

**CONSTRUCTION AGREEMENT**  
**(Stipulated Sum)**

BY AND BETWEEN

**NYU HOSPITALS CENTER**

**- OWNER -**

AND

[ ]

**- CONTRACTOR -**

-----

**PROJECT**

SUPER STORM SANDY  
BUILDING MANAGEMENT SYSTEM RESTORATION AND MITIGATION  
NYU LANGONE MEDICAL CENTER  
550 FIRST AVENUE  
NEW YORK, NEW YORK

**PIM NAME AND NUMBER**

BMS Restoration and Mitigation - # 12062

**DATED AS OF**

[ ]

**CONSTRUCTION AGREEMENT**  
**(Stipulated Sum)**

AGREEMENT dated as of [ ] by and between **NYU Hospitals Center**, a New York not-for-profit corporation with offices located at 550 First Avenue, New York, New York 10016 (the “Owner”), and [ ], a [ ] with offices located at [ ] (the “Contractor”).

The Project:            Building Management System Restoration and Mitigation  
                                 NYU Langone Medical Center  
                                 550 First Avenue  
                                 New York, New York

The Engineer:        [ ]

The Owner and the Contractor agree as follows:

**ARTICLE 1**

**(The Contract Documents)**

The Contract Documents consist of this Agreement, the Conditions of Contract (General, Supplementary and other Conditions), the documents enumerated in Article 7, and all Addenda issued prior to and all Modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

## **ARTICLE 2**

### **(The Work)**

The Contractor shall perform all the Work required by the Contract Documents in order to furnish and install a new fiber optic backbone cabling system and all associated managed switches, uninterrupted power supply (UPSs) and panels throughout the NYU Langone Medical Center campus. A list of all Contract drawings and specifications is attached hereto as Exhibit A.

## **ARTICLE 3**

### **(Time of Commencement and Substantial Completion)**

The Work to be performed under this Contract shall be commenced on [ ] and, subject to authorized adjustments, the Contractor shall achieve Substantial Completion of the Work [ ].

## **ARTICLE 4**

### **(Contract Sum)**

The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of [ ]. A further breakdown of the Contract Sum appears in the Contractor's Bid Form attached hereto as Exhibit B. Change Order mark-ups shall not exceed (a) ten percent (10%) for the Contractor's general conditions, insurance and overhead and five percent (5%) for the Contractor's profit; and (b) ten percent (10%) for all Subcontractor general conditions, insurance and overhead and five percent (5%) for all Subcontractor profit. Contractor mark-up on Subcontractor work shall not exceed five percent (5%).

## ARTICLE 5

### (Progress Payments)

Based upon Applications for Payment submitted to the Engineer by the Contractor and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum as provided in the Contract Documents for the period ending on the last day of the month as follows: Not later than ninety (90) days following the end of the period covered by the Application for Payment, or as otherwise provided by law, ninety percent (90%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work and ninety percent (90%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to ninety-Five percent (95%) of the Contract Sum, less such amounts as the Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents. The Contractor shall invoice monthly to [redf.ps@nyumc.org](mailto:redf.ps@nyumc.org) and shall reference the Owner's project information management name and number as follows: BMS Restoration and Mitigation – 12062. In the event the Contractor is unable to transmit documents electronically, the Contractor shall invoice to:

Finance and Administration  
Real Estate Development and Facilities  
NYU Langone Medical Center  
339 East 28<sup>th</sup> Street, 1<sup>st</sup> Floor  
New York, New York 10016

Use AIA Forms G701-Change Order, G702-Application and Certificate for Payment, G703-Continuation Sheet, G706-Payment Affidavit and G713-Construction Change Directive.

Request for the first payment must be accompanied by all required permits, filings, notifications, etc. All payment applications must also be accompanied by partial release and lien waivers for payments throughout the project and a final release and lien waiver for the final payment.

## **ARTICLE 6**

### **(Final Payment)**

Final payment, constituting the entire balance of the Contract Sum, shall be paid by the Owner to the Contractor when the Work has been completed, the Contract has been fully performed and a final Certificate for Payment has been issued by the Engineer. Invoice for final payment must be accompanied by a listing of the legal name, address and telephone numbers of all subcontractors with their associated trades, and an original notarized AIA G-706A form; and must also be accompanied by all required sign-offs, inspections, acceptances and other approvals.

## **ARTICLE 7**

### **(Miscellaneous Provisions)**

7.1 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.2 The Contractor and each person signing on behalf of the Contractor represents and warrants that the Contractor and each parent and/or affiliate of the Contractor has not been suspended, disqualified, debarred or otherwise excluded from or declared ineligible to bid or perform work for any governmental agency or otherwise prohibited from participation in any federal or state program, including Medicare or Medicaid (collectively, "Program"), and to the best of its knowledge, there are no pending civil anti-trust or criminal investigations or

pending or threatened debarments or exclusions of the Contractor from any Program. The Contractor covenants to notify Owner in writing as soon as practicable if the Contractor is the subject of any civil anti-trust or criminal investigation, or is excluded, barred or suspended from participation in any Program and to refrain from employing or contracting for purposes of providing any work or services to Owner with any individual or entity known by the Contractor to be sanctioned, suspended or excluded from participation in any Program. The Contractor shall include the provisions of this "No Exclusion" Article in each subcontract agreement (of any tier) that the Contractor enters into under this Agreement and shall cause such subcontractors and their subcontractors of any tier to so include such provisions. Each of the representations and warranties made in this "No Exclusion" Article is a material representation of fact by the Contractor upon which Owner has relied as an essential inducement to enter into this Agreement. In addition to any other remedies available to the Owner, the Owner may terminate this Agreement for cause in the event that any representation or warranty made in this Article is untrue at the time of entering into this Agreement or becomes untrue at any time during the term of this Agreement.

7.3 Prior to beginning the Work, the Contractor shall visit the Owner's Environmental Health and Safety website (located at <http://redaf.med.nyu.edu/safety/environmental-health-safety/safety-policies>) and note any revisions or additions made to the Work Requirements attached hereto. Thereafter, the Contractor shall periodically visit the website during the course of the Project and keep abreast of any revisions and additions made to the Work Requirements. At all times during the course of the Project, the Contractor shall comply with all revisions and additions made by the Owner to the Work Requirements, as such revisions and additions are posted to the website.

7.4 The Contractor shall be responsible for avoiding jurisdictional and other Project Site-specific labor disputes involving the labor employed at the Project Site by the Contractor, Subcontractors and sub-contractors of any tier. The Contractor shall not be responsible for industry-wide labor disputes.

7.5 The Contractor acknowledges that the Owner may seek recovery of amounts paid to the Contractor pursuant to this Agreement from the Federal Emergency Management Agency ("FEMA"), insurance companies and other potential funding sources and that the Owner has engaged consultants to assist in such recovery, and the Contractor agrees to reasonably cooperate with the Owner, FEMA, insurance companies, other potential funding sources and the Owner's consultants as requested by the Owner. The Contractor shall comply with the provisions of "FEMA Addendum #1 - Construction" annexed hereto to as Exhibit C.

7.6 The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1, and except for Modifications issued after execution of this Agreement, are enumerated as follows:

General Conditions and Work Requirements (attached)

List of Drawings and Specifications (Exhibit A)

Contractor's Bid Form (Exhibit B)

FEMA Addendum #1 – Contracting (Exhibit C)





 **AIA® Document A201™ – 2007****General Conditions of the Contract for Construction****for the following PROJECT:***(Name and location or address)*

Named in the Agreement

**THE OWNER:***(Name and address)*

NYU Hospitals Center

550 First Avenue

New York, New York 10016

**THE ARCHITECT:***(Name and address)*

Named in the Agreement

**THE CONTRACTOR:**

Named in the Agreement

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**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

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

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Work Rules, 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 or (3) a Construction Change Directive. 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 requirements.

#### **§ 1.1.2 THE CONTRACT**

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

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

*(Paragraphs deleted)*

### **§ 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.

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

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

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### § 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 DOCUMENTS

§ 1.5.1 Except to the extent otherwise provided in a written Agreement between the Owner and the Architect, title to all Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants shall vest in the Owner, and the Architect shall be deemed the author thereof and shall retain the copyright and any other intellectual property rights therein subject to a perpetual, non-terminable royalty-free license granted to the Owner. The Contractor may retain one record set of such documents. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants. All copies of such documents, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Drawings, Specifications and other documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on such documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use such documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit information or documentation in digital form, they shall establish appropriate protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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

§ 2.2.1 Any instructions which the Owner shall forward to the Contractor must be in writing with a copy provided to the Architect..

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.8.1, 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.

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§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, if required. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

### § 2.3 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 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.

### § 2.4 OWNER'S RIGHTS IN THE EVENT OF CONTRACTOR DEFAULT

§ 2.4.1 Any one or more of the following shall constitute a "default" or an "event of default" by the Contractor:

.1 The Contractor shall fail or refuse to perform or comply, in whole or part, with any term, condition or provision of any of the Contract Documents;

.2 The Contractor shall fail or refuse to pay any of its Subcontractors, suppliers or workers for any materials, labor or other things incorporated into, or used in connection with, the Work when such payments are due in the Owner's judgment;

.3 The Contractor shall abandon the Work, reduce its labor force to a number insufficient, or fail to increase its labor force to a number sufficient, in the Owner's judgment, to maintain the progress of the Work or complete the Work in accordance with the construction schedule; or

.4 The Contractor shall disregard any applicable law, statute, ordinance, code, rule, regulation or lawful order of a public authority.

§ 2.4.2 If an event of default described in Section 2.4.1 occurs, then the Owner at any time may:

.1 Order the Contractor to comply immediately with any term, condition or provision of any of the Contract Documents;

.2 Order the Contractor, within a specified time, to remove any defective work or materials and to replace such work or materials with satisfactory work or materials;

.3 Accept any defective work or materials and reduce the Contract Sum accordingly;

.4 Arrange to have performed by others any of the Contractor's obligations under the Contract Documents; and/or

.5 Arrange to satisfy the Contractor's obligations relating to the Work for labor, materials, equipment, insurance or other items.

§ 2.4.3 If an event of default described in Section 2.4.1 occurs, then the Owner at any time may also:

.1 Refuse to release any payments to the Contractor for Work performed until the event of

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default is cured to the satisfaction of the Owner; and/or

.2 Upon three (3) days' written notice to the Contractor, terminate this Contract, accept assignment of Subcontracts pursuant to Section 5.4, take possession of all materials, tools, equipment and appliances of the Contractor with respect to the Project and finish the Work by whatever means, method or agency which the Owner, in its sole discretion may choose. In addition, the Owner may take any other steps the Owner, in its sole discretion, may choose to secure any labor, materials, equipment and services. In such event, the Owner shall have a lien on and may take over all of the Contractor's equipment, tools, appliances and materials related to the Work (whether on or off-site) and complete the Work. However, if the default involves any breach of safety laws, regulations or requirements, only one (1) day's notice (whether oral or written) shall be required. If this Contract is terminated as aforesaid, there shall be no obligation to pay the Contractor for any Work performed after such termination, and no obligation to make any further payments to the Contractor for Work performed before such termination until the Project has been completed and accepted by the Owner, and the Owner determines to its complete satisfaction that potential expenses, charges, and claims relating to the performance of the Work have been satisfied or satisfactorily bonded. Such payments to the Contractor shall in any event be reduced by amounts due to the Owner under the terms of the Contract Documents.

§ 2.4.4 The Owner's choice of any remedy shall not operate to waive any other rights or remedies provided under the Contract Documents, or by law, against the Contractor or its surety. The Owner, at its option, may choose more than one remedy or choose one or more particular remedies at different times.

§ 2.4.5 The Contractor shall pay, immediately upon demand, all costs, losses, damages and expenses including without limitation all administrative, management, overhead and other expenses and economic loss, and reasonable attorney's fees (all herein sometimes collectively called "Costs"), incurred by the Owner in connection with any default by the Contractor or exercise of any right or remedy upon the Contractor's default. If the Contractor does not pay the Costs immediately, the Owner may deduct all Costs from any unpaid portion of the Contract Sum.

§ 2.4.6 If payments due to the Contractor for completed portions of the Work are not sufficient to cover the Costs, the Contractor immediately shall pay to the Owner the full amount of any such excess with interest thereon until paid in full at the maximum contractual interest rate permitted by law.

§ 2.4.7 The liability of the Contractor pursuant to Section 2.4.5 shall extend to include, without limitation, the full amount of Costs incurred and obligations assumed in good faith under the reasonable belief that such Costs or obligations were necessary or required. An itemized statement of such obligations and payments shall be **prima facie** evidence of the Contractor's liability.

### ARTICLE 3 CONTRACTOR

#### § 3.1 GENERAL

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

§ 3.1.2 The Contractor represents that it is an expert in the performance of work similar to the Work. Further, the Contractor is cognizant of, and agrees to, the requirement for premium quality consistent with first class medical facility construction in accordance with the highest standards of the trade.

§ 3.1.2.1 The Contractor shall undertake and complete the Work in accordance with the Contract Documents and to the entire satisfaction of the Owner and the Architect. The Contractor shall faithfully and diligently perform and complete the Work and its obligations under the Contract Documents in strict compliance with and subject to each of the provisions of the Contract Documents to the fullest extent that each such provision is applicable to the Work. Any work performed by the Contractor outside the scope of the Work as described in the Contract Documents will be at the sole risk and expense of the Contractor, unless such work has been approved in writing by the Owner.

§ 3.1.3 The Contractor shall not be relieved of 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 By executing the Contract, the Contractor confirms that it has carefully examined the site of the Work, as well as its adjacent area, and has referred to other usual sources of information with respect thereto, and the Contractor will be conclusively presumed to have full knowledge of any and all conditions on, about or above the site relating to or affecting in any way the performance of the Work that would have been indicated to a reasonably prudent contractor. Under no circumstances shall any extra compensation be allowed the Contractor because of its failure to inform itself fully and to include in its bid all items of labor and material required or necessary to be furnished hereunder.

§ 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 2.2.3, 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. The Contractor also shall check for any errors, omissions or discrepancies that may appear in any of the Contract Documents. 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.

§ 3.2.3 The Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 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 make 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 as would have been avoided if the Contractor had performed such obligations.

### § 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and 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 written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

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

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

§ 3.3.4 If the Owner hires a commissioning agent for the Project, the Contractor shall coordinate the Work with the services of the commissioning agent.

### § 3.4 SCAFFOLDING

§ 3.4.1 The Contractor shall provide exterior and interior scaffolding as needed for the construction of the Project.

§ 3.4.2 The Contractor shall arrange to allow other contractors and subcontractors to use such scaffolds provided by the Contractor as shall from time to time be required by the Work.

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§ 3.4.3 All scaffolds shall be built in accordance with the requirements of all state and local laws and regulations.

*(Paragraphs deleted)*

### § 3.5 LABOR AND MATERIALS

§ 3.5.1 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.

§ 3.5.2 The Contractor may make substitutions only as provided in Section 3.13.11, with the written consent of the Owner and subject to any stated conditions to such consent. The Contractor's submittal for any proposed substitution shall identify any required changes to the Work or related work of others and the Contractor shall take responsibility for all such changes and any associated services. The Owner may withhold or condition its consent to any substitution in its sole and absolute discretion.

§ 3.5.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

3.5.4 When directed to do so by the Owner in writing, the Contractor and each of its Subcontractors and Sub-subcontractors shall promptly remove from the Work any of their respective workers engaged in the Work if such worker's performance is unsatisfactory in the Owner's sole opinion, and such worker shall not again be assigned to the site of the Work without the prior written consent of the Owner. Neither the Contractor nor any of its Subcontractors or Sub-subcontractors shall be entitled to any extra compensation on account of any such removal.

§ 3.5.5.1 The Contractors and all Subcontractors and Sub-subcontractors employed upon the Work shall and will be required to conform to the Labor Laws of the United States of America and the State of New York and the various Acts amendatory and supplementary thereto; and to all other laws, ordinances and legal requirements applicable to performance of the Work. When required by law or funding source, the Contractor and all Subcontractors shall pay prevailing wages for labor employed in the Work and shall submit to the Owner certified payroll reports documenting the payment of prevailing wages.

§ 3.5.5.2. All labor shall be performed in the best and most workmanlike manner by mechanics skilled in their respective trades. The standards of the Work required throughout shall be of such grade as will achieve first class results.

#### § 3.5.5.3 Non-Discrimination Clause:

(a) In connection with the performance of the Work the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age or sexual orientation. The aforesaid provision shall include without limitation: 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.

(b) The Contractor agrees to post hereafter in conspicuous places, and have available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(c) The Contract may be cancelled or terminated by the Owner at any time upon seven (7) days' prior written notice, and all moneys due or to become due hereunder shall thereupon be forfeited, for violation of the terms or conditions of the foregoing provisions of the Contract.

(d) The Contractor further agrees to insert the foregoing provisions in all Subcontracts hereunder in order that each Subcontractor, supplier or materialman engaged in the Work shall be obliged to comply with the foregoing requirements.

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**§ 3.6 WARRANTY**

**§ 3.6.1** The Contractor warrants that all 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. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, 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.

**§ 3.6.2** The Contractor shall submit guarantees and warranties on all equipment and workmanship required by the Contract Documents and shall furnish four (4) sets of maintenance and operating manuals to the Owner before final acceptance.

**§ 3.6.3** No operation of equipment by the Owner shall constitute an acceptance of the Work and no final acceptance will be deemed to have occurred until the Contractor has operated the equipment and demonstrated that it fulfills the requirements of the Contract Documents and has furnished all customary certificates of information.

**§ 3.7 TAXES**

**§ 3.7.1** 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.

*(Paragraphs deleted)*

**§ 3.7.2.1** The Owner is generally exempt from payment of taxes and is specifically exempt from the payment of sales and compensating use taxes of the State of New York, and of its cities and counties, on all materials and supplies sold to the Owner. The amount of any such taxes is not included in the Contract Sum.

**§ 3.7.2.2** The Contractor hereby agrees to sell and the Owner agrees to purchase all the supplies and materials required, necessary or proper for or incidental to the Work covered by the Contract.

**§ 3.7.2.3** The Contract Sum shall be deemed to be in full consideration for the performance by the Contractor of all the Contractor's duties and obligations in connection with the foregoing sale and furnishing the use of construction equipment not owned by the Contractor or its Subcontractors but rented from others.

**§ 3.7.2.4** The Contractor agrees to perform the Work and to furnish all the supplies and materials required, necessary or proper for or incidental thereto, except that the supplies and materials sold to the Owner under Section 3.7.2.2 above shall be furnished by the Owner to the Contractor for use in the performance of such Work and except that the use of construction equipment not owned by the Contractor or its Subcontractors but rented from others shall be deemed to be in full consideration for the performance by the Contractor of all duties and obligations under this Contract in connection therewith.

**§ 3.7.2.5** The purchase by the Contractor of the supplies and materials sold hereunder will be a purchase or procurement for resale and therefore not subject to the New York State sales or compensating use taxes or any such taxes of cities or counties. The sale of such supplies and materials by the Contractor to the Owner will not be subject to the aforesaid sales or compensating use taxes. With respect to such supplies and materials sold hereunder, the Contractor, at the request of the Owner, shall furnish to the Owner, properly executed, acknowledged and delivered, such bills of sale and other instruments as may be required by it, assuring it that title to such supplies and materials shall have passed to the Owner free of encumbrances, and the Contractor shall mark or otherwise identify all such supplies and materials as the property of the Owner.

**§ 3.7.2.6** The purchase by Subcontractors of supplies and materials to be sold hereunder will also be a purchase or procurement for resale to the Contractor (either directly or through other Subcontractors) and therefore not subject to the aforesaid sales or compensating use taxes, provided that the Subcontracts between the Contractor and its Subcontractors shall provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction and that such subcontract agreements are in a form similar to this Contract with respect to the separation of the sale of supplies and materials from the work and

labor to be performed.

§ 3.7.2.7 If as a result of such sale of supplies and materials, payment for which was made by the Contractor after the date of this Contract, (i) any claim is made against the Contractor by the State of New York or any city or county thereof for sales or compensating use taxes on the aforementioned supplies and materials or (ii) any claim is made against the Contractor by a Subcontractor or materialman on account of a claim against such Subcontractor or materialman by the State of New York or any city or county thereof for sales or compensating use taxes on the aforementioned supplies and materials, then, if the Contractor and Subcontractors have complied with the provisions of this Contract relating thereto, the Owner will reimburse the Contractor for an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that:

(a) (i) The Subcontracts in connection with this Contract provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction;

(ii) Such Subcontracts are in the form of this Contract with respect to the separation of the sale of supplies and materials from the other work and labor to be provided; and

(iii) Such separation is actually followed in practice, including, without being limited to, the separation of payments for supplies and materials from the payments for other work and labor; and

(b) The Contractor and the Subcontractors and materialmen shall have obtained any and all necessary resale exemption certificates from the appropriate government agency or agencies, and shall have furnished a resale certificate to all persons, firms or corporations from which they have purchased supplies and materials for the performance of the Work covered by this Contract; and

(c) The Owner shall have been afforded the opportunity, before any payment of tax is made, to contest such claim in the manner and to the extent that the Owner may choose and to settle or satisfy such claim, and such attorney as the Owner may designate shall have been provided with the opportunity to act for the purpose of contesting, settling and satisfying such claim, and the Contractor and the Subcontractor shall have given immediate notice to the Owner of any such claim, cooperating with the Owner and its designated attorney in contesting such claim and furnished promptly to the Owner and said attorney all information and documents necessary or convenient for contesting such claim, such information and documents to have been preserved for six years after the date of final payment for the sale or until the resolution of such claim if such a claim is pending or threatened at the end of such six years. If the Owner elects to contest any such claim, it will bear the expense of such contest.

§ 3.7.2.8 Nothing in this Section 3.7.2 is intended to relieve or shall be construed as relieving the Contractor from the Contractor's obligations under this Contract and the Contractor shall have the full continuing responsibility to install and protect the materials and supplies purchased in accordance with the provisions of the Contract, to maintain them in proper conditions and forthwith to repair, replace and make good any loss thereof or damage thereto without cost to the Owner until such time as the work covered by the Contract is fully accepted by the Owner.

### § 3.8 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

*(Paragraphs deleted)*

§ 3.8.1.1 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.

§ 3.8.1.2 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.

§ 3.8.1.3(a) In the event of the failure of the Contractor promptly to secure any building permit or any certificate of occupancy and to pay for any such permit or certificate or to secure and pay for any licenses, inspections and certificates necessary for the proper execution and completion of the Work, then, following two (2) days' written notice to the Contractor of its intent to do so, the Owner may proceed to secure such permits, licenses, inspections or certificates at the expense of the Contractor.

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**§ 3.8.1.3(b)** In the event the securing of any such permit, license, inspection or certificate requires the cooperation or signature of the Contractor, the Contractor shall immediately upon request of the Owner supply and execute all documents necessary to obtain each such document and shall indemnify the Owner from and against any expense, delay or damage to the Owner resulting from any failure by the Contractor strictly to observe and perform its obligations hereunder.

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

**§ 3.8.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.8.4 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 before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. Failure of the Contractor to give such notice and to permit the Owner to investigate such conditions, before they are disturbed, shall constitute a waiver by the Contractor of any and all Claims arising therefrom. The Owner and the Architect will promptly investigate such conditions and, if the Owner 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, there will be an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different, there will be no change in the terms of the Contract. If the Contractor disputes the Owner's determination, the Contractor may proceed as provided in Article 15.

### **§ 3.9 ALLOWANCES**

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

**§ 3.9.2** 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 3.9.2.1 and (2) changes in Contractor's costs under Section 3.9.2.2.

**§ 3.9.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.10 STAFFING**

**§ 3.10.1** The Contractor and each of its Subcontractors shall furnish a competent and adequate staff and labor as necessary for the proper administration, coordination, supervision and superintendence of the Work and clean-up of the Site; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to maintain the progress of the Project and complete the Work in strict accordance with all requirements of the Contract Documents. The Contractor shall keep on the job throughout its duration a full-time competent superintendent and any necessary assistants, all of whom must be satisfactory to Owner. Any limitations or reductions in the Contractor's staffing shall be set forth as exclusions in the Contractor's bid for a Project and in the Agreement.

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§ 3.10.2 Prior to assigning a superintendent or project manager to the Work, the Contractor shall furnish to the Owner in writing, with a copy to the Architect, the name and resume of prior work experience of the proposed superintendent or project manager and shall obtain the written approval of the Owner for such assignment. If during the progress of the Work the Owner in its sole discretion objects to the superintendent, project manager or any other key member of the Contractor's staff, the Owner may demand in writing that the superintendent, project manager or other key staff member be replaced. Upon such demand the Contractor shall appoint a replacement superintendent, project manager or other key staff member after having first obtained the Owner's approval of such replacement. The Contractor shall not be entitled to any extra compensation on account of any such replacement. No superintendent, project manager or other key member of the Contractor's staff shall be fired, transferred or otherwise removed from the Work by the Contractor without the prior written consent of the Owner.

*(Paragraphs deleted)*

### § 3.11 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.11.1 The Contractor, within ten (10) days after being awarded the Contract, shall prepare and submit for the Owner's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall show (a) the sequence and interrelationship of the items of the Work of each trade and their relationship to the Work of the other trades; (b) the time required for fabrication or delivery, or both, of all materials and equipment required for the Work; and (c) the time required for the preparation and submission of all shop drawings, coordination drawings, product data and samples, coordinated with the submittal schedule required under Section 3.11.2. In addition, the Contractor shall prepare and submit to the Owner every two (2) weeks throughout performance of the Work a two-week look-ahead schedule showing the Work the Contractor plans to perform in the next two (2) weeks. Failure to submit a proposed schedule, revision or two-week look-ahead schedule as required shall constitute a material breach of this Contract, which may not be waived except in writing signed by the Owner.

§ 3.11.2 The Contractor shall prepare a submittal schedule, within ten (10) days after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be 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, 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.

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

### § 3.12 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.12.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12.2 The Contractor shall submit to the Owner each day detailed written daily reports of the Work performed the previous day by its employees and the employees of its Subcontractors.

§ 3.12.3 Each such daily report shall be prepared and signed on behalf of the Contractor. Each report shall include the following information for that day concerning the Contractor and each Subcontractor: materials and equipment being installed, number of workers working, the hours worked, the type and location of the Work being performed by each trade and each item of major equipment being used. The report shall also include other significant events occurring on the job site with regard to the Work. The Contractor's failure to submit such reports shall constitute a material breach of this Contract, which may not be waived except in writing signed by the Owner.

*(Paragraphs deleted)*

### § 3.13

*(Paragraphs deleted)*

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## **SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

§ 3.13.1 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.

§ 3.13.2 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.

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

§ 3.13.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which 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 Sections 3.13.10 and 4.2.8. 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.

§ 3.13.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents 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. No extensions of time will be granted to the Contractor for delays attributable to the Contractor's failure to submit submittals in an orderly and timely manner. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. Any submittal which, in the Architect's opinion, is incomplete, contains numerous errors, has not been checked or has been checked only superficially by the Architect will be returned unchecked by the Architect for resubmission by the Contractor.

§ 3.13.6 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.

§ 3.13.7 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.

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

§ 3.13.9 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 written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.13.10 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. If professional design services or certifications by a

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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 cause such services or certifications to be provided by a properly 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, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.13.10, the Architect will review, 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. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

**§ 3.13.11** No fixtures or equipment other than that shown and specified in the Contract Documents may be submitted by the Contractor for approval more than four (4) weeks after the date of the Contract. If any such submission shall be made the Contractor must at such time specifically agree in writing that it shall be responsible for all structural, mechanical, electrical or other changes which shall be required in connection therewith at no additional cost to the Owner. The Contractor will be required to furnish all necessary services relating to any substituted fixtures or equipment approved by the Owner which shall be necessary to provide proper operation thereof.

#### **§ 3.14 USE OF SITE**

**§ 3.14.1** 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.

**§ 3.14.2** The Contractor shall arrange with the Owner for access to the site or, if an alteration is involved, the premises, and for use of elevators, toilet facilities, etc., if appropriate. All Work shall be performed during regular, lawful working hours unless otherwise directed by the Owner with the permission (if required) of appropriate governmental agencies.

**§ 3.14.3** The Contractor and all Subcontractors shall at all times coordinate their respective Work with all adjacent work and shall coordinate with all other trades so as to facilitate the general progress of the Work.

#### **§ 3.15 CUTTING AND PATCHING**

**§ 3.15.1** 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 and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

*(Paragraphs deleted)*

#### **§ 3.16 CLEANING UP**

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

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

### **§ 3.17 ACCESS TO WORK**

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

### **§ 3.18 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 such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

*(Paragraphs deleted)*

### **§ 3.19 INDEMNIFICATION**

**§ 3.19.1** To the fullest extent permitted by law, the Contractor shall assume entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of the Contractor or otherwise, and to all property, including, without being limited to, property of the Owner, New York University School of Medicine, an administrative unit of New York University, New York University Medical Center Condominium or the Architect, or loss of use thereof, actually or claimed to be caused by, resulting from, arising out of, or occurring in connection with, the execution of the Work or caused or contributed to by any negligent act, error, or omission on the part of the Contractor, or any Subcontractor, Sub-subcontractor or supplier or any of their respective agents, servants or employees, including, without limitation, any alleged breach of any statutory duty or obligation on the part of any of the Indemnitees (as hereafter defined) or any of their affiliates, subsidiaries, agents, consultants, trustees, servants, employees, directors, officers or volunteers, except as hereinafter provided; and if any claim shall be made for any damage or injury (including death resulting therefrom) as hereinabove described (unless and only to the extent that such injury or damage is caused by or results from the sole negligence of an Indemnitee or any of their respective affiliates, subsidiaries, agents, consultants, trustees, servants, employees, directors, officers or volunteers), the Contractor agrees to indemnify and hold harmless the Owner, New York University School of Medicine, an administrative unit of New York University, New York University Medical Center Condominium and the Architect (each an "Indemnitee" and collectively the "Indemnitees"), and each of their respective affiliates, subsidiaries, agents, consultants, trustees, servants, employees, directors, officers and volunteers from and against any and all loss, expense, damage or injury that may be sustained as the result of any such claim, and the Contractor agrees to assume, on behalf of each of the Indemnitees and/or any of their respective affiliates, subsidiaries, agents, consultants, trustees, servants, employees, directors, officers or volunteers, the defense of any action at law or equity which may be brought against any of them upon such claim and to pay all costs and expenses of whatever nature resulting therefrom or in connection therewith, and to pay on behalf of the Indemnitees and/or any of their respective affiliates, subsidiaries, agents, consultants, trustees, servants, employees, directors, officers or volunteers upon demand, the amount of any judgment that may be entered against any of them in any such action. This indemnification agreement shall continue in effect in each instance notwithstanding the fact that the Owner has accepted and paid for the Work, in whole or in part, and has occupied the Project.

**§ 3.19.2** In claims against any person or entity indemnified under this Section 3.19 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 3.19.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### **§ 3.20 TEMPORARY HEAT**

**§ 3.20.1** The Contractor shall, at its own expense, provide such temporary heating as shall be required for the proper protection, facilitation and drying of all Work.

### **§ 3.21 TEMPORARY LIGHT AND POWER**

**§ 3.21.1** The Contractor shall, at its own expense, furnish all temporary light and power, complete with wiring, lamps and similar equipment, as shall be required for the completion of the Work. At such time as the temporary light and power shall no longer be required, all such wiring, lamps, and equipment comprising temporary light and power shall be removed by the Contractor at its own expense.

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## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 Unless otherwise provided in the Contract Documents, 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.

§ 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 except by written direction of the Owner.

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

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Owner and Architect will provide administration of the Contract as described in the Contract Documents. The Architect will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect will not have authority to increase the Contract Sum or extend the Contract Time. The Owner may carry out any or all of the administrative functions of the Architect set forth in the General Conditions.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations to become familiar with and to keep the Owner informed about the progress and quality of the Work completed, and to determine in general if the Work is being performed in accordance with the Contract Documents and all applicable laws. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. Neither the observations of the Architect, nor observations, inspections, tests or approvals by persons other than the Contractor, shall relieve the Contractor from the Contractor's obligations to perform the Work in accordance with the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 FACILITATING CONTRACT ADMINISTRATION

Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review for conformance with the information given and the design concept expressed in the Contract Documents, and take appropriate and timely action upon, the Contractor's submittals such as Shop

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Drawings, Product Data and Samples, based upon the requirements of and as necessitated by the Contract Documents. 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, 3.8 and the other provisions of the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, 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 Construction Change Directives. The Architect will investigate concealed and unknown conditions as provided in Section 3.8.4.

§ 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will determine the quality, acceptability and fitness of all parts of the Work and will interpret and decide matters concerning performance under and requirements of, the Drawings, Specifications and other Contract Documents issued by the Architect on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. 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 (if any) will not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (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.

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

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

**§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

**§ 5.2.1** The Contractor shall use only Subcontractors on the Owner's approved list of subcontractors; provided, however, that the Contractor may propose in its bid for a Project, as an alternate, a Subcontractor not on the Owner's approved list and the proposed price reduction (if any) if the Owner agrees to such use of the proposed alternate Subcontractor. The Agreement will include a list of the Subcontractors for the Project, including any agreed alternate Subcontractors. Within thirty (30) days of the award of the Contract, the Contractor shall furnish in writing to the Owner the names of any Subcontractors for the Project not listed in the Agreement and of suppliers proposed for each principal portion of the Work.

**§ 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 Owner shall not require the Contractor to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** The Contractor shall require that each Subcontractor or supplier examine, analyze and expressly agree in writing to be bound by all provisions of the Contract and the Contract Documents.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor or supplier previously selected if the Owner or Architect makes reasonable objection to such substitution.

**§ 5.3 SUBCONTRACTUAL RELATIONS**

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

**§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

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

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

**§ 5.4.3** Upon such 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 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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those

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portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 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 that executes the Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the 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, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, 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 report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for direct 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 the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner and/or separate contractors.

§ 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 3.15.

## § 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 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 or Construction Change Directive, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor shall submit a written proposal for adjustment of the Contract Sum and/or the Contract Time on account of a proposed change within ten (10) days after the Contractor's receipt of notice of the change or proposed change and thereafter shall meet with the Owner as and when requested by the Owner to negotiate any such adjustment

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§ 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.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

## § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Contractor 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 Methods used in determining adjustments to the Contract Sum may include those listed in Sections 7.3.3 and 7.3.7.

## § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order signed by the Owner 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. A Construction Change Directive may take the form of an authorization letter signed by the Owner.

§ 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 based upon estimated amounts calculated in accordance with Section 7.3.7;
- .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 7.3.7.

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

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

§ 7.3.6 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.

§ 7.3.7 If the Construction Change Directive does not state in the method for adjustment of the Contract Sum, or if the Contractor does not respond promptly or disagrees with the stated method for adjustment, the Architect or Owner shall determine the method and the adjustment on the basis of reasonable direct expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, percentage allowances for general conditions, insurance, overhead and profit as set forth in the Agreement. The Contractor shall be entitled to only one level of allowance for general conditions, insurance, overhead and profit, whether the Work is

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performed by a Subcontractor or is self-performed by the Contractor. In cases covered by this Section 7.3.7, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting together with appropriate supporting data. If any Work attributable to the change is performed by a Subcontractor, the Contractor shall require the Subcontractor to keep and present such itemized accounting and supporting data, which the Contractor shall submit to the Owner. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed; and
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others.

*(Paragraph deleted)*

Costs shall exclude costs for general conditions (including, without limitation, all clean-up and other support labor and all supervisory and project management labor), insurance and overhead, all of which are covered by the allowances for general conditions, insurance and overhead as set forth in the Agreement.

**§ 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. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for general conditions, insurance, overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** 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 documented by a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

*(Paragraph deleted)*

#### **§ 7.4 PERFORMING CHANGED OR DISPUTED WORK**

**§ 7.4.1** If the Contractor or any Subcontractor is performing changes in the Work under Article 7 hereof (unless payment therefor is to be made by a lump sum or at unit prices previously agreed upon), or is performing disputed work or complying with a determination or order under protest in accordance with Section 15.1.4.2 hereof, the Contractor shall furnish each of the Architect and the Owner daily with an original and one copy of a written statement signed by the Contractor's representative at the site showing:

- .1 The number of workers engaged in performing such work or engaged in complying with such determination or order, the number of hours each such worker is devoting thereto and a description of the specific work each is doing; and
- .2 The nature and quantity of all materials and equipment furnished or used in connection with the performance of such work or compliance with such determination or order and from whom purchased or rented.

**§ 7.4.2** A copy of each such statement shall be counter-signed by the Architect or the Owner's representative, noting thereon any items questioned, and will be returned to the Contractor promptly after submission for answers to each of the questions raised.

**§ 7.4.3** Notwithstanding any other provision of the Contract or any applicable law, since the purpose of the foregoing requirements is to provide the Owner with the opportunity to ascertain immediately the validity of any costs or damages claimed, failure by the Contractor to comply strictly with the requirements set forth in Section 7.4.1 above shall constitute a waiver and release by the Contractor of any and all Claims for costs or damages arising therefrom.

**§ 7.4.4** The Contractor, and each Subcontractor, when required by the Owner or Architect, must also produce for inspection all books, vouchers, records, daily job diaries, reports and cancelled checks, showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such work or in complying with such determination or order, and the amounts expended therefor, including, without limitation records and data

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#### **§ 7.5 REQUIREMENT FOR WRITTEN ORDER**

**§ 7.5.1** Except in the case of emergencies, all changes in the Work must be authorized by a written directive and the Contractor shall not proceed with a change without such a directive. Failure to comply strictly with this requirement for a written directive shall constitute a waiver by the Contractor of any and all Claims relating to such work.

#### **§ 7.6 CONTINUING PERFORMANCE**

**§ 7.6.1** The existence of any disputes regarding changes in the Work shall not relieve the Contractor of its obligations to proceed diligently with its performance of the Contract as provided in Section 15.1.3.

#### **§ 7.7 RECORD DRAWINGS**

**§ 7.7.1** The Contractor shall continuously maintain a complete set of black and white prints of all Contract Drawings on which it shall contemporaneously record all changes in the Contractor's Work made during construction so as to provide an "as-built" record of the Work (the "Record Drawings").

**§ 7.7.2** Each Subcontractor shall also timely prepare and provide record shop drawings (the "Record Shop Drawings") in accordance with good construction practice and shall continuously update the Record Shop Drawings to include all comments made by the Architect, engineers and consultants and all changes in the Subcontractor's Work. The Record Shop Drawings shall be sealed and signed by the Subcontractor's licensed professional engineer(s) whenever required by the Specifications and other Contract Documents. A complete set of Record Shop Drawings shall be provided by each Subcontractor to the Contractor at such time as each Subcontractor has substantially completed its Work and prior to such Subcontractor receiving final payment from the Contractor. The failure of any Subcontractor to so provide its Record Shop Drawings shall constitute grounds for withholding final payment until full compliance herewith has been made.

**§ 7.7.3** Prior to final acceptance of the Work the Contractor shall provide to the Owner an indexed and complete set of "as-built" Record Drawings and Record Shop Drawings for the Project. The Contractor shall also provide to the Owner one set of all of the Contract drawings and sketches issued for the Work.

### **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 or the Owner's notice to proceed.

**§ 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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

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**§ 8.3 DELAYS AND EXTENSIONS OF TIME**

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

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15. The Contractor shall give written notice of any such Claim as provided in Section 15.1.2.

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

**§ 8.3.4** Within three (3) days after the discovery or commencement of any condition which is causing or may cause delay or disruption in the Work the Contractor must notify the Architect and the Owner in writing, duly executed by the Contractor, of the effect, if any, of such condition upon the progress of the Work, must state in such notice in what respect, if any, the condition is causing or may cause delay or disruption and must set forth therein suggestions for avoiding such delay or disruption. Such notice shall be followed by notice of any Claim on account of any such condition as provided in Section 15.1.2.

**§ 8.3.5** If the Contractor shall at any time claim or intend to claim compensation for any damage sustained by reason of any such delay or disruption the Contractor shall (in addition to providing notice under Sections 8.3.4 and 15.1.2), on or before the fifteenth (15th) day of the month following that in which any such damage shall have been sustained, provide both the Architect and the Owner with an itemized written statement duly executed by the Contractor, setting forth in detail the nature, extent and amount of such damage and having attached thereto copies of all documentation then in the possession of the Contractor supporting such claim.

**§ 8.3.6** Notwithstanding any other provision of this Contract or any applicable law, since the purpose of each of the foregoing requirements is to provide the Owner with the opportunity to avoid or minimize the effect of any such condition and to immediately ascertain the validity of any damages claimed, the failure by the Contractor to comply strictly with each of the requirements set forth in Sections 8.3.4, 8.3.5 and 15.1.2 shall constitute a waiver and release by the Contractor of any and all claims for damages for delay or disruption arising from any such condition, no right to recover upon any such Claim shall exist thereafter and under no circumstances shall Contractor assert any such Claim.

**ARTICLE 9 PAYMENTS AND COMPLETION**

**§ 9.1 CONTRACT SUM**

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.

**§ 9.2 SCHEDULE OF VALUES**

The Contractor shall submit to the Owner for the Owner's approval a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, with any revisions required by the Owner, shall be used only as a basis for reviewing the Contractor's Applications for Payment and for no other purpose and may not be offered in evidence in any action or proceeding against the Owner for the purpose of establishing the value of the Work or any portion thereof as performed by the Contractor.

**§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** Before the first Application for Payment for the Work, the Contractor shall submit to the Owner for the Owner's approval a written cash flow schedule of projected payments to the Contractor for the duration of the Work.

*(Paragraphs deleted)*

**§ 9.3.2** Each month during performance of the Work, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment

as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Following certification by the Architect, the Contractor shall submit the Application for Payment to the Owner.

*(Paragraph deleted)*

§ 9.3.2.1 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 material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

§ 9.3.2.3 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.2.4 Before the Contractor shall become entitled to any intermediate or final payment under the terms of this Contract, the Contractor must first submit signed, notarized and original partial or final lien waivers from the Contractor and Subcontractors and such other evidence in such form as the Owner may designate that everything in connection with the then completed Work, whether or not furnished at the job site or elsewhere, has been fully paid for to the date of the Application for Payment (including, without limitation, materials furnished, labor performed, services rendered and equipment supplied by all persons engaged in the prosecution of the Work, whether or not such persons be agents, servants or employees of the Contractor and regardless of any contractual relationship between the Contractor and such persons) and the Contractor shall certify under penalties of perjury, at any time required by the Owner, that all such payments or claims therefor have been fully made or satisfied. In the event there shall be any lien or other claim for moneys due or to become due by any of the foregoing, the Contractor shall immediately satisfy such claim and bond such lien. The Owner shall have the right to retain out of any payment then due, or thereafter to become due, an amount sufficient to completely indemnify it against such lien or other claim, including any premiums charged for a bond and any attorneys' fees and disbursements. The Contractor agrees to pay the above costs incurred by the Owner and the Owner is authorized to retain such sums from any amounts due the Contractor. The Contractor hereby appoints any duly authorized agent or officer of the Owner as its agent to execute a release or satisfaction of any such lien in the name of the Contractor. Should the Owner give the Contractor written notice of any unpaid claim for obligations incurred by the Contractor, the Contractor shall be stopped from disputing the liability for any such claim unless within three (3) days after receipt of such notice the Contractor shall notify the Owner in writing that an amount different from that demanded is actually owing or that there is no amount owing. Should there be any claim outstanding after all payments have been made, the Contractor shall refund to the Owner all moneys that the Owner may pay in connection with discharging and defending such claim. Any such lien or other claim, until satisfied or withdrawn, shall preclude any and all claims or demand for any payment by the Contractor under or by virtue of this Contract.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will either execute a Certificate for Payment, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in 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 comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of

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

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by 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 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 failure to carry out the Work in accordance with the Contract Documents.
- .8 failure to comply with the construction schedule;
- .9 failure to respond in a timely manner to a Change Order requests;
- .10 erroneous estimates by the Contractor of the value of Work performed; or
- .11 the existence of an event of default under the Contract Documents.

In addition, the Owner may withhold the Owner's approval of the Application, or after approval the Owner may withhold payment, in whole or in part for any of the foregoing reasons and shall notify the Contractor of any such withholding.

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

**§ 9.5.3** If the Architect withholds certification or the Owner withholds 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 material or equipment suppliers 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 Architect will reflect such payment on the next Certificate 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 unless the Owner withholds payment under Section 9.5.1.

**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven (7) 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.

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§ 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 material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors 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, except as may otherwise be required by law.

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

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within fourteen (14) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within fourteen (14) days after the date established in the Contract Documents the amount certified by the Architect (except to the extent of withholding by the Owner under Section 9.5.1) or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 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 Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon submission of the Contractor's list, 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, 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, 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, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall 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.

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§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under 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, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that 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 terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner and (6) data establishing that all permits, inspections, signoffs and acceptances have been received from all regulatory agencies having jurisdiction over the Work, and that all open work applications have been closed at the issuing agency. 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. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining

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balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

*(Paragraphs deleted)*

**§ 9.10.4** No payment made by the Owner hereunder, including the final payment, shall be evidence of the performance of the Contract either in whole or in part, against any Claim of the Owner, and no payment shall be construed to be an acceptance of any defective Work or as a waiver of any of the provisions of the Contract, including the provisions for guarantees, warranties and indemnification, each of which shall survive any such payment and any waiver of any of the terms hereof by the Owner shall be without prejudice and such waiver shall not be deemed to be continuing or in any way affect the other terms, provisions or covenants of the Contract.

**§ 9.10.5** The acceptance of final payment by the Contractor shall constitute a waiver of all Claims by the Contractor, except for those made in writing duly executed by the Contractor and submitted with the final Application for Payment. Such writing shall specify that the writing contains a Claim by the Contractor, shall set forth all alleged Claims of the Contractor against the Owner in any way connected with or arising out of the Contract, either in contract or in tort, and with respect to each item of such claim the total amount thereof, the labor and various materials included therein and the alleged value thereof. If any such Claim be one for delay or disruption, the Contractor shall set forth the alleged cause of each delay or disruption, the period or periods of time involved (including the dates when the Contractor claims the performance of the Work, or a particular part thereof, was delayed or disrupted) and an itemized statement and breakdown of the amount claimed for each such delay or disruption. The Contractor shall also certify that the Contractor has complied with provisions of Sections 8.3 and 15.1.2 of the Contract with respect to any Claim for delay or disruption, with the provisions of Sections 15.1.4 and 7.5 with respect to any Claim for extra or disputed Work and with the provisions of Section 15.1.4 with respect to any Claim for other additional cost.

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

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

**§ 10.1** Safety and Fire Precautions and Programs: The Contractor shall be responsible for initiating, maintaining and supervising all safety and fire precautions and programs in connection with the Work. Within ten (10) days after execution of the Contract, the Contractor shall submit to the Owner a detailed, site-specific safety plan for the Project.

**§ 10.2** Safety of Persons and Property: The Contractor shall take all necessary precautions for the safety of, and shall assume responsibility for and provide all necessary protection to prevent damage, injury or loss to:

- .1 All employees on the Work and all other persons who may be affected thereby;
- .2 All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site; and
- .3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 The public.

*(Paragraphs deleted)*

**§ 10.3** The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority that has jurisdiction over the site where the Work is being performed, and also shall comply with the Owner's work rules (including the work rules attached as part of the Contract Documents and reasonable revisions and additions) and any applicable rules and regulations of any landlord or managing agent. The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all necessary safeguards for safety, protection and fire prevention, including posting danger signs and other devices against hazards, and shall be responsible for promulgating safety regulations and notifying owners and users of adjacent property and utilities.

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

§ 10.5 All damage or loss to any property referred to in Section 10.2 above which shall be caused in whole or in part by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor at its expense, except damage or loss attributed solely to faulty drawings and specifications or solely to the acts or omissions of the Owner or Architect or anyone employed by either of them.

§ 10.6 The Contractor shall designate a responsible individual at the site whose duty shall be the prevention of accidents and fire protection. This individual shall be the Contractor's Project Superintendent unless otherwise specified in writing by the Contractor to the Owner and the Architect.

§ 10.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

§ 10.8 Emergencies: In any emergency affecting the safety of persons or property, the Contractor shall act, in its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided for in Article 7 (Changes in the Work).

§ 10.9 Protection in General:

.1 The Contractor shall protect all shrubs, trees, lawns and all landscape work from damage by providing such guards and covering or other protection as may be necessary. Any damage to such items shall be repaired or replaced at the Contractor's expense.

.2 The Contractor shall protect all streets and sidewalks and shall make all necessary repairs at the Contractor's own expense.

.3 The Contractor shall protect all private roads and walks, shall maintain them during the course of the Work and shall repair all damage thereto at its own expense.

.4 The Contractor shall comply with the requirements of the specification entitled "Protection & Safety Work" of the Committee on Accident Prevention, Building Trades Employers' Association of the City of New York, insofar as the provision of any article or articles thereof are applicable to the Work, the same as if such provisions were set forth herein in full, and with all local and state laws.

§ 10.10 Water Protection: The Contractor shall at all times protect the excavation, the trenches and the building from damage from rain water, backing up of drains or sewers and all other sources of water and shall provide all pumps, equipment and enclosures to provide this protection.

§ 10.11 Temporary Drainage: The Contractor shall construct and maintain all necessary temporary drainage and so all pumping necessary to keep all excavations, basements and cellars free of water.

§ 10.12 Snow and Ice: The Contractor shall remove all snow and ice as may be required for the proper protection and prosecution of the Work.

§ 10.13 Bracing, Shoring & Sheeting: The Contractor shall provide all bracing, shoring and sheeting as required for safety and for the proper execution of the Work and shall have such items removed when the Work is completed.

§ 10.14 Guard Lights: The Contractor shall provide and maintain guard lights at all barricades, railings, obstructions in the streets, roads or sidewalks, and at all trenches or pits adjacent to public walks or roads.

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§ 10.15 Weather Protection: The Contractor shall at all times protect against rain, wind, storms, frost or heat so as to maintain all work, materials, apparatus and fixtures free from injury or damage. At the end of each day's work all new Work which might be damaged shall be protected.

§ 10.16 Protection to Previously Completed Work: The Contractor shall provide the proper protection for all previously completed Work, and all furnishings and fixtures which may be damaged. Whenever any exterior openings shall be made in previously completed Work they shall be covered with watertight protection at the end of each day.

§ 10.17 Cold Weather: During cold weather the Contractor shall protect all Work from damage. If at any time low temperatures shall make it impossible to continue operations safely in spite of cold weather precautions, the Contractor shall cease work at that time and shall notify the Architect.

§ 10.18 Damage: Any Work damaged by a failure to provide the protection required above shall be removed and replaced at the Contractor's expense.

§ 10.19 Fire:

.1 Smoking shall be prohibited on the premises and signs to this effect shall be posted conspicuously.

.2 Fires shall not be built on the premises.

.3 The Contractor shall provide and maintain in working order a minimum of two per floor (or such greater number as shall be required by law) Standard Underwriter's labeled 2-1/2 gallon fire extinguishers.

§ 10.20 The Contractor shall notify the Owner of any incident, accident, injury or fatality within fifteen (15) minutes after occurrence, and of any avoided incident, accident, injury or fatality once each day.

#### § 10.21 HAZARDOUS MATERIALS

§ 10.21.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. 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 asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.21.2 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for 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.

§ 10.21.3 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S AND SUBCONTRACTORS' INSURANCE

*(Paragraphs deleted)*

§ 11.1.1 Work shall not commence under this Contract until the Contractor has obtained, at its own cost and expense, with a company or companies satisfactory to the Owner's Director of Insurance, all the insurance hereinafter set forth. The Contractor also shall require each of its Subcontractors to obtain the same insurance as is required of the Contractor in the amounts stated below. The Contractor shall not allow Work to be commenced by any of its

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Subcontractors until the insurance required of the Subcontractor has been obtained and approved by the Owner's Director of Insurance.

§ 11.1.2 The Contractor and each Subcontractor shall procure and maintain such insurance from commencement of Work until completion of the Work or its final acceptance, whichever is later (and for at least three years thereafter for CGL/Completed Operations and Professional Liability) and the Contractor and each Subcontractor shall deliver certificates of insurance evidencing the procurement of the required insurance to the Owner's Director of Insurance at least five (5) business days prior to the commencement of any Work under the Contract. These certificates shall show the type, amount and class of operations covered, as well as the effective dates and expiration dates of the various insurance policies and will name the Owner as a certificate holder. Such certificates shall contain in substance the following language:

NEW YORK UNIVERSITY SCHOOL OF MEDICINE, AN ADMINISTRATIVE UNIT OF NEW YORK UNIVERSITY, NEW YORK UNIVERSITY, NEW YORK UNIVERSITY MEDICAL CENTER CONDOMINIUM, THE PROJECT ARCHITECT AND THEIR RESPECTIVE AFFILIATES AND SUBSIDIARIES, AGENTS, CONSULTANTS, TRUSTEES, SERVANTS, EMPLOYEES, DIRECTORS, OFFICERS AND VOLUNTEERS, ARE NAMED AS ADDITIONAL INSURED FOR GENERAL LIABILITY COVERAGE.

The Insurance described by this certificate will not be canceled nor materially altered during the term of this Contract except after thirty (30) days prior written notice to the Director of Insurance of New York University, Contractor and each Subcontractor shall, upon demand by New York University, deliver to the Director of Insurance of New York University certified copies of the insurance policies required herein.

The receipt by the Owner of any certificate not containing the foregoing language shall under no circumstances constitute a waiver of the foregoing requirement. No insurance policy procured or maintained by the Contractor or any Subcontractor shall have any "professional services" exclusion which excludes coverage for engineering services rendered by the Contractor in connection with its Work.

§ 11.1.3 If during the period of time referred to in Section 11.1.2 above any of the insurance required of the Contractor or any Subcontractor shall expire or be altered in any material respect, the Contractor shall immediately advise the Owner's Director of Insurance, in writing, of such expiration or alteration, such policy shall be immediately renewed, with the same limits and conditions, and such policy shall be maintained in effect for the duration of such period. See Section 11.8 below.

§ 11.1.4 The Owner shall not be responsible for payment of any of the premiums of the required insurance. By carrying the required insurance, neither the Contractor nor any Subcontractor shall be relieved of any responsibility whatever and each may, at its own expense, carry such additional insurance as it deems necessary.

§ 11.2 Compensation Insurance: The Contractor and each Subcontractor shall procure and maintain, during the period of time referred to in Section 11.1.2 above, Workers' Compensation Insurance, as required by the New York State Workers' Compensation law, and any other applicable law, with respect to each of its employees to be engaged in the performance of Work under the Contract.

§ 11.3 Employers' Liability Insurance: The Contractor and each Subcontractor shall procure and maintain, during the period of time referred to in Section 11.1.2 above, Employers' Liability Insurance in an amount not less than \$1,000,000 for each occurrence for all employees engaged in Work under the Contract. Should any class of employees engaged in Work under the Contract not be protected under the Workers' Compensation Statute, the Contractor and each Subcontractor shall procure adequate Employers' Liability Insurance for the protection of all such employees who are not otherwise protected. The Contractor and each Subcontractor shall procure and maintain appropriate Disability and Unemployment insurance for all of their employees engaged in the performance of Work under the Contract.

*(Paragraphs deleted)*

§ 11.4 Commercial General Liability and Excess Liability Insurance: The Contractor and each Subcontractor shall procure and maintain during the period of time referred to in Section 11.1.2 above (and for at least three years

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thereafter in the case of Completed Operations) Commercial General Liability and Follow Form Excess Liability Insurance, in an amount established in conjunction with the New York University Insurance & Risk Management Department, for the various trades, for personal injury, bodily injuries or death resulting therefrom, and Property Damage (Broad Form) for each occurrence and in the annual aggregate. The policies providing such insurance shall include Contractual Liability Insurance against the liability assumed under the hold harmless and indemnification clauses contained in Section 3.19 of these General Conditions. In addition such policies shall provide the following coverages:

- a. Premises - operations liability;
- b. Occurrence bodily injury and property damage liability;
- c. Independent contractors' liability;
- d. Completed operations and products liability;
- e. Blanket contractual liability;
- f. Personal injury liability insurance hazards A, B, C, with employee exclusion (c) deleted;
- g. Broad form property damage liability (including completed operations);
- h. Blanket X, C and U coverage;
- i. Host liquor liability; and
- j. Incidental medical malpractice liability insurance.

CGL and Excess Insurance

Type of Work	Requirements
General Contractor	as specified by the Owner's Director of Insurance
Excavation	"
Foundations	"
Site Work	"
Concrete Form Work	"
Structural Steel	"
Electrical	"
Fire Protection	"
Elevators/Escalators	"
HVAC	"
Masonry	"
Plumbing	\$10,000,000
Roofing & Waterproofing	as specified by the Owner's Director of Insurance
Carpentry	\$5,000,000
Painting	\$5,000,000
Ceramic Tile	as specified by the Owner's Director of Insurance
General Conditions	as specified by the Owner's Director of Insurance
Landscaping	\$2,000,000
All Others	as specified by the Owner's Director of Insurance

(Paragraphs deleted)

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§ 11.5 Automobile Liability Insurance: The Contractor and each Subcontractor shall procure and maintain during the period of time referred to in Section 11.1.2 above Automobile Liability Insurance in an amount as specified by the Owner's Director of Insurance for bodily injuries, or death resulting therefrom, and property damage. This insurance shall apply to all owned, non-owned, leased or hired vehicles used by the Contractor and each Subcontractor in furtherance of the Work. This coverage shall also cover loading and unloading hazards. If automobiles are provided to any employees of the Contractor in connection with the Project, then insurance on these automobiles shall be the responsibility of the Contractor or the employee. The Owner and the Architect shall be named as additional insureds for all Automobile Liability coverage.

§ 11.6 Design Professional Liability Insurance: Each design professional engaged by the Contractor, if any, and each of its Subcontractors or consultants, shall procure and maintain during the period of time referred to in Section 11.1.2 above and for at least three years thereafter, Professional Errors and Omissions Insurance in an amount as specified by the Owner's Director of Insurance for each wrongful act.

§ 11.7 Each insurance policy cited above (except workers' compensation, unemployment insurance or as otherwise indicated) shall be endorsed as follows:

.1 With respect to Commercial General Liability, to provide the additional insureds with coverage no less comprehensive than that being provided to the Contractor, and which provides coverage in all instances other than the additional insureds' sole negligence, which specifies that no additional insured shall be responsible for the payment of the premium for the additional insured status, and which is otherwise acceptable to the Owner's Director of Insurance;

.2 To state that bodily injury to any person, including employees of the Contractor and each of the Subcontractors, occurring at any work site in connection with the Work to be performed under this Contract, shall be deemed to be bodily injury arising out of or occurring in connection with the Work;

.3 To provide that any notice of any occurrence, claim or suit in connection with the Work shall also be considered notice by the Owner and the Architect; and

.4 To provide that the coverage provided by such insurance policy shall be considered primary to any other similar insurance coverage carried by or for the benefit of the Owner or the Architect.

§ 11.8 If the Contractor or any Subcontractor is fulfilling the Commercial General and Excess Liability, Design Professionals Liability or Employer's Liability insurance requirements of this Contract by use of Claims Made Policies, each of the Contractors and such Subcontractor warrant and agree that each such Claims Made Policy will remain in effect for at least three years following the completion of the work performed under this Contract or its Final Acceptance, whichever is later. Furthermore, if any such Claims Made Policy is canceled during the aforesaid period of time, each shall purchase equivalent coverage for the remainder of the aforesaid period.

§ 11.9.1 Property Damage Insurance: The Owner shall provide and maintain, at its cost and expense, property insurance for the Project, and shall include the interests of the Contractor as its respective interest may appear. The Contractor shall be given thirty (30) days' notice of cancellation or non-renewal.

§ 11.9.2 The Owner, the Contractor and each Subcontractor hereby waives, and shall hereafter waive, all rights against each other, with respect to damages (whether or not due to the negligence of any such party) caused by fire or other perils covered by insurance provided pursuant to Section 11.9.1. The Contractor agrees to obtain appropriate endorsements to its insurance policies with respect to the foregoing waiver.

§ 11.10 The procuring of the insurance required under the Contract shall not relieve the Contractor of any obligation or liability assumed hereunder including specifically the Contractor's indemnification obligations.

§ 11.11 The Contractor and each Subcontractor shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of the Work and shall cooperate with the insurance carrier in all claims and demands which the insurance carrier or carriers are called upon to adjust or resist.

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§ 11.12 The Contractor and each Subcontractor shall secure, pay for and maintain whatever fire or extended coverage or other property insurance it may deem necessary for protection against loss of or damage to owned or rented capital equipment, tools, other equipment, scaffolding, staging, towers and forms, hoists or other items to be used by the Contractor or its Subcontractors in the performance of the Work; provided, however, that whether or not any such insurance is obtained it is agreed that the Owner shall have absolutely no liability whatsoever with respect to loss of, theft of or damage to any such equipment, tools or other items. Failure of the Contractor or any Subcontractor to secure such insurance or to maintain adequate levels of coverage shall not in any way obligate the Owner or its employees, agents or representatives for any loss of or damage to any of the aforesaid owned or rented equipment, tools or other items. If the Contractor or any Subcontractor secures such insurance, the insurance policy shall include a waiver of subrogation substantially as follows:

It is agreed that in no event shall this insurance company have any right of recovery against New York University School of Medicine, an administrative unit of New York University, New York University, New York University Medical Center Condominium or the Architect.

### § 11.13 PERFORMANCE BOND AND PAYMENT BOND

§ 11.13.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The Contractor shall provide such bonds to the Owner, if required, within ten (10) days after executing this Contract and before the Contractor performs any Work at the site. Such bonds shall be with a corporate surety acceptable to the Owner, in the full amount of the Contract Sum, and shall name the Owner as obligee thereunder and such other persons as the Owner may designate as additional obligees thereunder. Such bonds shall include provisions guaranteeing the performance and payment of all obligations of the Contractor under the Contract Documents and, in any event, shall be in form and substance satisfactory to the Owner.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, 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 3.6, 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor

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a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 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, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract and the rights of the parties hereunder shall be governed by the law of the State of New York.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 This Contract is binding upon each of the parties hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract nor sublet it as a whole without the prior written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to the Contractor hereunder without prior written consent of the Owner. Any purported assignment without the prior written consent of the Owner shall be void and the assignee in such case shall acquire no rights in the Contract or any moneys due thereunder. Any such consent by Owner, if given, shall not relieve Contractor of any of its obligations under the Contract or the Contract Documents or change any of the terms thereof.

*(Paragraph deleted)*

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail, return receipt requested, or by courier service providing proof of delivery to, the party's address for delivery of notices set forth in the Agreement. Whenever the Contract Documents require written notice to be given to the Owner or to the Architect such notice shall be given in duplicate directly to each of them.

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## § 13.4 RIGHTS AND REMEDIES

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

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

§ 13.4.3 Neither the Owner nor the Architect, nor any employee, officer, agent or other representative of either the Owner or the Architect, shall, by reason of any oral statement or any course of conduct, be deemed to have waived, or be estopped from asserting and enforcing, any of the provisions of the Contract or the Contract Documents as herein or elsewhere set forth, and all claims by the Contractor which may rely, in whole or in part, upon a theory of waiver and/or estoppel arising from any such statement or conduct are hereby waived and released by the Contractor.

## § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

§ 13.5.4 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 Owner.

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

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

## § 13.6 INTEREST

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

## § 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 As between the Owner and Contractor:

- .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged

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cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

- .2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.6, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

### § 13.8 CONSTRUCTION

§ 13.8.1 The captions to the provisions of this Contract are for convenience and are not a part of this Contract.

§ 13.8.2 If any provision of the Contract Documents or the application thereof to any person or situation is to any extent held invalid or unenforceable, the remainder of the Contract Documents, and the application of such provision to persons or situations other than those to which it was held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

### § 13.9 BINDING EFFECT

§ 13.9.1 If the Contractor, with the actual consent of the Owner or Architect, begins to perform Work without signing this Contract, the Contractor shall be deemed to be performing such Work under and pursuant to each of the terms and conditions of this Contract and no contention to the contrary shall be asserted by the Contractor.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of forty-five (45) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court 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 payment on a Certificate for Payment within the time stated in the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in 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 (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has 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' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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

The Owner may terminate the Contract for cause as provided in Section 2.4.3.

*(Paragraphs deleted)*

**§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

**§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 immediately take actions necessary, or that the Owner may direct, for the protection and preservation of the Work and in the interests of public safety;
- .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; and
- .4 assign to the Owner all right, title and interest in and to the materials that have been specifically fabricated for the performance of the Contract that are not capable of use except in the performance of the Work.

**§ 14.4.3** The Owner shall assume and be liable for all the obligations and commitments that the Contractor may have in good faith undertaken or incurred in connection with the Work which cannot be cancelled as aforesaid.

**§ 14.4.4** The Owner's sole liability in such event shall be to pay the Contractor for the fair and reasonable value, or the cost, of the aforesaid Work and materials, whichever shall be the lesser amount, prior to sending the aforesaid notice of termination, and for all such materials that have been specifically fabricated for the performance of this Contract and that are not capable of use except in the performance of the Work.

**§ 14.4.5** In addition to such payment, the Owner shall also pay to the Contractor a profit on the portion of the Work completed as of the date of termination. The amount of the profit to be paid will be calculated by multiplying the profit which the Contractor would have made had the Project been completed times the percentage of completion at the date of termination.

**§ 14.5 CONTINUATION OF OBLIGATIONS**

**§ 14.5.1** All provisions of the Contract Documents which require performance after termination of this Contract shall survive any such termination.

**ARTICLE 15 CLAIMS AND DISPUTES**

**§ 15.1 CLAIMS**

**§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, extension of 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.

### § 15.1.2 NOTICE OF CLAIMS

Any Claim by the Contractor must be initiated by written notice to the Owner and to the Architect. Claims by the Contractor must be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

Notwithstanding any other provision of this Contract or any applicable law, since the purpose of such notice is to provide the Owner and Architect with the opportunity to avoid or minimize the effect of any event or direction giving rise to a Claim and to immediately ascertain the validity of any time extension or damages claimed, the failure by the Contractor to comply strictly with this requirement shall constitute a waiver and release by the Contractor of any and all Claims arising from any such event or direction, and no right to recover upon any such Claim shall exist thereafter and under no circumstances shall the Contractor assert any such Claims. Notice under this Section 15.1.2 of any Claim based on a determination and direction of the Owner pursuant to Sections 15.1.4.1 and 15.1.4.2 shall be given within ten (10) days after the Contractor receives notice of the determination or direction.

### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

*(Paragraphs deleted)*

### § 15.1.4 CLAIMS BASED ON DETERMINATIONS AND ORDERS

§ 15.1.4.1 If the Contractor is of the opinion (1) that any work ordered to be done as Contract Work by the Owner or the Architect is extra work and not Contract Work or (2) that any determination or order of the Owner or Architect violates the terms and provisions of this Contract, the Contractor must promptly notify the Owner and the Architect in writing of the reasons for the Contractor's opinion with respect thereto and request a final determination thereon. Such determination shall be rendered by the Owner within a reasonable time.

§ 15.1.4.2 If the Owner shall determine that the work in question is Contract Work and not extra work, or that the determination or order complained of is proper, the Owner will direct the Contractor to proceed and the Contractor must promptly comply. In order to preserve the Contractor's right (if any) to claim compensation for such work or damages resulting from such compliance, the Contractor must, within ten (10) days after receiving notice of the determination and direction, notify the Owner and the Architect in writing that the work is being performed, or that the determination and direction is being complied with, under protest.

§ 15.1.4.3 If the Contractor fails to request the Owner for a determination as provided in Section 15.1.4.1, the Contractor shall be deemed to have waived any claim for extra compensation or damage resulting from such order or determination.

§ 15.1.4.4 If the Contractor shall at any time claim to have sustained any increased cost or damage by reason of any determination, order, act or omission of the Owner or the Architect, the Contractor shall, not later than the fifteenth (15th) day of the month following that month during which any such damage increased cost or shall have been sustained, provide to both the Owner and the Architect an itemized written statement, duly certified by the Contractor, setting forth in detail the damages sustained, together with copies of all documentary evidence of such increased cost or damage then available. If the Contractor shall fail to comply strictly with this requirement, any such Claim shall be deemed to have been waived, no right to recover upon any such Claim shall exist thereafter and under no circumstances shall the Contractor assert any such Claim.

§ 15.1.4.5 In addition to the above-mentioned detailed statement of damages the Contractor and each Subcontractor shall, upon written notice from the Architect or the Owner, promptly produce for examination by representatives of the Owner, all books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, check books, cancelled checks and similar documents showing all of the acts and transactions of the Contractor or such Subcontractor in connection with or relating to or arising by reason of the Contract or the Work, including, without limitation, records and data stored in electronic form such as computer hard drives, tape backups and other storage devices, computer software and other electronic files.

### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Sections 8.3 and 15.1.2 shall be given. In the case of a continuing delay, only one Claim is necessary.

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§ 15.1.5.2 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.

*(Paragraphs deleted)*

§ 15.2 DISPUTE RESOLUTION

§ 15.2.1 Arbitration is not an available remedy under this Contract.

§ 15.2.2 The Contractor agrees that it will not commence any action, whether in law or in equity, against the Owner arising out of this Contract or the Work in any court located in the County of New York, State of New York.

§ 15.2.3 The Contractor agrees that service of process may be made upon it by registered mail, return receipt requested, directed to the Contractor at the address set forth in the Contract.

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*(Paragraphs deleted)*

## **EXHIBIT A**

### **List of Drawings and Specifications**

**EXHIBIT B**

**Contractor's Bid Form**

## EXHIBIT C

### **FEMA Addendum #1 - Construction**

As certain funding for the project may be provided by or through the Federal Emergency Management Agency ("FEMA"), the Contractor further agrees as follows:

Non-Discrimination. During the performance of the Work, the Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations 41 CFR chapter 60.

Access to Books and Records. The Contractor agrees that any federal agency providing funding for the Contractor's Work, including FEMA and the Comptroller General of the United States, shall have access to the Contractor's books and records relating to the hourly compensation and Reimbursable Expenses for review, audit and reproduction.

Compliance With Laws. The Contractor agrees to comply with the Contract Work Hours and Safety Standards Act, Chapter 37 (40 U.S.C Sections 3701 et seq.), as supplemented by Department of Labor regulations (29 CFR part 5); Clean Air Act (42 U.S.C. Sections 7401 et seq.); Federal Water Pollution Control Act (33 U.S.C. Sections 1251 et seq.).

Copeland Anti-Kickback Act. The Contractor agrees to comply with all applicable provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).

Certifications. The Contractor agrees to prepare and deliver to the Owner certifications of the Contractor's ongoing compliance with the foregoing provisions as may reasonably be requested by the Owner in writing during the term of the Agreement.

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