, or as otherwise provided by law.

§ 13.6.6 The Contractor shall include clauses 13.6.1 to and including 13.6.5 in every Subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 September 24, 1965, as amended so that such provisions will be binding upon such action with respect to any Subcontractor or vendor. The Contractor shall take such action with respect to any Subcontractor or vendor as the appropriate agency of the Federal or State Government may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that, in the event the Contractor determines to initiate litigation against such party, it may request the United States to enter such litigation to protect the interests of the United States. Exemptions to the requirements of the above Equal Opportunity conditions are construction contracts and subcontracts not exceeding \$10,000 and contracts and subcontracts with regard to Work performed outside the United States by employees who were not recruited in the United States.

### **§ 13.7 Confidentiality**

§ 13.7.1 The Contractor recognizes and agrees that the Contract Documents contain proprietary information and trade secrets of the Owner, its affiliates and third parties, and that all other materials and information relating to the Work and marked or specifically identified as "confidential" (whether provided by the Owner or its affiliates or drawn or prepared by the Contractor or any subcontractor during performance of the Work) contain proprietary information or trade secrets of the Owner, its affiliates or third parties. Such trade secrets and proprietary information shall be regarded by the Contractor as secret and confidential and the Contractor, except for purpose of this Contract, shall not publish or disclose to any third party or make use of such information without prior written consent transmitted by the Owner.

The obligations of non-publication, non-disclosure and non-use imposed upon the Contractor shall apply (irrespective of any termination of the Contract) to all information except:

- .1 Information which at the time of supply or thereafter is in the public domain (otherwise than by any fault of or omission on the part of the recipient); and



- .2 Information which is at any time received from a third party having a bona fide right to supply it and which (and to the extent to which) the recipient is or becomes free from all or any obligations to such third party not to disclose or use the same.

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

### **§ 14.1 Termination by the Contractor**

~~§ 14.1.1 The~~ Provided that the Contractor can demonstrate that it has been materially harmed thereby, the Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; ~~or~~
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made an undisputed payment on a Certificate for Payment within the time stated in the Contract Documents; ~~or Documents (unless a partial payment is otherwise expressly permitted under the Contract Documents), provided that the Contractor provides to the Owner at least fourteen (14) days' prior written notice of such termination and the opportunity to make payment within such fourteen (14) day period.;~~
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2. Intentionally Omitted.

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

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, and failure of the Owner to cure the condition during the seven day notice period, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination. ~~for Work properly executed and for payment of costs directly related to the Work thereafter performed by the Contractor in terminating the Contract, including reasonable demobilization and cancellation costs, proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, and profit thereon.~~

**§ 14.1.4** If all of the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3. Section 14.1.3, provided that the Work is not authorized to proceed within that seven-day period.

### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly-refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors ~~or suppliers;~~ or suppliers or as otherwise required by law;
- .3 repeatedly disregards-fails to comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 is adjudged bankrupt, or makes a general assignment for the benefit of creditors or if a receiver is appointed on account of such insolvency;
- .6 fails to furnish the Owner with reasonable assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents; or

.7 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than seven days, except as permitted under the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2** Accept assignment of subcontracts pursuant to Section 5.4; and
- .3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor ~~a detailed~~ an accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that to which the Owner is entitled.

**§ 14.2.4** ~~If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to The Contractor shall be entitled to payment for the lesser of (1) the Work completed, or (2) the difference between the Contract Sum still owing, and the amount it would take to finish the Work following the Contractor's breach, including, but not limited to, fees incurred for architectural services, attorney's fees, and the costs of hiring another contractor. The Contractor shall pay interest on such amount at the Prime Rate set forth at KeyBank, NA from the date of demand until paid by the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, Architect, upon application, and this obligation for payment shall survive termination of the Contract.~~

### **§ 14.3 Suspension by the Owner for Convenience**

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

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for any increases in the cost and time established by ~~the Contractor to have been~~ caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include ~~profit~~ profit through the date of suspension. No adjustment shall be made to the extent

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

### **§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** ~~The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Contract may be terminated by the Owner for the Owner's convenience and without cause upon at least ten (10) days' prior written notice to the Contractor. In the event of such termination by the Owner without cause, the Owner shall pay the Contractor for the cost of all Work then due, together with the portion of the Contractor's fee payable to the date of termination, and documented costs reasonably incurred as a direct result of such termination, but not lost profit or profit on unperformed Work.~~

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

- ~~.1~~ cease operations as directed by the Owner in the notice;
- ~~.2~~ take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;  
and

~~3~~ — except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In the event that the Contract is terminated by the Owner pursuant to this Article 14, the Contractor agrees to assign or cause to be assigned to the Owner, to the extent directed by the Owner, all of the Contractor's right, title and interest in any Subcontracts and purchase orders placed with respect to the Project. The Contractor's agreement to cause such assignment of Subcontracts and purchase orders shall survive the termination of the Contract.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination.

**§ 14.4.4** Upon receipt of any notice of termination under this Paragraph 14.4, the Contractor shall, unless the notice directs otherwise, immediately discontinue the Work on that date and, to the extent specified in the notice, place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued. The Contractor shall promptly make every reasonable effort to procure cancellation upon terms satisfactory to the Owner of all orders and subcontracts to the extent they relate to performance of the discontinued portion of the Work. Thereafter, the Contractor shall do only such Work as may be necessary to preserve and protect work already in progress and to protect materials, plants and equipment on the site or in transit thereto.

**§ 14.4.5** Upon such termination, the obligations of the Contractor shall continue as to portions of the Work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

**§ 14.4.4** Upon a determination by an arbitrator(s) or court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful or otherwise improper, such termination shall be converted to a termination for convenience pursuant to Section 14.4 and the provisions of Section 14.4 shall apply.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2. applicable statutory limitations under the laws of the State of Ohio.

#### § 15.1.3 Notice of Claims

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker and shall be expressly stated to be a Claim under this Article 15 to the other party, with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party Architect. Claims by Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant Contractor first recognizes the condition giving rise to the Claim, whichever is later.

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

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments for Work not in dispute in accordance with the Contract Documents. Notwithstanding anything to the contrary contained in the Contract, the Contractor shall not stop the Work and shall continue to perform in accordance with the most recent Project schedule pending resolution of any dispute or Claim.

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

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Such notice shall include, to the extent then known by the Contractor, full details and substantiating data to permit evaluation by the Owner and the Architect. If further, or other, information subsequently becomes known to the Contractor, it shall promptly be furnished to the Owner and the Architect in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Should the Contractor contend that it is entitled to an extension of time for completion of any portion or portions of the Work, it shall, within seven (7) days of the occurrence of the cause of the delay, notify the Owner in writing of the existence of the delay, setting forth (1) the cause for the delay, (2) a description of the portion or portions of Work affected thereby, and (3) all details pertinent thereto. If it is impracticable to specify the length of such delay at the time the notice referred to in the preceding sentence is delivered, then the Contractor shall provide the Owner with periodic (not less than weekly) supplemental notices during the period over which the event continues. Such supplemental notices shall keep the Owner informed of any change, development, progress or other relevant information concerning the event of which the Contractor is aware. It is a condition precedent to the consideration or prosecution of any Claim for extension time that the foregoing procedures be strictly adhered to in such instance, and if the Contractor fails to comply in all material respects, then the Contractor shall be deemed to have waived such Claim. Within seven (7) days after the expiration of any such delay, the Contractor shall deliver to the Owner a subsequent written application for the specific number of days of extension of time requested, which, if accepted by the Owner, shall be memorialized in a Change Order. No extension of time shall be granted to the Contractor to the extent that, notwithstanding the existence of any circumstance beyond the Contractor's control, delay would have resulted from any event due to a concurrent unexcused delay of the Contractor. Except to the extent prohibited by law or as otherwise agreed to by the Owner in its sole discretion, the Contractor agrees that whether or not any delay shall be the basis for an extension of time, it shall have no Claim against the Owner for any increase in the Contract Sum, nor a Claim against the Owner for payment or allowance of any kind of damage, loss or expense resulting from delays, hindrances, obstructions or interferences with the Work, unless such delays were caused by the active interference of the Owner (but not the Architect) in the progress of the Work.

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

#### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner ~~waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~1~~ — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- ~~2~~ — waives Claims against the Owner for consequential damages relating to the Contract, including, without limitation, damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## **§ 15.2 Initial Decision Resolution of Claims and Disputes**

~~§ 15.2.1~~ Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. ~~may upon written request of both the Owner and the Contractor be referred to the Architect for initial decision.~~

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

~~§ 15.2.3~~ In evaluating Claims, the Initial Decision Maker Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. ~~party.~~

~~§ 15.2.4~~ If the Initial Decision Maker Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker Architect when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part. ~~Architect will take one of five (5) numbered actions in subparagraph 15.2.2 (2)-(5) in writing stating the reasons therefor.~~

~~§ 15.2.5~~ The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution. Intentionally Omitted.

~~§ 15.2.6~~ Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Intentionally Omitted.

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation

within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. Intentionally Omitted.

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

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

### **§ 15.3 MediationArbitration**

§ 15.3.1 Any unresolved Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. Contract will be determined in accordance with the provisions of this Section 15.3.

**§ 15.3.2 Controversies and Claims Subject to Arbitration.** Subject to the rights reserved by the Owner in Subparagraph 15.3.3.7, a controversy, dispute or claim arising out of or related to this Agreement, or the breach hereof (a "Claim"), shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as modified by this Section 15.3.2), and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. In any arbitration in which the amount stated in the demand is \$100,000 or less, the American Arbitration Association shall appoint a single arbitrator in accordance with such Rules, who shall be a lawyer in a private law firm with ten or more partners. In any such arbitration in which the amount stated in the demand is in excess of \$100,000, or in which the controversy or dispute in question does not involve a liquidated claim, the demand shall include the name of an arbitrator appointed by the claimant. The respondent shall appoint a second arbitrator, and shall notify the claimant in writing of such appointment, within thirty days of receipt of the demand, failing which the matter shall be decided by the arbitrator named in the claimant's demand. Within thirty days after the claimant's receipt of notice of the appointment of the second arbitrator, the two arbitrators shall appoint a neutral arbitrator and shall notify the parties in writing of such appointment, failing which either party may apply to the American Arbitration Association to appoint such neutral arbitrator. If such arbitrator is appointed by the American Arbitration Association, he or she shall be a lawyer in a private law firm with ten or more partners.

**§ 15.3.3 Rules for Arbitration.** If the neutral arbitrator is appointed by the American Arbitration Association, the said Association shall administer the arbitration and its Construction Industry Arbitration Rules shall govern all aspects of the proceeding including the enforcement of any award. If the neutral arbitrator is not appointed by the American Arbitration Association, then the panel of arbitrators shall act as the administrator of the arbitration but the Construction Industry Arbitration Rules of the Association shall nonetheless govern all aspects of the proceeding, including the enforcement of any award; provided, however, that the arbitration panel shall have all the powers and duties conferred on the Association pursuant to said rules. In additions, the following rules shall govern the selection of arbitrators and the proceedings:

.1 **Avoidance of Conflicts of Interest.** Neither party may appoint as an arbitrator an employee, officer or an owner of that party, nor the parent, spouse or child of any employee, officer or owner of that party.

.2 **Ex Parte Communications Prohibited.** After the neutral arbitrator has been appointed, neither party may engage in *ex parte* communication with the arbitrator appointed by that party.

.3 **Contract Performance During Arbitration.** Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing, the parties shall proceed diligently with the performance of their respective obligations under this Agreement.

.4 **When Arbitration May be Demanded.** Demand for arbitration shall be filed in writing with the other party or parties to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the Claim has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

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

**.6 Judgment on Final Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**.7 Rights Reserved by the Owner.** Notwithstanding any provision contained in this Section or elsewhere in the Contract Documents, the Owner reserves the following rights in connections with Claims and disputes with any party or parties.

(a) The right to institute legal action against such party or parties in any court of competent jurisdiction in lieu of demanding arbitration pursuant to this Section 15.3.3, in which case the dispute or disputes which are the subject of such action shall be decided by such court, and not by arbitration.

(b) The right to obtain from any court of competent jurisdiction a stay of any arbitration instituted by any other party, provided that the application for such stay is made before the appointment of the neutral arbitrator in such arbitration, in which case the dispute or disputes which are subject of such arbitration shall be decided by such court.

(c) The right to require any other party to join as a party in any arbitration relating to the Project, in which case the party so joined agrees to be bound by the decision of the arbitrator or arbitrators in such arbitration.

(d) In case the Owner elects to proceed in accordance with Section 15.3.3(7)(a) or (b) above, the word "litigation" shall be deemed to replace the word "arbitration" wherever the latter word appears in this Agreement.

(e) Except where such condition is expressly prohibited by law, an award or judgment against the Owner in accordance with the procedure described in this Section 15.3.3 shall be a condition precedent to the filing by any party, or any of its consultants or agents, of any attachment or lien of any nature against the real estate on which the work is situated or against the Owner's property.

**§ 15.3.2** ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~Intentionally Omitted.

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

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

**§ 15.4 Arbitration**Intentionally Omitted.

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

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 15.4.4 Consolidation or Joinder**

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

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

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.