

AIA Document A133"- 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

or a Lump Sum Price

AGREEMENT made as of the __
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

and the Construction Manager:
(Name, legal status and address)

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

The Architect:
(Name, legal status and address)

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

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

AIA Document A201 TM-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Construction Manager's Designated Representative:
(Name, address and other information)

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

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, General Conditions of the Contract (Document A201-2007, General Conditions of the Contract for Construction, as revised ("A201-2007-as revised"), (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, including the Tax Matter Agreement Addendum, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or Lump Sum proposal, as applicable, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Contract Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the fiduciary relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the reconstruction Phase, AIA Document A201™-2007-as revised, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007-as revised, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007-as revised, shall mean the Construction Manager.

§ 1.4 Integrated Project Delivery

It is the expectation of the Owner that all projects of substantial size and/or complexity, with construction budgets of \$1,000,000 or greater will be designed using three-dimensional design tools such as Revit or similar. It is further expected that there will be a free exchange of electronic design files and data with the Construction manager for the purpose of analysis, construction coordination/planning, and other Pre-Construction activities.

Projects with a construction budget of \$10,000,000 or greater, when directed by Owner, will be accomplished using Design Assist and other Integrated Project Delivery (IPD) methods to include production of Construction Documents by selected Subcontractors based on design criteria provided by the Architect. When so directed by the Owner, the Architect will plan their work and fully cooperate with the Owner, Construction manager, and Subcontractors to organize the work and utilize IPD methods.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions, including but not limited to the following activities: (1) review and advise Owner and the Architect regarding all in-progress and final versions of the Program Schematic Design, Design Development, Construction Documents and other plans, specifications, schedules, budgets and bidding documents; (2) advise Owner and the Architect regarding site use and improvements and any and all other elements of the Project upon which Construction Manager is qualified to advise given its knowledge and areas of expertise, including, without limitation, concept feasibility, constructability, cost economics, scheduling and construction; (3) advise Owner and the Architect regarding the relative construction feasibility of various designs, materials, building systems and equipment; (4) consult and cooperate generally with the Architect, Construction Manager shall work with the Architect and other members of the Project Team to the extent necessary to effectuate the timely completion of all pre-construction tasks being carried out by the Architect and other members of the Project Team in accordance with the Project Schedule and the Construction Budget; (5) assist Owner and the Architect in investigating and reviewing various alternative approaches to design and construction of the Project including without limitation phased or "fast track" construction; (6) identify issues, including without limitation, those raised by the Concealed Conditions Program (as defined in Article II), the Architect's Demolition Plan, the Architects' Phasing Plan, the Disruption Plan (as defined in Article II) and Construction Manager's Cost Estimates and the Architect's evaluation of the same and recommend alternative solutions whenever design details affect budgets, construction feasibility of schedules previously proposed or established; (7) investigate any potential special labor requirements for the Work and advise Owner regarding same; (8) procure Material Safety Data Sheets and other relevant information for all Architect-specified materials and products. If any specified materials or products are known by Construction Manager to contain any hazardous or toxic materials as defined under any federal or state laws, rules or regulation, Construction Manager shall suggest any known and feasible available alternative nonhazardous and nontoxic materials and products.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and

identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal, or Lump Sum proposal, as applicable; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, economies, time of performance, availability of labor and materials, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

The Construction Manager shall prepare a written itemized estimate of the Construction cost at each phase milestone based on that phase's design package and within three weeks of receiving the design package. The Construction Manager's Cost Estimate shall include the total cost to the Owner of all elements of Demolition and construction designed or specified by the Architect including the total costs of labor, materials, services and equipment to be furnished by the Construction Manager or its subcontractors, appropriate construction contingencies, any Owner-approved Allowances, general conditions and the Construction Manager's Fee. The Construction Cost estimate shall not include labor, materials or equipment to be supplied by Owner for the Project (except the cost of installation by the Construction Manager of any Owner supplied equipment as provided in the Construction Documents), compensation for Architect or the costs of land, right-of-way, financing or other items for which Owner is responsible. The Construction Manger's Cost Estimate shall include a completion date for each bid package and be in the Construction Specifications Institute format indicating total cost per square foot and percent of cost for each division, unless the parties agree otherwise. Once the Construction Manger's estimate is prepared, the Construction Manager and Architect shall meet and use best efforts to reconcile their independent estimates. If at any phase the estimates cannot be reconciled despite the parties' best efforts, at the request of the Owner, the Architect and Construction Manager shall each prepare a report of the obstacles preventing reconciliation. The Owner will then reconcile the estimates to the best of its ability and the Owner's reconciled estimate shall be the Reconciled Estimate. If the Reconciled Estimate exceeds the Owner's Budget, the Construction Manager, Architect and Owner shall reduce the scope of the Project or otherwise make cost reductions to the Project so that the Reconciled Estimate meets the Owner's Budget.

Construction Manager shall prepare a final estimate of the Construction Cost for the Project (the "Final Estimate"). The Final Estimate shall be based on the 90% Construction Documents, and shall establish target budgets, for each trade category. The Final Estimate shall reflect any details, specifications or estimates (add or deducts) incorporated into the Construction Documents and any addenda thereto which are inconsistent with the 90% Construction Documents. **If** the Contract Price for the Project is not within the Construction Budget, the Construction Manager shall provide, at no cost to the Owner, such additional pre-construction services (except Architect's and Architect's Consultants' fees) necessary to conform the scope of the Project and the Contract Price to the approved budget.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Contract Price for the but in any event, no less frequently than every major drawing revision. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action and provide analysis for changes from previous estimate or Owner's Budget.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principle portion of the Work. The Owner will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Contract Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Contract Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Contract Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. Any design errors or omissions noted by the Construction Manager during the Construction Manager's review of the Drawings and Specifications shall be reported promptly to the Architect, but it is recognized that the Construction Manager's review is made in the Construction Manager's capacity as a construction manager and not as a licensed design professional. The Construction Manager shall not be liable to the Owner for damages resulting from the failure of the Drawings and Specifications to comply with applicable laws, statutes, ordinances, building codes and rules and regulations unless the Construction Manager should have recognized such discrepancy or non-conformity with the exercise of reasonable care and fails to do so and report it to the Architect. The Owner acknowledges that the services to be provided by the Construction Manager under this Contract shall not constitute the Construction Manager an Architect or Engineer, nor impose on the Construction Manager any obligation to assume or perform on behalf of the Owner the professional responsibilities, duties, services and activities for which the Owner has contracted with the Architect.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 2.1.9.1 Construction Manager's Organizational Plan. The Construction Manager has provided the Owner with a plan for its supervisory and administrative organization of the Project (a copy of which is attached hereto as an Exhibit to an Amendment), setting forth the Construction Manager's personnel and basic organizational plans. The Construction Manager agrees to substantially conform to such plan throughout the term of this Agreement. As the Architect develops the Drawings and Specifications and during the performance of the Work, the Construction Manager shall update and refine such plan on a regular basis and shall conform its Project organization thereto, subject to the approval of the Owner. Personnel assigned to this project shall be subject to the Owner's written approval, and shall not be re-assigned, without the Owner's prior written approval.

§ 2.2 Contract Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare either a Guaranteed Maximum Price proposal, or a Lump Sum proposal for the Owner's review and acceptance.

Any Lump Sum proposal shall provide for the total amount payable by the Owner to the Construction Manager, stated as a lump sum amount, for performance of the Work under the Contract Documents, including the Construction Manager's Fee, subject only to additions and deductions as provided in the Contract Documents (the "Lump Sum"). The Guaranteed Maximum Price (referred to herein as the "Guaranteed Maximum Price" or the "GMP") proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, and the Construction Manager's Fee.

The Owner may select, in its sole discretion, either the Lump Sum proposal or the Guaranteed Maximum Price proposal, subject to the Owner's rights to require modifications to either proposal pursuant to the terms of this Agreement. Upon the Owner's selection of either the Lump Sum proposal or the Guaranteed Maximum Price proposal, either Lump Sum or Guaranteed Maximum Price, as applicable, shall be set forth in an Amendment to this Agreement (the "Contract Price Amendment"); and, upon such selection by the Owner, the term "Contract Price" as used in this Agreement shall mean either the Lump Sum or the Guaranteed Maximum Price, as applicable. Where the term "Guaranteed Maximum Price" is used in this Agreement, such term shall only apply if Owner has selected the Guaranteed Maximum Price proposal and the parties have attached the Amendment establishing such Guaranteed Maximum Price. Where the term "Lump Sum" is used in this Agreement, such term shall only apply if Owner has selected the Lump Sum proposal and the parties have attached the Amendment establishing such Lump Sum. Construction manager acknowledges that this Agreement may be based on the development of two or more separate Guaranteed Maximum Price proposals or Lump Sum proposals.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

The estimated Cost of the Work shall include the Construction manager's contingency, a sum established by the Construction manager for the Construction manager's exclusive use to cover costs arising under this Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. Unless otherwise agreed in writing, all Cost of Work expenditures from this contingency, of whatever kind or nature, shall require the Owner's prior written authorization. The Construction manager shall develop methods and procedures for the timely administration of this requirement.

§ 2.2.3 The Construction Manager shall include with the Contract Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract; and
- .2 A list of allowances and a statement of their basis; and
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Contract Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications; and
- .4 A statement of the proposed Contract Price, including a statement of the estimated Cost of the work organized by trade categories or systems, allowances, contingency, and other items, and the Construction Manager's Fee; and
- .5 The Date of Substantial Completion upon which the proposed Contract Price is based, and a schedule of the Construction Documents issuance dates upon which the Date of Substantial Completion is based; and
- .6 A date by which the Owner must accept the Contract Price; and
- .7 The other information required as part of the Contract Price proposal consistent with Amendments attached hereto.

§ 2.2.4

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Contract Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Contract Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Contract Price proposal in writing before the date specified in the Contract Price proposal (but not less than 30 days), the Contract Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Contract Price, the Owner and Construction Manager shall execute the Contract Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Contract Price Amendment shall set forth the agreed upon Contract Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs. Upon acceptance by the Owner of the Contract Price proposal, the Contract Price and its basis shall be set forth in the Contract Price Amendment, or, if more than one Contract Price is anticipated in association with this Agreement, by other subsequent similar Amendments.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Contract Price Amendment to the extent necessary. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Contract Price Amendment and the revised Drawings and Specifications. The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed upon assumptions and clarifications contained in the Contract Price Amendment or other similar Amendments. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect, and Construction manager. The Construction manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.

§ 2.2.9 The Construction Manager shall include in the Contract Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Contract Price Amendment is executed.

§ 2.2.10 The Guaranteed Maximum Price, if applicable, will be calculated and the Contract Time will be established on the basis of Preliminary Documents prepared by the Architect. The Lump Sum, if applicable, will be calculated and the Contract Time will be established on the basis of Final Drawings and Specifications prepared by the Architect. In determining the Guaranteed Maximum Price and Contract Time, the Construction Manager will take into account the level of completeness of the Preliminary Documents and will exercise the best skill and efforts of the Construction Manager to make (1) appropriate judgments and inferences in connection with the requirements of such Preliminary Documents and (2) all inquiries of the Owner to clarify the Preliminary Documents as necessary to calculate and establish both the Guaranteed Maximum Price and the Contract Time. As Final Drawings and Specifications are developed, the Construction Manager shall be permitted to verify the Guaranteed Maximum Price and Contract Time as set forth in this Section 2.2.10 (hereinafter referred to as the "Scope Verification Process").

§ 2.2.10.1 Prior to execution of an amendment establishing the Guaranteed Maximum Price, the Construction Manager shall furnish the Owner with (1) an initial Schedule of Values as required by Section 9.2 of the General Conditions and (2) an initial Construction Schedule as required under Section 3.10 of the General Conditions. Both such documents shall be in a form and substance satisfactory to the Owner and the Architect and include such data and documents as the Owner and the Architect may reasonably require. The initial Schedule of Values and initial Construction Schedule shall also each include a written narrative that sets forth any clarifications, assumptions, conditions and qualifications to the information and data set forth therein, such as any line items in the initial Schedule of Values or Milestone Dates in the initial Construction Schedule (collectively the "Planning Criteria"). The Owner and Construction Manager intend to use the Planning Criteria as the basis for determining whether any Supplemental Documents constitute further refinement and detailing of the scope of the Work, for which no adjustments in the Guaranteed Maximum Price or Contract Time are required, or a Scope Change (as defined in Section 2.2.1 0.4). Upon review and acceptance by the Owner of the initial Schedule of Values and initial Construction Schedule, a list of the Planning Criteria shall be compiled by the Construction Manager for approval by the Owner and attached to the

Amendment establishing the Guaranteed Maximum Price and made a part thereof as an exhibit. Throughout the Scope Verification Process, the Owner shall furnish the Construction Manager, to the extent reasonably possible, with information and materials in the Owner's possession to resolve issues raised by the Planning Criteria, and the Construction Manager shall promptly revise and resubmit the Schedule of Values and Construction Schedule, as appropriate, to both Owner and Architect based upon such additional information.

§ **2.2.10.2** By executing a Contract Price Amendment establishing the Contract Price, and furnishing the Owner with both a Schedule of Values and a Construction Schedule, the Construction Manager represents and warrants to the Owner that the Contract Documents (including the Preliminary Documents), materials and information furnished to the Construction Manager as of the date of submission of the Contract Price and the ongoing discussions and meetings between the Construction Manager and both the Owner and the Architect have described the scope, construction requirements, and design intent of the work in detail sufficient to enable the Construction manager to establish firmly the Contract Price and the Construction Schedule, except for the Planning Criteria. The Construction Manager shall not be permitted to claim any adjustment in either the Contract Price or Contract Time in connection with completion of Final Drawings and Specifications, except for Scope Changes described below in this Section 2.2.10.

§ **2.2.10.3** Upon completion of such review, the Construction Manager shall also notify the Owner in writing of any item in the Supplemental Documents that in the Construction Manager's opinion represents a Scope Change, as defined in Section 2.2.10.4 below, setting forth, with particularity, the reasons the Construction manager contends that information or requirements of the Supplemental Documents represent a Scope Change (such a notice is referred to as a "Scope Verification Request"). Construction Manager acknowledges and agrees that (1) the Supplemental Documents are not intended to change the scope, quality, quantity, function or design intent of information set forth in the Preliminary Documents and (2) not all differences between the Preliminary Documents and Supplemental Documents, or information first appearing in the Supplemental Documents, constitute Scope Changes but rather are scope detailing. Each Scope Verification Request shall set forth the increased costs that the Construction Manager attributes to the Work covered by such Scope Verification Request and the estimated adjustment to any Milestone Date. Failure of the Construction Manager to so notify the Owner within 14 calendar days after the date of receipt by the Construction Manager of any Supplemental Documents, is hereby deemed to mean (1) such Supplemental Documents are consistent with the Preliminary Documents; (2) no Scope Changes exist; and (3) the Construction Manager is willing and able to perform all of the work for the Guaranteed Maximum Price and in accordance with all the requirements of the then current Schedule of Values and Construction Schedule and all Contract Documents.

§ **2.2.10.4** A "Scope Change" is hereby deemed to mean Work described in Supplemental Documents that is not reasonably inferable either from the Preliminary Documents or any other previously furnished Contract Documents by a construction manager of similar skill, experience and expertise as necessary for the proper, timely and orderly completion of the Work and is (1) materially inconsistent with the Planning Criteria or (2) a material change in the quantity, quality, programmatic requirements, or other substantial deviation in the then current Contract Documents.

§ **2.2.10.5** If the Construction Manager timely submits to the Owner a Scope Verification Request, then the Owner shall have the following options:

- (1) If upon review of a Scope Verification Request the Owner agrees with the Construction Manager but the Owner does not desire the identified change in scope, the Owner shall direct the Architect in writing, with a copy to the Construction Manager, to redesign that aspect of the Supplemental Documents to which the Construction Manager objects. The Construction Manager shall cooperate with the Owner and the Architect during the redesign effort and shall make recommendations appropriate to correct such portions of the Supplemental Documents. The Architect shall submit to the Construction Manager the revised Supplemental Documents as approved by the Owner. The Construction Manager shall promptly re-examine such revised Supplemental Documents as described in Section 2.2.10.3.
- (2) If, upon review of a Scope Verification Request, the Owner believes that the portion of the Work described therein does not constitute a Scope Change, the Owner shall so advise the Construction Manager in writing. The Owner and Construction Manager will attempt to resolve their disagreement and identify elements of the Scope Verification Request that can be revised. If such disagreement is not resolved, the Work described in the Scope Verification Request shall be identified in a schedule (the "Disputed Work Schedule") to be prepared and periodically updated by the Owner. The Owner and the Construction Manager shall resolve items set forth in the Disputed Work Schedule, confirming such resolution in a written memorandum signed by both parties. An appropriate Change Order, if necessary, will then be issued.

- (3) If the Owner agrees in writing, then such Scope Verification Request shall be deemed approved by the Owner and a Change Order issued to cover such request. Under no circumstances shall the Owner be deemed to agree unless the Owner issues its written statement agreeing with the Construction Manager's Scope Verification Request.

§ 2.2.10.6 Upon identification of all items to be set forth in the Disputed Work Schedule, a Change Order shall be issued covering the entire aggregate adjustment to the Guaranteed Maximum Price and Contract Time caused by such Scope Verification Requests that have been approved by the Owner. The Scope Verification Process shall then be considered concluded. Any Change Orders pursued thereafter not involving the Disputed Work Schedule shall be deemed to relate to the Contract Documents as completed and under or pursuant to the procedures contained in Article 7 of the General Conditions. Except as set forth in Section 5.3, nothing contained in Section 5.3 relating to Scope Changes shall be deemed to limit the Change Order Procedures set forth in Article 7 applicable to Final Drawings and Specifications.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007-as revised, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Contract Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Contract Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Contract Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.2.1 Additional Bidding Terms. Construction Manager shall prepare all necessary bidding forms, information and related documents for the review and approval of Owner and the Architect after Owner has approved the Construction Documents and Construction Manager's draft bidding documents. Construction Manager shall assemble and provide Owner with separate bound Bid Packages containing the final Construction Documents (as provided by the Architect) bidding forms and related data and documents.

The bidding documents shall require bidders to bid and/or account for all alternates.

As soon as practicable during the course of development of the Construction Documents, Construction Manager shall prepare a list of potential subcontractors and major suppliers for various portions of the Work and shall consult with Owner regarding such list. Construction Manager shall obtain and provide Owner with such background information on any potential subcontractors and major suppliers as Owner shall reasonably request. Owner and Construction Manager shall agree upon a final list of proposed subcontractors and major suppliers, which list shall include Construction Manager if Construction Manager so elects, but Owner shall have no duties or liabilities arising out of its participation in the preparation of the list of proposed subcontractors and major suppliers. Unless otherwise approved by Owner, Construction Managers shall not obtain bids from or contract with any subcontractor or major supplier who is not on the agreed list for any portion of the Work.

Upon written authorization from Owner, Construction Manager shall issue Bid Packages to approved subcontractors and major suppliers (the Architect will be responsible for providing sufficient sets of Construction Documents for inclusion with the Bid Package), and shall use good faith efforts to obtain not less than three (3) qualified bids for each trade or vendor category. If it is difficult or infeasible for Construction Manager to obtain three (3) qualified bids for each trade or vendor category such conditions shall be documented by Construction Manager and approved by Owner prior to bidding. Owner shall approve the schedule for the bid and award process.

Construction Manager shall conduct pre-bid and pre-award conferences, maintain written records of such conferences, record all bidders' contacts, questions and the responses provided thereto as they relate to the Project and shall deliver such records to Owner upon request. Construction Manager shall provide Owner with a written report of each pre-bid and pre-award conference identifying those in attendance and summarizing the issues discussed during said conferences. Construction Manager shall give Owner not less than 48 hours' notice prior to holding any pre-bid or pre-award conferences, and Owner shall have the right but not the obligation to attend such conference.

At Owner's request, Construction Manager shall re-bid all or any portion of the Work.

Construction Manager shall have the right to submit bids to perform all or any portion of the Work by its own forces, subject to Owner's prior approval and the following conditions: (1) Construction Manager shall discuss with Owner in advance its intentions with respect to bidding including, without limitation, which portions of the Work it proposes to bid and the reasons it desires to perform such Work; (2) Construction Manager's bid for any portion of the Work shall be on either a time-and-materials basis with a guaranteed maximum price or a lump-sum basis, subject to Owner's approval. Construction Manager may not use project savings or contingencies to offset overruns on self-performed work. Notwithstanding the foregoing, the Owner may require the Construction Manager to obtain at least two competitive bids for any work the Construction Manager intends to perform either with its own forces or through an affiliated company.

Upon receipt of the proposals and during or after completion of negotiations by the Construction Manager with the bidding subcontractors, but prior to concluding any such agreement, the Construction Manager shall prepare a complete bid analysis of the bids received and transmit the same to Owner for review and approval. Such bid analysis shall clearly establish the basis for award of the proposed subcontract and shall adjust all bids to ensure the Owner and Construction Manager can adequately compare the bids on an equal footing. All exclusions from any bid must be detailed on a part of this analysis.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Contract Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007-as revised.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might

affect progress of the work, accidents, injuries, and other information required by the Owner. If requested, the Construction Manager shall provide copies of its daily logs to the Owner on a weekly basis.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect as part of its monthly reports and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.2.9 The Construction Manager shall comply with the Owner's Contractor Handbook.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007-as revised shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007-as revised shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Contract Price Amendment, the Construction Manager may request in writing that the Owner provide evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but Construction Manager shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 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. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark, as may be required, which requirements Construction manager shall make known to the Owner, as noted above.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Owner's and Construction Manager's designated representatives are identified in Article II. Except as otherwise provided in Section 4.2.1 of A201-2007-as revised, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101-2007-as revised, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the reconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. The Owner shall cause the Architect to timely perform and release modifications to the design necessary to incorporate the Construction Manager's value engineering proposals that are accepted by the Owner. The Owner acknowledges that timely performance by the Owner and Architect are essential to timely commencement of the construction phase of Work by the Construction Manager.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's reconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2

If the Construction manager is not compensated for preconstruction Phase Services in accordance with a separate agreement for preconstruction services between Construction manager and Owner, the scope, schedule, and fees related to the preconstruction Phase Services shall be defined in an amendment to this Agreement.

§ 4.2 Payments

NOTE; THIS AGREEMENT PROVIDES FOR PAYMENTS TO THE CONSTRUCTION MANAGER LATER THAN SEVEN DAYS AFTER THE CONSTRUCTION MANAGER'S APPLICATION FOR PAYMENT IS CERTIFIED.

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable thirty (30) days from the date the Construction Manager's invoice is certified. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

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(Insert rate of monthly or annual interest agreed upon.)

1 15% per month

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

The Construction Manager's Fee for this Contract is set forth in the Contract Price Amendment and the Cost of the Work is included in the Contract Price, provided that the sum of the Construction Manager's Fee and the Cost of the Work shall not exceed the Contract Price. The Fee will be converted to a Lump Sum, fixed fee amount upon approval of the Contract Price.

§ 5.1.1.1 For additive changes in the Contract Price, Construction Manager's Fee will be increased by that same percentage that is defined as the fee for each project, pursuant to the provisions of Section 7 of the General Conditions.

§ 5.1.1.2 For deductive changes in the Contract Price for partially used or unused allowances, Construction Manager's Fee will be decreased by that same percentage that is defined as the fee for each project, pursuant to the provisions of Section 7 of the General Conditions. For deductive changes from recommendations brought forward by Construction Manager for cost savings, value engineering, or general savings against the Contract Price to include unused construction contingency, there shall be no change in the Construction Manager's Fee.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the standard rate typically paid at the place where the Project is located.

§ 5.2 Contract Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Contract Price set forth in the Contract Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Contract Price, the Construction Manager shall bear such costs in excess of the Contract Price without reimbursement or additional compensation from the Owner.

The difference as of the date of Final Completion between (1) the total aggregate sum of the Cost of the Work plus the Construction Manager's Fee and (2) the Contract Price upon Final Completion of the Work (such difference equals the "Savings") shall accrue solely to the benefit of the Owner. The Construction manager shall not participate in sharing any savings.

§ 5.2.2 The Contract Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007-as revised,

General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Contract Price on account of changes in the Work subsequent to the execution of the Contract Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007-as revised, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007-as revised and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007-as revised shall have the meanings assigned to them in AIA Document A201-2007-as revised and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of this Agreement, unless the Owner has furnished the Construction manager with prior written approval of the form and substance of a subcontract, in which case such adjustments shall be calculated in accordance with the terms and conditions of the subcontract.

§ 5.3.4 In calculating adjustments to the Contract Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007-as revised shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Contract Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. Costs as defined herein shall be actual costs incurred by the Construction Manager plus all discounts, rebates, and salvages that shall be taken by the Construction Manager, subject to this Article 6 of the Agreement. All payments made by the Owner pursuant to this Article 6, whether those payments are actually made before or after the execution of the Contract, are included in with the Contract Price specified in Section 5.2 above. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 6 or elsewhere in the Contract Documents there shall be no duplication of payment if any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Contract Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by Owner and Construction manager, including fringe benefits, if any, all of which shall be approved by Owner, or, with the Owner's prior approval, at off-site workshops. The agreed-upon rate schedule- Labor Rates- shall be made a part of this Agreement as attached to each project Amendment, as applicable.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior Approval provided the rates charged for such personnel are consistent with a rate schedule approved by the Owner. The Labor Rates include fringe benefits, which includes sick leave, holiday time, vacation time, and payroll related taxes and insurance (workers' compensation is to be excluded from the Labor Rates if the Owner has chosen to utilize an OCIP insurance program as set forth in Article II of the A201-2007-as revised)

and establish benefit programs. A forty hour billable hours per week is the maximum allowed for salaried personnel.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identified in Section II.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only if approved in writing by the Owner.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance not provided by the Owner, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as medical and health benefits, and pensions, but not merit bonus, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made or incurred by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs including transportation, and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools (not owned by the workers) consumed in the performance of the Work. Any such items used but not consumed, which are paid for by the Owner, shall become the property of the Owner and shall be delivered to the Owner upon completion of the Work in accordance with instructions furnished by the Owner. If the Owner elects, however, the Construction Manager shall purchase any such items from the Owner at a purchase price equal to the original cost charged to the Owner, less the reduction in fair market value resulting directly from use of any such item in connection with the Work or such other price that is mutually acceptable to the Owner and the Construction Manager. Upon demand by the Owner, the Construction Manager shall furnish the Owner with any information and documentation necessary to verify the period of time for which such items were used in connection with the Work.

§ 6.5.2 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Construction Manager or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery costs thereof. Such rental charges shall be consistent with those generally prevailing in the location of the Project. Upon request of the Owner, the Construction Manager shall obtain bids for all machinery and equipment to be rented from no less than two responsible suppliers other than the Construction Manager itself or an affiliated entity. The Owner shall, with the advice of the Construction Manager, determine which bid is to be accepted. The Construction Manager shall avoid billing the Owner for rental costs for any single piece of machinery or equipment in excess of 90% of its fair market value as of the date that such machinery or equipment is first put into place on the project. Upon Owner request the Construction Manager will provide rental versus Fair Market Value calculations. If directed by the Owner, the Construction Manager shall purchase the machinery or equipment versus renting it.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and petty cash expenses of the site Office which are reasonable and necessary in the discharge of details connected with the Work. In addition, utility consumption costs including, but not limited to, water, steam, gas, oil, electricity, winterizing and temporary toilets.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, provided however, that all travel shall be approved by Owner in advance and in writing.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract providing that such bonds and insurance required by the Contract Documents are not provided by the Owner. Also, insurance that is not provided by the project OCIP including, but not limited to, Construction manager's internal cost of risk insurance at the rate of 0.25% Self-insurance for either full or partial amounts of the coverage's required by the Contract Documents, with the Owner's prior approval.

It is the Contractor's policy to have all of its subcontractors provide performance and payment bonds. However, the Owner has directed Contractor not to have some of its subcontractors procure performance and payment bonds. The Contractor will conduct its usual due diligence on the subcontractors and assist the Owner in interpreting the results. The Owner will then determine which subcontractors may be considered for waiving of the bonding requirement. In consideration of Contractor agreeing not to require subcontractor performance and payment bonds, Owner agrees to assume the risk of any unbonded subcontractor not meeting their subcontract obligations, including but not limited to filing for bankruptcy, failing to complete its Project work due to financial insolvency, failing to perform its subcontract obligations, going out of business, failing to complete the Project, failure to timely pay for labor, material or vendors, breach of warranty or failure to correct defective work, to the extent that these risks would have been covered by a subcontractor performance payment bond, provided that the Contractor has fulfilled all of its obligations relating to the affected unbonded subcontractor under this Contract and under its subcontract agreement with that subcontractor. Owner recognizes and agrees that by assuming the risk, if the subcontractor does not meet the subcontract obligations, the Owner will be responsible for all associated costs in excess of the subcontractor's subcontract amount, in addition to that subcontract amount due Contractor under its Contract with the Owner. Nothing in this subparagraph relieves or discharges the Contractor from its responsibility to manage and coordinate the performance of the subcontractors. The risk assumed by the Owner described above does not apply to the extent a subcontractor fails to perform because Contractor breached its contractual duty to properly supervise, instruct, or coordinate the subcontractor.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable. Arizona Transaction Privilege Tax will be treated as an Allowance within the Contract Price. Whenever the costs for taxes are more than or less than the tax allowance amount, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowance amount. Savings in the Arizona Transaction Privilege Tax line item may not be applied to other line items within the Contract Price.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007-as revised or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Subject to the Owner's prior written approval, royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal

judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Contract Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007-as revised or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work. Costs of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents or judgments and settlements of these suits or claims will not be accepted by Owner unless such arise specifically from the Work or Change Order requested by Owner and Owner's prior acceptance of these costs.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007-as revised, to the extend not (1) caused by the Construction Manager, Subcontractor or anyone for whom either is responsible or (2) capable of being prevented through timely notice of an unsafe condition to the Owner.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others, provided that any absence of collectible insurance is not due to the Construction manager's breach of a contract for insurance. Construction Manager must seek compensation by insurance or otherwise before attempting to charge Owner for such costs..

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007-as revised or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office or the wages or salary of any corporate office of the Construction manager, except with the Owner's prior written approval, or, except as specifically provided in Section 6.2, or as may be provided in Article II;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Contract Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase; and
- .9 Any relocation related expenses or subsistence will not be reimbursed by the Owner unless specifically approved in advance by the Owner.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment, including all supporting documentation submitted to the Owner and Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. Construction Manager's Applications for Payment shall be prepared on AIA payment application, document number G702. Any detailed or substantiating information required, in addition to this form, must be supplied by the Construction Manager as directed by the Owner. Construction Manager shall submit its Applications for Payment in triplicate. All requisitions, inquiries, etc., relating to payments, etc., are to be addressed to the Owner, attention of the Project Executive for the Work.

§ 7.1.2

During the course of construction, each Application for Payment shall be subject to a retention of 10%. Retention shall be withheld on the Construction Manager's General Conditions costs. If the Construction Manager performs any portion of the Work by its own forces as described in Section 2.3.2.3, that portion of the Work shall be subject to a retention of 10%. Subject to approval of the Owner and Owner's Lender, if any, the retention requirements may be modified where full or extended retention is not warranted. In the event the Construction Manager retains more than 10% from disbursements to be made to the subcontractor, the Application for Payment from the Owner shall be subject to a retention in an equal amount.

§ 7.1.2.1 The Owner may hold retention for a Subcontractor when that Subcontractor's work including all applicable punch list work has been fully completed in accordance with the Contract Documents and accepted by the Construction Manager, Architect and Owner, until the final completion of the project. In addition, the OCIP, if in effect, will be notified to confirm that all OCIP requirements have been met.

§ 7.1.3

Construction Manager's monthly pay applications for work performed under this contract must be received by the Owner and Architect, based on Owner's approval of amounts to be billed at the end of specific billing periods, no later than the First day of the following month, to assure that the Construction Manager's request for payment of work progress may be considered. Provided an Application for Payment is received by the Owner and Architect not later than the First day of the second proceeding month (60 days), the Owner shall make payment to the Construction Manager not later than thirty days after certification of the Application for Payment. If an Application for Payment is received by the Owner and Architect after the application date fixed above, payment shall be made by the owner not later than thirty days after certification of the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Contract Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Contract Price allocated to that portion of the Work in the schedule of values less retainage often percent. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007-as revised;
- .2 Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing less retainage often percent;
- .3 Add the Construction Manager's Fee, less retainage of ten percent (10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the

Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .4 Subtract retainage of ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007-as revised and other amounts properly withheld by the Owner at the time of each progress payment.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than ten percent.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007-as revised, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007-as revised. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007-as revised. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007-as revised. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the

Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Contract Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

§ 7.2.5 No Waiver or Acceptance. No payment, whether partial, in the course of the Project, or final, made hereunder shall be or construed to be final acceptance or approval of that part of the Work to which such payment relates, or to relieve the Construction Manager of any of its obligations hereunder with respect thereto, or constitute a waiver or otherwise affect the covenants and warranties of the Construction Manager. Each payment hereunder shall be subject to the continuing right of the Owner to review and audit all documentation supplied by the Construction Manager with respect to each Application for Payment. In the event the Owner shall determine that amounts previously paid to the Construction Manager were done so improperly or without proper documentation, it shall give written notice to the Construction Manager of such improper payment. If the Construction Manager shall fail to substantiate such payment to the satisfaction of the Owner within seven (7) days thereafter, the Owner shall have the right to withhold all or any portion of such improper payment from the next monthly payment due the Construction Manager.

§ 7.2.6 Grounds for Withholding Payment. Either the Owner or Architect may decline to certify payment and may withhold certification in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion it is improper to represent that the Work has progressed to the point indicated; that, to the best of their knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in its Certificate); and that the Construction Manager is entitled to payment in the amount certified. The Owner or Architect may also decline to certify payment and may withhold the Certificate in whole or in part for any of the reasons specified in A.R. S. §32-1129.01 (d). The Owner or Architect may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, they may nullify the whole or any part of any Certificate of Payment previously issued, to such extent as may be necessary in their opinion to protect the Owner from loss because of: (1) defective Work not remedied; (2) third party claims filed; (3) failure of the Construction Manager to make payments properly to subcontractors or for labor, materials, or equipment provided to the Project; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Price in the event a GMP is established; (5) damage to the Owner or another contractor; (6) reasonable evidence that the Work will not be completed in accordance with the approved Project Schedule; (7) persistent failure by the Construction Manager to carry out the Work in accordance with the Contract Documents; (8) insufficient documentation, erroneous estimates of Value of the Work performed or other incorrect statements in the Application; or (9) any other reason permitted under applicable law.

ARTICLE 8 INSURANCE AND BONDS

THE PROVISIONS OF THIS SECTION 8 ARE DELETED IN THEIR ENTIRETY AND REPLACED BY THE "INSURANCE REQUIREMENTS" IN SECTION 11 OF THE A201-2007-as revised.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007-as revised. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or litigation.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007-as revised, the method of binding dispute resolution shall be as follows:

Upon completion of the Work, or the termination of this Agreement, under whatever circumstance this termination may occur, the Construction manager shall furnish the Owner with copies of all schedules, budgets, shop drawings, samples, and other work papers and Contract Documents prepared by the Construction Manager in accordance with this Project, as property of the Owner.

(Paragraphs deleted)

Unless otherwise required by the laws of the place where the Project is located, the Contract shall be governed by the law of the State of Arizona provided, however, that Colorado law shall govern this Contract if the Project is located in the State of Colorado.

§ 9.3 Initial Decision Maker

The Owner will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007-as revised for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(Paragraphs deleted)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Contract Price

§ 10.1.1 Prior to the execution of the Contract Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007-as revised.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Contract Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work properly performed and incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will

terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Contract Price

Following execution of the Contract Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007-as revised.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007-as revised shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Contract Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007-as revised. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007-as revised, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007-as revised.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007-as revised shall apply to both the Reconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201-2007-as revised shall apply to both the Reconstruction and Construction Phases.

§ 11.4 Assignment

The Construction manager shall not assign the Contract as a whole without written consent of the Owner. If Construction manager attempts to make such an assignment without Owner's consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Notwithstanding any provisions of the Agreement to the contrary, Owner shall have the right to assign or otherwise transfer its interest under this Agreement to any related entity. A related entity shall include a parent, subsidiary, an entity resulting from a sale of all or substantially all of Owner's assets or from a merger or consolidation of Owner with or into another entity(ies). Such an Assignment shall not require the consent or approval of Construction Manager.

§ 11.5

Any written notices hereunder directed to Owner or Architect may be served on the Owner or Architect's representative by fax or hand-delivery at:

§ 11.6 Any written notices hereunder directed to Construction Manager may be served on its project manager by fax or hand-delivery at:

Your office

§ 11.7 A copy of all notices from Construction Manager regarding insurance, termination, allegations of breach, lien notices, demands for mediation and claims shall be delivered to David Bixby, General Counsel, 1441 N. 12th Street, Phoenix, AZ 85006 in addition to the Owner's Representative noted above.

§ 11.8 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions) other documents listed in this Agreement, and Drawings, Specifications, Addenda, which are to be developed during the duration of this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of Contract Documents shall appear as amendments to this Agreement. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

§ 11.9 The Work of This Contract. Subsequent to the parties' agreement to a Guaranteed Maximum Price proposal with Amendment No. 1, or such similar Amendments, the Construction Manager shall perform or cause to be performed all construction required by the Contract Documents (the "Work"), including the furnishing of all labor necessary to produce such construction, and all materials, supplies, and equipment to be incorporated or utilized in such construction (the "Materials") if required, by the Contract Documents, to be provided by the Construction Manager. The Construction Manager shall fully execute the Work described in the Contract Documents and reasonably inferable by the Construction Manager as necessary to produce the results intended by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 11.10 Purchasing Agency Agreement. By executing the Agreement, Construction Manager agrees to act as Owner's agent in purchasing all materials and equipment that will be incorporated into the Work. Construction Manager agrees to coordinate with the Owner to maximize purchases from Group Purchasing Organization vendors.

§ 11.11 Concealed Conditions Program. Except with respect to construction of new facilities not involving any renovation of existing facilities, Construction Manager shall assist in formulating a written program to investigate the existence of concealed or unknown conditions on or about the Project site ("Concealed Conditions Program") for approval by Owner. The Concealed Conditions Program, which shall be developed in consultation with Owner, the Architect and all other members of the Project Team shall be designed to discover existing concealed or unknown conditions which may be discovered with reasonable expenditure of time and expense, with the goal of minimizing the need for change orders during the construction due to concealed conditions.

§ 11.12 Disruption Plan. Construction Manager shall formulate a written disruption plan ("Disruption Plan") permitting existing facilities to function with a minimum of intrusion and interruption from the Work. The Disruption Plan which shall be developed in consultation with Owner, the Architect and all other members of Project Team shall set forth provisions for minimizing work-related disruptions to the operations of occupied facilities, including, without limitation, disruptions caused by noise, fumes, dirt, dust, vibration or other physical intrusion, utility interruption, ingress and/or egress blockage and destruction of existing structures of systems. The Disruption Plan shall provide for the giving of notice to Owner not less than five (5) days before any anticipated disruption to permit advance operational Planning. The Disruption Plan shall be submitted to Owner for approval within ten (10) working days after Construction Manager's receipt of the Architect's Phasing Plan, and Construction Manager shall promptly make any revisions to the Disruption Plan required by Owner. All subcontractors and other personnel involved in the Work will be required to strictly comply with the approved Disruption Plan.

§ 11.13 Confidentiality. During and after the term of this Agreement, the Construction Manager shall not directly or indirectly disclose, divulge, or communicate to any person, firm or corporation other than the Owner or its designated representatives, subcontractors, or as required by law, any information which it may have obtained during the term of this Agreement concerning any matter relating to the Project or the regular business of the Owner including, without limitation, the costs, plans, Contract Documents, data and procedures developed for the Owner under this Agreement, construction account methods, and other information relating to the project.

§ 11.14 Title to Work. Immediately upon the performance of any part of the Work, as between the Construction Manager and Owner, title thereto shall vest in the Owner, provided, however, the vesting of such title shall not impose any obligations on the Owner or relieve the Construction Manager of any of its obligations hereunder.

§ 11.15 Notwithstanding any disputes between the Owner and the Construction Manager for any reason whatsoever, Construction Manager shall continue to prosecute the Work diligently in a good and workmanlike manner and in conformity with this Agreement and shall not have the right to cease its performance hereunder, and the Owner shall continue to pay the Construction Manager as provided in Article 7, except any such amount or amounts which are disputed.

§ 11.16 Mechanics' Lien. The Construction Manager shall not permit any mechanic's lien to be filed by any subcontractor, laborers, or material vendors upon the premises of the Owner, provided such lien arises from the execution of Work included in this Agreement. Construction Manager acknowledges that it is knowledgeable of the requirements of the laws governing Mechanic's Liens in the state where the Work is located, and will develop administrative systems to assure that the Work is performed in full compliance with the requirements of the law and so as to prevent any mechanic's lien from being filed in association with the Work of this Agreement.

§ 11.17 Warranty. Construction Manager unconditionally warrants to Owner that the Work shall be free from defects for a period of three years after Substantial Completion of the entire Project. Construction Manager expressly acknowledges and agrees that some elements, components and building systems cannot be considered fully operational until the entire Project is complete and all parts of the same may be fully tested together, and therefore the one-year warranty against defects, regardless of the Phase in which they may contain, will commence upon Substantial Completion of the entire Project. The warranty period for any corrected work shall be extended to run for one year after completion of all corrective work. This warranty shall not limit the terms of any special warranties given with regard to any portion of the Work.

This relates only to the specific warranty of Construction Manager to correct defects in the work and has no relationship to the time within which Construction Manager's 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 Construction Manager's or any Subcontractor's or material supplier's liability with respect to its obligations under the Contract Documents as law is in equity.

§ 11.18 OIG /GSA. Construction Manager represents and warrants to Owner that Construction Manager has not been either (1) sanctioned by the United States Department of Health and Human Services Office of Inspector General, or (2) barred from contracting with governmental agencies by the United States General Services Administration. See OIG Medicare/Medicaid Sanction Report and GSA Excluded Parties List Report. Construction Manager agrees to obtain a similar representation and warranty from each subcontractor with whom Construction Manager contracts for any portion of the Work on the Project.

§ 11.19 Medicare Disclosure. Construction Manager agrees until the expiration of four years after the furnishing of services to be provided under this Agreement, to make available upon written request, to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States of America, or any of their duly authorized representatives, the contract and books, documents and records that are necessary to certify the nature and extent of reimbursable costs under the Medicare laws.

§ 11.20 Certification of Non-Segregated Facilities. Construction Manager hereby certifies to Owner that it does not, and will not, maintain or provide for Construction Manager's employees any segregated facilities at any of Construction Manager's establishments and that Construction Manager does not, and will not, permit its employees to perform their services at any location under Construction Manager's control where segregated facilities are maintained. Construction Manager understands and agrees that a breach of this certificate is a violation of the Equal Opportunity Clause required by Executive Order Number 11246 of September 23, 1965. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or area in fact segregated on the basis of race, creed, color or national origin because of habit, local custom or otherwise. Construction Manager further agrees that (except where Construction Manager has obtained identical certifications from proposed (vendors) for specific time periods) prior to the award of contractors (purchase orders)

exceeding \$5,000.00 which are not exempt from the provisions of the Equal Opportunity Clause that Construction Manager will forward the following notice to such proposed contractors (vendors) (except where the proposed contractors (vendors) have submitted identical certifications for specific time periods).

§ 11.21 Equal Employment Opportunity. Construction Manager will comply with all relevant provisions of the Civil Rights Act of 1964; Federal Executive Order 11246 of 1965, as amended by Federal Executive Order 11375 of 1967, the Equal Employment Opportunity Act of 1972; and all provisions relevant to fair employment of the rules and regulations of the Owner. Construction Manager will furnish all information and reports requested by the Owner(s) project representative or its representatives, for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause. In the event of the Construction Manager's noncompliance with the nondiscrimination clause of this contract, or with any of the aforesaid rules, regulations or requests, this contract may be canceled, terminated or suspended in whole or in part.

§ 11.22 Arizona Taxes (this section only applies to Work being performed in the State of Arizona)

§ 11.22.1 The Construction Manager as a part of the Project will acquire, by itself or through its various subcontractors, building materials and equipment which will be incorporated in or installed at the Project. All these items constitute tangible personal property.

§ 11.22.2 The Owner is a non-profit corporation which meets the definition of a "qualifying hospital" pursuant to A.R.S. §42-5001.11 for purposes of Arizona Transaction Privilege Taxes (which includes applicable County Taxes) and municipal Privilege License Taxes (collectively, "State and City Taxes") and is exempt from such State and City Taxes on its purchases of tangible personal property, including the building materials and equipment referred to above (the "Materials").

§ 11.22.3 The Construction Manager will take a deduction for purposes of the State and City Taxes for the cost of the Materials for purposes of computing its State and City tax liability under the prime contracting classification pursuant to A.R.S. §42-5075 (8)(9) for State and County sales tax purposes and a deduction under the construction contracting classification for City tax purposes.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document AI33-2009-as revised, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007-as revised, General Conditions of the Contract for Construction
- .3
- .4
- .5 Other documents:
(List other documents. {fany, forming part of the Agreement.})

Tax Matters Agreement Addendum

ADDENDUM TO CONSTRUCTION CONTRACT
TAX MATTERS AGREEMENT

This Tax Matters Agreement is entered into between Sensys, Owner, and DPR Construction, A General Partnership, Contractor, and is an addendum to that certain Construction Contract between the Contractor and the Owner, dated December 17, 2011, relating to Sensys and related Work_ (the "Project"), and is effective as of the date of that Contract.

RECITALS

A. The Contractor as a part of the Project will acquire, by itself or through its various subcontractors, building materials and equipment which will be incorporated in or installed at the Project. All these items constitute tangible personal property.

B. As detailed below, the Owner is a non-profit organization which meets the definition of a "qualifying hospital" for purposes of Arizona Transaction Privilege Taxes (which includes applicable County Taxes) and municipal Privilege License Taxes (collectively, "State and City Taxes") and is exempt from such State and City Taxes on its purchases of tangible personal property, including the building materials and equipment referred to above (the "Materials").

C. The Contractor is allowed a deduction for purposes of the State and City Taxes for the cost of the Materials for purposes of computing its State and City tax liability under the prime contracting classification for State tax purposes and under the construction contracting classification for City tax purposes.

D. This Tax Matters Agreement is entered into by the parties in order to describe the rights and obligations of the parties relating to the State and City Sales Taxes with respect to the Materials.

AGREEMENT

In consideration of the mutual covenants contained herein, the Owner and the Contractor agree as follows:

I. Owner's State and City Sales Tax Exemption Representations.

1.1 Owner is a Qualifying Hospital. The Owner hereby represents and warrants that it is a non-profit organization which meets the definition of a "qualifying hospital" pursuant to A.R.S. § 42-500!.II. "Qualifying hospital" is defined by the statute to mean any of the following:

(a) A licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

which is operating by the federal government, this state or a political subdivision of this state.

The Model City Tax Code contains an identical definition of "qualifying hospital" in section __-100.

The Owner represents and warrants that it falls within subsection (b) of the both the State and City definition of a "qualifying hospital" as a "licensed nursing care institution, licensed residential care institution or a residential care facility operating in conjunction with a licensed nursing care institution and which provides medical services, nursing services or health related services and is not used or held for profit." The Owner also represents and warrants that the Project when completed and used by the Owner will meet the subsection (b) definition of "qualifying hospital."

1.2 State and City Sales Tax Exemption for Sales of Tangible Personal Property to Qualifying Hospitals. A.R.S. § 42-5061.A.25 provides an exemption from the retail classification of the State transaction privilege tax for tangible personal property sold to "a qualifying hospital as defined in § 42-5001." A.R.S. § 42-5159.A.13(c) provides an exemption from the State use tax for tangible personal property purchased by "a licensed nursing care institution or a licensed residential care institution or a residential care facility operating in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit." A.R.S. § 42-5075.8.9 provides a deduction under the prime contracting classification of the State transaction privilege tax for "the gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from transaction privilege and use tax under . . . section 42-5061, subsection A, paragraph 25 . . . [or] section 42-5159, subsection B."

The Model City Tax Code contains identical exemptions and deductions for qualifying hospitals as the State deductions and exemptions listed above. See section __-465(p) (deduction for sales of tangible personal property to a qualifying hospital); section __-660(p) (use tax exemption for tangible personal property acquired by a qualifying hospital); and section __-415(b)(3) (deduction under the construction contracting classification for tangible personal property sold to a qualifying hospital as a part of a construction project).

The Owner represents and warrants that the State and City exemptions and deductions as described in this section apply to the Materials and specifically that the Contractor is allowed a deduction under the prime contracting classification of the State tax and the construction contracting classification of the City tax with respect to cost of the Materials.

2. Taxes Not to be Paid with Respect to Materials. The Contractor and its subcontractors shall not pay any State or City sales taxes, including county taxes, on the purchase of the Materials and further will take a deduction under the prime contracting classification pursuant to A.R.S. § 42-5075.8.9 for State (and county) sales tax purposes and a deduction under the construction contracting classification pursuant to section __-415(8)(3) of the Model City Tax Code for City sales tax purposes with respect to the Materials.

3. Owner to Provide Exemption Certificate. All shall provide the Contractor with Arizona Department of Revenue, Transaction Privilege Tax Exemption Certificate, Form 5000, covering the State and City Tax exemption for the Materials.

4. Tax Indemnity.

If transaction privilege (sales), privilege license, excise, use or similar taxes ("Such Taxes") are assessed by the State of Arizona (including any applicable county taxes), or any municipality on the gross income of the Contractor to the extent such assessment is attributable to the inclusion of all or any portion of the cost or purchase price of the Materials in the Contractor's gross income under the prime contracting classification for State sales tax purposes and and/or under the construction contracting classification for City sales tax purposes, then:

The Contractor shall immediately notify the Owner of the assessment of Such Taxes no later than ten business days after the Contractor's receipt of notice of any such assessment. The Owner at its sole option may elect to require the Contractor to protest the assessment of any Such Taxes and the Contractor agrees that in such event

it will give fully and completely of its time and effort in cooperating with the Owner to protest the liability for Such Taxes. The Owner shall have the right to designate the law firm to undertake any such protest and shall be responsible for the payment of that firm's legal fees and expenses. In the event the Owner chooses not to protest the assessment of any Such Taxes, or in the event such a protest is unsuccessful and Such Taxes are found to be due and owing, then the Owner shall save and hold harmless the Contractor for any Such Taxes determined to be due and owing together with interest and any penalties. However, in the event the Contractor fails to notify the Owner of the assessment of Such Taxes in writing within the time period permitted for contesting the assessment, it shall be the Contractor's sole obligation to pay the Such Taxes, together with interest and any penalty.

This Tax Matters Agreement is executed by and between the parties this as of the day and year first written above.

I AIA Document A201"- 2007

General Conditions of the Contract for Construction

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

MDAnderson Cancer Center
Cancer Center Phase II

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

THE ARCHITECT:
(Name, legal status and address)

THE CONTRACTOR:

TABLE OF ARTICLES

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6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK

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

1. The Agreement
2. Addenda, with those of later date having precedence over those of earlier date
3. These General Conditions of the Contract for Construction as amended
4. The Supplementary Conditions
5. Specifications
6. Drawings

§ 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, 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.

§ 1.1.7

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person(s) identified by the Owner to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.8 APPROVED

When the words "approved", "satisfactory", "proper" or "as directed" are used, approval by the Architect shall be understood.

§ 1.1.10 PROVIDE

When the word "provide", including derivative thereof, is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, material, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation to use under the terms of the Specifications.

§ 1.1.11 KNOWLEDGE

The terms "knowledge", "recognize" and "discover", and their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

§ 1.1.12 PERSISTENTLY OR REPEATEDLY

The phrase "persistently fails" or "repeatedly" and other similar expressions, as used in the reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, which causes the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.1 however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7.

- 1 Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Project Site and shall be responsible for the correctness of such measurements. The GMP will not be increased on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted to the Architect for resolution before proceeding with the Work.

.2 If a minor change in the work is found necessary due to actual field conditions, the Contractor shall submit to Owner and Architect sufficient information regarding the needed change so that the Owner can either decline the change or request detailing drawings of such departure by the Architect.

§ 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.

§ 1.2.3.1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification or other Association Standard and when requested by the Architect or required in the Specifications, the Contractor shall present an affidavit from the manufacturer certifying that the produce complies with the particular Standard or Specification. When requested by the Architect or specified, supporting test data shall be submitted to substantiate compliance.

§ 1.2.3.2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitution may be made unless accepted prior to execution of the Contract or if accepted as a change in the Work in accordance with Sections 3.12.4-3.12.6.

§ 1.2.4 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.2.5 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated.

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

§ 1.2.7 All work and material shall be the best of the respective kinds specified or indicated. Should workmanship or materials be required which are not directly or indirectly called for in the Specifications and/or shown on the Drawings but are consistent with the Contract Documents and reasonably inferable through them or pursuant to standard industry practice, said workmanship or materials shall be the same as similar parts that are detailed, indicated or specified, or shall match or exceed the quality of existing conditions for remodeling and restoration work, and the Contractor shall understand the same to be implied and provide for the same as fully as if it were particularly described or delineated.

§ 1.2.8 Should conflicts occur in or between the Contract Documents, the Contractor is deemed to have estimated on the more expensive method and material, unless the Contractor has requested and obtained a written decision from the Architect before submission of a Proposal as to which method or materials will be required.

§ 1.2.9 Where detailed information is lacking, if Work is required in a manner that makes it impossible to produce satisfactory Work, or should discrepancies appear among Contract Documents, the Contractor shall request interpretation from the Architect before proceeding with Work.

§ 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.

§ 1.4.2 EXECUTION OF CONTRACT DOCUMENTS

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

§ 1.4.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of new construction and areas of new construction on the Project site. The Owner shall not be required to make any adjustments in either the Contract Sum or contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of Section 1.4.2.2.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Owner consultants shall be deemed the owner of the Work Product created in connection with this Project, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other

purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Work Product provided to them solely and exclusively for execution of the Work.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

The parties intend to transmit design-related materials including the Work Product and/or other information or documentation in digital form to the fullest extent possible.

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1

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

§ 2.2.3 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. 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 Contractor will be furnished, free of charge, such copies of Drawings and project manuals as are reasonably necessary for execution of the Work.

§ 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 RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses

and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 EXTENT OF OWNER'S RIGHTS

§ 2.5.1 The rights state in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents, at law or in equity.

§ 2.5.2 In no event shall Owner or its representatives have control over, charge of, or any responsibility for the construction means, methods, techniques, sequences or procedures or for the safety precautions and programs in connection with the work, notwithstanding any of the rights and authority granted to the Owner in the Contract Documents.

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 term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

§ 3.2.2 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other 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. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by the Contractor as a request for information. The Contractor shall be liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions in the Contract Documents if the Contractor, with the exercise of reasonable care should have recognized such error, inconsistency, omission or difference and fails to report it to the Architect. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by the Contractor without any increase in the Contract Sum.

§ 3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but 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 provided specifically in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes and rules and regulations, and the rules and regulations of hospital accrediting organizations, but the Contractor shall promptly report to the Architect any non-conformity discovered by or made known to it. The Contractor shall not be liable to the Owner for damages resulting from the failure of the Contract Documents to

comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, and rules and regulations of hospital accrediting organizations unless the Contractor should have recognized such discrepancy or non-conformity with the exercise of reasonable care and fails to report it to the Architect in a timely manner.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect 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 set forth in 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. The Contractor shall not be liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents, or for differences between field measurements or conditions in the Contract Documents unless the Contractor should have recognized such error, inconsistency, omission or difference with the exercise of reasonable care and failed to report it to the Architect.

§ 3.2.5 Neither the Owner nor the Architect assume responsibility for an understanding or representation made by their agents or representatives prior to the execution of the Agreement unless (1) such understanding or representations are expressly stated in the Agreement, and (2) the Agreement expressly provides that responsibility therefor is assumed by the Owner.

§ 3.2.6 Failure by the Contractor to become acquainted with available information will not relieve the Contractor from responsibility for properly estimating the difficulty or cost of successfully performing the work and including those costs in the Contract Sum.

§ 3.2.7 Except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions defined in Section 3.7.4 by executing this Agreement the Contractor represents the following:

- .1 The Contract Documents are sufficiently complete and detailed for the Contractor to (1) perform the Work required to produce the results intended by the Contract Documents and (2) comply with all the requirements of the Contract Documents.
- 2 The Work required by the Contract Documents including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, 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. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 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.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. All labor used throughout the work shall be acceptable to the Owner and shall be of a standing affiliation that will permit the Project to be carried on harmoniously and without delay, and that will in no case or under any circumstances, cause any disturbance, interference or delay to the progress of the Project.

§ 3.4.4 The Contractor, immediately upon Notice to Proceed (or where shop drawings, samples, etc., are required immediately upon receipt of approval thereof) shall place orders for materials, work, fabrication, and/or equipment to be employed by him in that portion of the work contracted for. The Contractor shall keep records of materials, work fabrications and/or equipment specified and advise the Architect, promptly, in writing, of orders placed and of such materials, work fabrications and/or equipment which may not be available for the purposes of the Contract.

§ 3.4.4.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or costs to the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

§ 3.4.4.2 In case the progress of the work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.4.5 Workers whose work is unsatisfactory to the Owner or the Architect, or who are considered by the Owner or Architect to be careless, incompetent, unskilled or otherwise objectionable, shall be dismissed from work under the Contract upon written notice from Owner or Architect.

§ 3.4.6 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. 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 Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The warranty provided in this Section 3.5 shall be in addition to an not in limitation of any other warranty required by the Contract Documents or otherwise provided by law.

§ 3.5.3 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties related to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Except as set forth in Section 2.2.2, the Contractor shall secure, pay for and, as soon as practicable, furnish the Owner with copies of certificates of all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work. All connection charges, assessments or inspection fees as may be imposed by any municipal agency or utility company are included in the GMP and shall be the Contractor's responsibility.

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

§ 3.7.3 If the Contractor performs Work knowing, or when the Contractor should have known, that it is contrary to applicable laws, statutes, ordinances, codes, rules and regulations, then the Contractor shall assume appropriate responsibility for such Work and bear the costs attributable to the correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. 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, will recommend 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 from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Contractor in writing, stating the reasons. If either party disputes the Owner's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.8 ALLOWANCES

§ 3.8.1 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.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 ON-SITE MANAGEMENT

§ 3.9.1 The Contractor shall employ a competent Project Manager, on-site Project Engineer and on-site superintendents and necessary assistants who shall be acceptable to Owner and shall be in attendance at the Project site during performance of the Work. The Contractor shall provide the Owner with Contractor's organization chart for the Project. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The contractor shall not substitute any of its on-site management or permit substitution of any of its subcontractor's on-site management teams without the Owner's prior approval.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the name and qualifications of a proposed superintendent. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.9.4 The Contractor shall provide the Owner with weekly "status and procurement" reports when so directed.

§ 3.9.5 The Contractor will attend scheduled "Project Coordination Meetings" and other meetings as directed by the Owner.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 Unless required sooner under the Agreement, the Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information 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.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly 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.

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

§ 3.10.4 The construction schedule shall be satisfactory to the Owner and the Architect and shall: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereafter referred to as Milestone Dates). The Contractor shall provide a summary of the work included in each Milestone Date along with Contractor's Schedule. Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and the attached to the Agreement as an Exhibit. If not accepted, the construction schedule shall be promptly reviewed by the Contractor in accordance with the recommendations of the Owner and the Architect and re-submitted for acceptance. The Contractor shall monitor the progress of the work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as progress reports) as set forth in Section 3.10.1 or if requested by either the Owner or Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime; (2) supplying additional manpower, equipment, and facilities; and (3) other similar measure (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the state of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. Nothing in this Agreement shall be construed to preclude Contractor from requesting an extension of time in circumstances where delays are not a result of Contractor's acts or failures to act.

§ 3.10.5.1 The Contractor shall not be entitled to an adjustment of the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

§ 3.10.5.2 The Owner may exercise its rights under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Times, if permitted under Section 8.3.1 and an increase in Contract Sum if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents and (2) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.10.6.1 Float/Weather days: It is the sole discretion of the Contractor to determine the use of the Float/Weather Days defined within. The maximum amount of days permitted for float/weather days is 15 -20 days, negotiable per terms set forth. If no time is agreed upon, 15 days will be assumed.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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 Owner and the Architect and shall be delivered to the Owner and the Architect upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate 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 Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect 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. Contractor shall also review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required to be submitted by contractors and suppliers retained by the Owner under separate contract. Contractor shall review and submit such Shop Drawings, Product Data, Samples and similar submittals with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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

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

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

§ 3.12.9 The Contractor shall 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.

§ 3.12.10 Except as specifically required by the Contract Documents, 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 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 3.12.10, 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.

§ 3.12.11 All shop drawings for any architectural, structural, mechanical or electrical work must be submitted to the Architect for review to determine conformity with design intent and with compliance to information given in the Contract Documents by the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and if required by the applicable law, by a licensed engineer.

13.12.12 Intended use for information modeling, BIM, shall be the sole discretion of the Owner and Architect. The model takes precedence over the contractual drawings for the following trades above ceiling only:

- Mechanical
- Electrical
- Plumbing
- Fire Suppression

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. On-site storage, staging, trailer, and similar types of locations will be provided at the sole discretion of the Owner, Contractor cannot rely upon availability of any on-site area. All deliveries must be coordinated with the Owner. Removal and relocation will be the responsibility of the Contractor.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

§ 3.15.2 Should the Contractor be unwilling or unable to provide cleanup as provided in the Contract Documents, upon 24 hour notice from the Owner, cleanup will be done for Contractor and the costs charged to the Contractor's account.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's Consultants, and agents and employees of any of them (collectively "Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs and the cost of appellate proceedings, arising out of or resulting from, either directly or indirectly, the performance of the Work or the conditions of the Site, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself) including loss of use resulting therefrom, but only to the extent caused by a negligent act or omission of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this paragraph. The Contractor, at its own expense and risk, shall defend with counsel acceptable to the Owner all legal proceedings that may be brought against the Indemnitees on any such claim, damage, loss or expense, and satisfy any resulting judgment that may be rendered against any of them.

§ 3.18.2

In claims against any person or entity indemnified under this paragraph by anyone directly or indirectly employed by the Contractor, a Subcontractor or anyone for whose acts they may be liable, the indemnification obligation under this

paragraph 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 employee benefit acts.

§ 3.19 AS BUILT DRAWINGS

§ 3.19.1 As Built Drawings are those graphic and pictorial documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams which have been marked to show the actual installation where the installation varies from the installation shown originally on the permitted contract documents.

§ 3.19.2 The Architect shall be responsible for creating, maintaining and delivering the final As Built Drawings to the Owner. The As Built Drawings are to be maintained by the Contractor in hard copy at the Project Site and shall be available for the Owner's review as a part of the monthly pay application requirements. If the As Built Drawings do not reflect the current progress of the Work, the Owner and Architect may hold the pay application until such Drawings are made current. The As Built Drawings must be completed and submitted by the Contractor to the Owner and Architect for their approval along with the final pay application. The final As Built Drawings shall be submitted in an electronic format acceptable to the Owner by the Architect. The As Built Drawings shall include the complete set of legible drawings showing construction, fixed equipment, and mechanical, plumbing, and electrical systems, as installed or built.

§ 3.19.3 During construction, the Contractor shall maintain a set of prints of drawings and shop drawings for As Built Drawing purposes. The Drawings shall be marked to show the actual installation where the installation varies from the installation shown on the permitted contract documents. The Contractor shall provide detailed information on concealed elements that would be difficult to identify or measure and record later. Items required to be marked include, but are not limited to the following:

- .1 Dimensional changes to the Drawings
- .2 Revisions to details shown on the Drawings
- .3 Depths of foundations below the first floor
- .4 Locations and depths of underground utilities
- .5 Revisions to routing of piping and conduits
- .6 Revisions to electrical circuitry
- .7 Actual equipment locations
- .8 Duct size and routing
- .9 Locations of concealed internal utilities
- .10 Changes made by Change Order or Construction Change Directive if architectural drawing is not included in Change Order or Construction Change Directive
- .11 Changes made following the Architect's written orders
- .12 Details not on original Contract Drawings.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 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 without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner 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 Architect will provide administration of the Contract as described in the Contract Documents and, unless otherwise designed by the Owner, will be an Owner-representative: (1) during construction; (2) until final payment is due; and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work

describing Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work observed is being performed in a manner indicating that the Work, is will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and 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

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Owner shall be provided copies of all such communications.

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

§ 4.2.6 The Architect or the Owner's designated representative 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 and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, 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. The Architect's action on any Contractor submittal shall not constitute an approval for the issuance of a change order. If the Contractor believes that any action by the Architect on a Contractor submittal requires an increase in the Contract Sum, the Contractor shall follow the procedure for the issuance of a Change Order.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Any reference in the Contract Documents to the Architect taking action or rendering a decision within a "reasonable time" is understood to mean no more than ten business days.

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

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

§ 5.2.2.1 Notwithstanding anything in the Contract Documents to the contrary, the Contractor shall not contract with any subcontractor that has been either (1) sanctioned by the United States Department of Health and Human Services Office of Inspector General, or (2) barred from contracting with governmental agencies by the United States General Services Administration. See OIG Medicare/Medicaid Sanction Report and GSA Excluded Parties List Report. If Contractor contracts with a subcontractor that is added to either the OIG Medicare/Medicaid Sanction Report or the GSA Excluded Parties List Report during performance of the Work, the Contractor shall terminate such subcontractor at no additional cost to the Owner when such subcontractor is added to either the OIG Medicare/Medicaid Sanction Report or the GSA Excluded Parties List Report. Accordingly, Contractor shall include in all subcontracts entered into for the Work a clause that allows Contractor to terminate a subcontract if a subcontractor is added to either the OIG Medicare/Medicaid Sanction Report or the GSA Excluded Parties List Report during performance of the Work.

§ 5.2.2.2 Notwithstanding anything in the Contract Documents to the contrary, the Contractor shall not contract with any subcontractor with an EMR rating of more than one (1) unless approved in advance in writing by the Owner.

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity 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. Each subcontract agreement shall preserve and protect the rights of the Owner 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, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. All subcontracts shall be in writing, in form and substance substantially similar to the Contractor's Standard Form Subcontract and shall specifically provide that the Owner is an intended third party beneficiary of such subcontract.

§ 5.3.2 Subcontractor Experience. The Contractor shall employ only subcontractors that are duly and properly licensed and which have at least three years of experience in the trade for which the subcontractor is retained.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 5.4.2 If the work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the

Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Each subcontract shall specifically provide that the Owner shall be responsible to the Subcontractor only for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in 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 who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement.

§ 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, II and 12.

§ 6.1.5 To the fullest extent provided by law, the Owner shall indemnify and hold Contractor harmless from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of work with the Owner's own forces provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the work itself), and provided that such injury, sickness, disease, or death is due to the sole negligence of the Owner or the Owner's separate subcontractors.

§ 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 Architect discrepancies or defects discovered 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 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 or separate contractors as provided in Section 10.2.5.

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Owner after review by the Architect.

§ 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. Except as permitted in Section 7.3 and Section 15.1, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. No action, conduct, omission, prior failure or course of dealing by the Owner shall act to waive, modify, or alter the requirement that Change Orders must be in writing signed by the Owner and General Contractor, and such written Change Orders are the exclusive method for effecting any change to the contract sum or contract time. The General Contractor understands and agrees that the contract sum and contract time cannot be changed by implication, oral agreements, actions, inactions, course of conduct, or constructive change order. This provision supersedes all other Articles listed elsewhere in the Contract Documents that provide methods for effecting change.

§ 7.1.4 If an Owner Controlled Insurance Program (OCIP) is used to insure the Project, neither a Change Order nor a Construction Change Directive shall include any Work relating to a loss for which a claim has been or may be made under any insurance policy issued pursuant to Section II without the express written authorization of the Owner's OCIP providers.

§ 7.1.5 Regardless of the method used to determine the cost of a Change Order, a Construction Change Directive or an order for a minor change in the Work, the cost may not include the Contractor's normal cost for insurance coverages provided by the Owner and identified in Section 11.1. By signing a Change Order, the Contractor certifies that the Change Order amount excludes its normal cost of insurance coverage provided by the Owner and identified in Section 11.1. That certification shall constitute cost and pricing data essential to determine if the price is reasonable and fair.

If the certification is determined to be inaccurate, incomplete or not current as of the date the Change Order was signed by the Contractor, the Contract Sum adjustment shall be reduced in the amount of the defect plus any related overhead, profit or fee.

§ 7.2 CHANGE ORDERS

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

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

§ 7.2.3 Agreement on any change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event of a Change Order increasing the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee not to exceed an aggregate fee of 15% for all markups; including that for any subcontractor, supplier or contractor; 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 Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 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, (excluding workers' compensation benefits);
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, not provided by the Owner as identified in Section 11.1, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

The Architect's determination, as specified above, shall not be less than the actual costs expended by the Contractor in performing the changed Work. If the Architect's determination is believed by the Contractor to be less than its actual costs (incurred or projected) in performing the Work, the Contractor may initiate mediation upon a statement of disagreement with the Architect.

§ 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 overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

§ 7.4 MINOR CHANGES IN THE WORK

The Owner, after review by the Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

§ 7.5 PRIOR APPROVAL REQUIRED FOR EXTRA COMPENSATION OR EXTENSION OF TIME

§ 7.5.1 Any change undertaken without the Owner's written authorization will not be recognized as a basis for a claim for extra cost at a later date. If the Contractor claims that any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and such instructions or orders are not accompanied by a written acknowledgement by the Owner that extra payment will be made or time extended, the Contractor shall promptly so notify the Architect and Owner in writing and should not proceed with the Work until the Contractor has received a further written order to proceed, except in cases of emergency affecting life or property. No claim for extra cost or time on account of such instructions shall be valid unless the Contractor has so notified the Architect and Owner,

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article II 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.

§ 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 pending mediation and litigation; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order to the extent (1) such delay affects the critical path of the project schedule, (2) such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time, but only if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.4 If Contractor's performance under the Contract Documents is delayed by the acts of the Owner, Architect or other representative of the Owner, which is unreasonable under the circumstances and which was not within the contemplation of the parties to this Agreement, Owner and Contractor will not negotiate for the recovery of damages related to expenses incurred by the Contractor for such delay. Absent an agreement by Owner and Contractor on the recovery of delay damages, an extension of time shall may potentially be the Contractor's sole remedy for such delay.

§ 8.5.1 Contractor is not in default of its obligations under the Contract Documents and if, in order to expedite completion of the Work, Owner directs Contractor to work overtime or multiple shifts, Contractor shall work the overtime or multiple shifts directed by Owner. Owner shall not pay the Contractor for overtime or multiple shifts directed by it.

§ 8.6 If the Contractor (a) fails or refuses to prosecute the Work in accordance with the approved construction schedule, as that schedule may be revised; (b) fails or refuses to supply sufficient skilled workmen; (c) fails to cause materials or equipment to be delivered to the Project in accordance with the approved construction schedule; or, (d) otherwise fails to maintain the approved construction schedule, the Owner may, after seven days written notice to the Contractor and without prejudice to any other remedy the Owner may have, either (a) supplement the Contractor's forces with a separate contractor or contractors retained by the Owner or (b) require Contractor to furnish additional labor and to expedite the delivery or availability of material and equipment at Contractor's sole costs. If such additional labor is not available, Owner shall have the right to require Contractor, at Contractor's sole costs and expense, to work overtime or multiple shifts to such an extent as will be sufficient to accelerate and complete the Work in accordance with the approved construction schedule. If the Owner retains a separate contractor or contractors to supplement the Contractor's forces, an appropriate Change Order shall be issued reducing the Contract Sum by the cost incurred by the Owner, including without limitation, the Owner's expenses and compensation for the Architect's additional services made necessary by the Contractor's failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 8.7 If the Contractor submits a progress report indicating, or otherwise expressing an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

ARTICLE 9 PAYMENTS AND COMPLETION

NOTE: THIS AGREEMENT PROVIDES FOR PAYMENTS TO THE CONTRACTOR LATER THAN SEVEN DAYS AFTER THE CONTRACTOR'S APPLICATION FOR PAYMENT IS CERTIFIED.

§ 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

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, 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 Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Within ten days before the date established for each progress payment, the Contractor shall submit to the Architect and the Owner a preliminary Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The purpose of the preliminary Application for Payment is to validate the percentages of completion of the Work.

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

§ 9.3.1.2

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 a notarized Application and Certificate for Payment that has been signed by the General Contractor, a current Contractor's lien waiver, and current Subcontractor's lien waivers; and
- .2 duly executed waivers of mechanics' and materialmen's liens from Contractor and all Subcontractors and, when appropriate, from materialmen and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities, itself, or persons in any previous Application for Payment; and
- .3 all information and material required to comply with the requirements of the Contract Documents, or to substantiate cost of work billed, or reasonably requested by the Owner or the Architect.

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

- .1 The aggregate cost of materials stored off site shall not exceed \$500,000 at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be: (a) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender; (b) specifically marked for use on the Project; and (c) segregated from other materials at the storage facility.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or

encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 As provided in Section 3.19.2, the Contractor agrees to maintain a hard copy of the As Built Drawings at the Project Site consistent with the progress of the Work. Such records shall be available for review by the Owner as a part of the monthly pay application requirements.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Owner in consultation with the Architect will, within fourteen days after receipt of the Contractor's Application for Payment, either issue a Certificate for Payment, with a copy to the Contractor, for such amount as the Owner determines is properly due, or notify the Contractor in writing of the 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 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 Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor as provided in Section 9.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner is able to make such representations. The Owner 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 Owner'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 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;⁷
repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 insufficient documentation, erroneous estimates of Value of the Work performed or other incorrect statements in the Application; or
- .9 any other reason permitted under applicable law.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or 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 issuance of a Certificate for Payment, the Owner shall make payment within 30 days of certification in the manner provided in the Contract Documents.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in this Section 9.6.2 to the contrary, the Owner may elect, at the Owner's sole discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any: (1) contract between the Owner and a subcontractor of any tier; (2) obligations from the Owner to such subcontractor; or (3) rights in such subcontractor against the Owner.

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

§ 9.7 FAILURE OF PAYMENT

If the Owner does not issue a Certificate for Payment, through no fault of the Contractor, within fourteen days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty days of certification of the Application for Payment then the Contractor may, ten days after Owner's receipt of written notice from the Contractor, stop the Work until payment of the amount owing has been received. The Contract Time will not be extended appropriately and the Contract Sum will remain the same regardless of increase by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and when either a Certificate of Occupancy issues from the appropriate building authority or authority to operate is granted by the governmental body responsible for such authorization.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a 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 receipt 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.

§ 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. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and 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.

§ 9.9.4 To the fullest extent provided by law, the Owner shall indemnify and hold Contractor harmless from and against any claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of injuries to persons or personal property in areas occupied by the Owner under this Section 9.9 provided that such injury is not due in any manner to the negligence of Contractor, any subcontractor, or agents or employees of any of them.

§ 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 Owner's and Architect's receipt of a final Application for Payment, the Owner in consultation with the Architect will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment stating that to the best of the Owner'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. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not

be issued by the Owner until all warranties and guarantees have been received and accepted by the Owner and until Contractor provides Owner with all closeout documents as required by Owner in the form required by Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect: (1) a properly completed Payroll Report Form for each Contractor and Subcontractor evidencing Project final payroll by workers' compensation class codes, if the Project was insured under and OCIP; (2) 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; (3) a certificate evidencing that insurance required by the Contract Documents will remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner; (4) 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, (5) consent of surety, if any, to the final payment, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests and/or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. 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.

§ 9.10.31f, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.1.2 All work shall be performed in accordance with the SenSys Contractor's Handbook and all County, State, Federal and local safety regulations.

§ 10.1.3 Contractor shall submit for approval a complete resume of Contractor's safety program within ten days of award of contract.

§ 10.1.4 Contractor shall have suitable safety representatives on the project site at all times when Contractor is performing any portion of the Work.

§ 10.1.5 Contractor's representative shall be empowered to represent Contractor in all matters pertaining to safety and any other safety related function deemed necessary to the Contractor. Owner may rely on representations and statements of Contractor's safety representative.

§ 10.1.6 Contractor shall submit copies of all accident reports or any other reports required by Owner.

§ 10.1.7 Contractor in signing this agreement, represents that Contractor has read and is familiar with all of the latest OSHA Safety and Health Regulations for this construction and further the Contractor agrees that Contractor will observe such regulations and be liable for any violation thereof by his subcontractors and/or his agents or employees. Contractor is therefore responsible for any costs, damages or penalties that Owner may suffer or incur as a result of a violation of such regulations by the Contractor, his agents or employees.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

The Contractor shall comply with the Owner's Safety Program. If an OCIP is used to insure the Project, the Contractor's safety precautions shall fully comply with the SenSys Contractor's Handbook. Compliance with the Owner's Safety Program or the minimum safety guidelines does not relieve the Contractor of any other contractual or legal duty to reasonably protect against the above defined damage, injury or loss. The Contractor is solely responsible for implementation of the minimum safety guidelines and all other project safety requirements.

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

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

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

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

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

§ 10.2.8

When all or a portion of the Work is suspended for any reason the Contractor shall securely fasten down all coverings and protect the Work, as necessary from injury by any cause.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 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.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyl's are less than applicable exposure standards set forth in OSHA regulations. In no event, however, shall the owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any subcontractor, materialman or supplier or any entity for whom any of these parties are responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are hazardous, toxic, or comprised of any items that are hazardous or toxic.

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

§ 10.3.4 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.

§ 10.3.5 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.

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

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

THE INSURANCE COVERAGE FOR THIS PROJECT WILL BE OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

§ 11.1 OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

§ 11.1.1 OCIP Coverages

At any time prior to the start of the Work, Owner reserves the right and may elect to insure all or a portion of this project under an Owner Controlled Insurance Program ("OCIP"). If the Owner makes this election, Owner will notify the Contractor in writing. The OCIP will apply to all subcontractors with total project costs that exceed thirty thousand dollars (\$30,000) over the life of the Project. Subcontractors with total project costs of thirty thousand dollars (\$30,000) or less that do not enroll in the OCIP shall provide insurance subject to Section 11.2.2. Owner may adjust the subcontractor participation level threshold amount of total project costs in the OCIP upon thirty (30) days written notice to Contractor.

Owner has secured and will maintain Builder's Risk insurance with a limit of liability equal to the final completed value of the Work as described in Section 11.1.1.3.

If the election is made to insure the project's workers' compensation and general liability coverages under an OCIP, the Owner will secure and maintain policy(ies) insuring Contractor, Subcontractor and their employees while performing Work at the Site for types of insurance shown in Sections 11.1.1.1 and 11.1.1.2 until Final Completion of the Work, or in the case of the Subcontractor, completion of the Subcontract work whichever is latest.

§ 11.1.1.1 Workers' Compensation

Workers' Compensation Insurance, in conformance with the laws of the state where the Work is located or imposed by any federal statutes, and Employers' Liability Insurance with a limit of not less than one million dollars (\$1,000,000) for Bodily Injury by Accident, one million dollars (\$1,000,000) for Bodily Injury by Disease, and one million dollars (\$1,000,000) for Bodily Injury for Disease-Policy Limits.

For Workers' Compensation coverage only, the project site definition is expanded to include:

- .1 In addition to the immediate grounds of the scheduled locations, coverage is extended to include the following incidental offsite activities of on-site contractors while in the course and scope of their work on the Owner OCIP:
 - .1 travel to/from work to related retailers/suppliers to secure job related materials or equipment;
 - .2 travel to/from health care provider's offices for job related injuries;
 - .3 travel for enrolled contractors between designed locations, in the same state, covered under this OCIP.

§ 11.1.1.2 Commercial General Liability

Commercial General Liability Insurance, insuring against Bodily Injury, Personal Injury, Advertising Injury and Property Damage with limits of liability as follows. The insurance includes coverage for Contractual Liability, Contractor's Protective Liability, Broad Form Property Damage, Products and Completed Operations, incidental medical professional liability, and the hazards commonly referred to as "XCU". The insurance also contains a severability of interest provision, and the Products and Completed Operations coverage is extended ten (10) years past the Substantial Completion of the Work under this Contract.

Per Occurrence	\$ 2,000,000
Per Annual Aggregate	\$ 4,000,000
Excess Liability Per Occurrence	\$100,000,000
Excess Liability Aggregate	\$100,000,000

§ 11.1.2 Primary and Non-Contributing

The insurance described in Section 11.1.1 is subject to the terms, conditions and exclusions of the policy(ies) which will be provided at the start of the Work. The insurance described in Section 11.1.1.2 is primary insurance and non-contributing with any other insurance carried by Contractor. The Owner is not providing coverage in excess of the limits stated in Section 11.1.1.2.

§ 11.1.3 Application for Insurance and Project Insurance Manual

Unless waived in writing by Owner, Contractor and all Subcontractors shall, prior to performing any Work at the Site and as a condition precedent to Owner providing the insurance coverage described in Section 11.1.1 above, furnish a completed application for insurance and shall cooperate with the OCIP administrators insurers regarding such application. A manual is available and shall be provided to the Contractor from Owner or OCIP Provider in connection with this Contract, which describes the procedures for Contractor to enroll in and comply with the OCIP ("Project Insurance Manual"). Contractor shall complete the application form and payroll report forms and follow the procedures as outlined in the Project Insurance Manual. Contractor shall include this Section II in its Contract with Subcontractors providing Work at the Site and shall ensure that such Subcontractors receive the project Insurance Manual, enroll in the OCIP, and comply with the OCIP procedures prior to the start of Subcontractor's Work.

§ 11.1.4 OCIP Certificates of Insurance

The OCIP insurers shall issue workers' compensation policies to each enrolled party and Certificates of Insurance, as appropriate, for the Workers' Compensation and Commercial General Liability insurance coverage specified in Section 11.1.

§ 11.1.5 Contract Obligations

The insurance, as provided by Owner for Contractors and subcontractors under this Section 11.1 is not intended to, and shall not be construed to limit, qualify, or waive any liabilities or obligations of Contractor or Subcontractor, assumed or otherwise, under this Contract.

§ 11.1.6 Rights of Insured Against Other Insureds

Inclusion of more than one insured, under such insurance, shall not operate to impair the rights of one insured against another insured, and except for the limits of liability, the coverages afforded by such insurance shall apply as though a separate policy had been issued to each insured.

To the extent damages are covered by the OCIP policies described in Section 11.1.1, the Owner, Contractor, and subcontractor waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policies shall provide for such waiver of subrogation by endorsement or otherwise.

§ 11.1.7 Premium Obligations

Contractor nor subcontractor shall not, by reason of its inclusion under the insurance provided by the OCIP, incur a liability for payment of premium for such insurance. Contractor shall not be entitled to return premiums, premium refunds, dividends, refunds, discounts, or other credits, and any other amounts due or to become due to them in connection with such insurance, unless agreed to in writing by the Owner.

§ 11.1.8 Combined Limits

Should Contractor enter into more than one (1) Contract with Owner and be issued more than one (1) Certificate of Commercial General Liability insurance, or should a subcontractor enter into more than one (1) Subcontract and be issued more than one (1) Certificate of Commercial General Liability insurance, limits shall apply on an occurrence basis with an annual aggregate for each Project, as stated in Sections 11.1.1.2.

§ 11.1.9 Performance of Contract to Exclude Insurance Cost

Compensation payable to Contractor for the performance of the Work shall exclude all costs of insurance as it relates to the coverage described and provided in this Section 11.1. Costs for overlapping insurance coverage maintained by Contractor shall not be reimbursable.

§ 11.1.10 Excluded Insurance Cost and Pricing Data

The Contractor must certify on the Bid Form that the insurance costs excluding from its bid pursuant to Section 11.1.9 are accurate, complete and current. The Contractor shall keep its books and records related to its excluded insurance costs and pricing data for three years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in writing by the Owner. The Contractor shall also contractually require its subcontractors to do the same for the express benefit of the Owner. The Owner or its authorized representative shall have the right to inspect such books and records at any reasonable time and place.

If the Owner determines that the certified cost and pricing data was inaccurate, incomplete or not current as of the date the Contractor submitted its bid, the Owner may reduce the Contract Sum by the amount of the defect plus related overhead and profit or fee. The Contractor may appeal such a determination under applicable appeal or claim procedures but the adjusted Contract Sum shall remain in effect pending the outcome.

§ 11.1.11 Termination of OCIP

Owner has the option to terminate any and all of the OCIP insurance coverage at any time. Owner shall notify Contractor, in writing thirty (30) days in advance of exercising this option, to terminate such insurance, and thereafter, Contractor and its Subcontractors shall obtain and maintain for the duration of the Work, the insurance as required by Owner. Cost of such insurance shall be reimbursable, provided Contractor furnishes satisfactory evidence to Owner of such insurance.

§ 11.1.12 Project Insurance Manual

Refer to the Project Insurance Manual for procedures on how to request Certificates of Insurance and how to report loss or damage that may be covered by the OCIP.

§ 11.2 CONTRACTOR PROVIDED INSURANCE

§ 11.2.1 CONTRACTOR PROVIDED INSURANCE (FOR SUBCONTRACTORS ENROLLED IN OCIP)

Prior to the commencement of construction of the Work, the Contractor shall cause to be obtained with insurers and in amounts acceptable to the Owner, insurance in the following forms:

§ 11.2.1.1 Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) per occurrence with respect to all vehicles used in the performance of the Work on or off the Site, whether owned, non-owned, leased, hired, assigned, or borrowed.

§ 11.2.1.2 Contractor's equipment insurance covering owned, non-owned, or leased equipment used in connection with the construction of the Work.

§ 11.2.1.3 Commercial crime insurance with a limit of one million dollars (\$1,000,000) which shall cover employees responsible to disburse funds to pay project costs against employee dishonesty, forgery or alteration, or computer fraud. This coverage is not required of subcontractors.

§ 11.2.1.4 For all off-site operations, General Liability insurance with a minimum combined single limit of two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate covering liability arising from operations performed away from the Project site, or from services performed for others, and for exposures not covered by the OCIP. The policy shall include coverage for any and all of the following: bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, and products and completed operations. Further, the policy shall include coverage for the hazards commonly referred to as XCU. The products and completed operations coverage shall extend for five (5) years past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provision.

§ 11.2.1.5 The insurance required by Section 11.2.1 shall remain in effect until the Owner has accepted its Certificate of Occupancy for the entire Work, and the Contractor and the Owner have agreed in writing that the Work is covered under insurance designed for the purpose of providing coverage for the accepted Work while occupied.

§ 11.2.1.6 The policies required by Section 11.2.1 herein shall be endorsed to include the Owner as well as its agents, officials, and employees as insureds and shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Owner, or their agents, officials or employees shall be excess and not contributory to insurance required by Section 11.2.1.

§ 11.2.1.7 The Contractor shall cause insurers providing the policies required by Section 11.2.1 to waive all rights of recovery against the Owner and its agents, officials and employees.

§ 11.2.1.8 Contractor shall provide, and cause subcontractors to provide, certificates of insurance from insurers acceptable to the Owner prior to commencement of the construction of the Work as evidence that policies providing

the required coverages, conditions and limits are in full force and effect. If a Contractor or Subcontractor is required by the specifications for their scope of work and/or their contract to furnish engineered drawings and calculations stamped by a qualified licensed design professional, the Contractor or Subcontractor and the licensed design professional must provide evidence of Professional Liability insurance. All certificates shall identify this Agreement and contain provisions that coverage afforded under the policies shall not be cancelled, terminated, reduced, or materially changed until after thirty (30) days prior written notice has been given to the Owner. Certificates of insurance and any notice of cancellation or material change should be addressed to Owner as follows: SenSys Health, Legal Department, 1441 N. 12th Street, Phoenix, AZ 85006

§ 11.2.1.9 The Owner reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.

§ 11.2.1.10 All insurance policies required by this Section 11.2.1 shall be obtained from a financially sound insurance company rated not less than B+ (Very Good) XII by A.M. Best Company, and be authorized to do business in the state where the Project is located.

§ 11.2.1.11 Costs of all insurance coverages required by Section 11.2.1 are the sole responsibility of the Contractor.

§ 11.2.1.12 The stipulation of insurance coverages in this Section 11.2.1 shall not be construed to limit, qualify, or waive any liabilities or obligations of Contractor, assumed or otherwise, under this Contract.

§ 11.2.1.13 Owner will provide the Builder's Risk coverage on this Project. Unless approved in writing by the OCIP provider, losses payable by this insurance are non-recoverable costs to the contractor through a change order. A per occurrence deductible of \$10,000 per claim shall be the responsibility of the Contractor or subcontractor causing the loss. The cost of the deductible may not be included in any change order to the Owner.

§ 11.2.2 CONTRACTOR PROVIDED INSURANCE (WITHOUT OCIP OR SUBCONTRACTORS NOT ENROLLED IN OCIP)
For subcontractors not enrolled in the OCIP (all subcontractors with contract values greater than thirty thousand dollars (\$30,000) must enroll in the OCIP and comply with Section 11.2.1) or if the Owner elects not to insure this Project under an OCIP, prior to the commencement of construction of the Work, the Contractor shall cause to be obtained with insurers and in amounts acceptable to the Owner, insurance in the following forms:

§ 11.2.2.1 Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of employees engaged in the construction of the Work, and Employers' Liability insurance with a minimum limit of one million dollars (\$1,000,000) for each accident. Evidence of qualified self-insured status shall also suffice for this Section 11.2.2.1.

§ 11.2.2.2 Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) per occurrence with respect to all vehicles used in performance of the Work on or off the Site, whether owned, non-owned, leased, hired, assigned or borrowed.

§ 11.2.2.3 Contractor's equipment insurance covering owned, non-owned, leased equipment used in connection with the construction of the Work.

§ 11.2.2.4 Commercial crime insurance with a limit of two hundred fifty thousand dollars (\$250,000) which shall cover employees responsible to disburse funds to pay project costs against employee dishonesty, forgery or alteration, or computer fraud. This coverage is not required of subcontractors.

§ 11.2.2.5 The insurance required by Section 11.2.2 shall remain in effect until the end of the Correction Period and at all times after that when the Contractor may be correcting, or removing and replacing defective Work and the Contractor and the Owner have agreed in writing that the Work is covered under insurance designed for the purpose of providing coverage for the accepted Work while occupied.

§ 11.2.2.6 The policy required by Section 11.2.2.2 herein shall be endorsed to include the Owner as well as its agents, officials, and employees as insureds and shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or

participated in by the Owner, or their agents, officials or employees shall be excess and not contributory to the insurance required by Section 11.2.2.2.

§ 11.2.2.7 The Contractor shall cause insurers providing the policies required by Section 11.2.2 to waive all rights of recovery against the Owner and its agents, officials and employees.

§ 11.2.2.8 Contractor shall provide, and cause subcontractors to provide, certificates of insurance from insurers acceptable to the Owner prior to commencement of the construction of the Work as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificates shall identify this Contract and contain provisions that coverage afforded under the policies shall not be canceled, terminated, reduced, or materially changed until after thirty (30) days prior written notice has been given to the Owner. Certificates of insurance and any notice of cancellation or material change should be addressed as follows: SenSys

Certificates evidencing the completed operation liability coverage will be required for five (5) years past the date the Owner accepts its Certificate of Occupancy for the entire Work.

§ 11.2.2.9 The Owner reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.

§ 11.2.2.10 All insurance policies required by this Section 11.2.2 shall be obtained from a financially sound insurance company rated not less than B+ (Very Good) XII by A.M. Best Company, and be authorized to do business in the state where the Project is located.

§ 11.2.2.11 Costs of all insurance coverage required by Section 11.2.2 are the sole responsibility of the Contractor.

§ 11.2.2.12 The stipulation of insurance coverages in this Section 11.2.2 shall not be construed to limit, qualify or waive any liabilities or obligations of Contractor, assumed or otherwise, under this Contract.

§ 11.2.2.13 Owner will provide the Builder's Risk coverage on this Project. Unless approved in writing by the Owner, losses payable by this insurance are non-recoverable costs to the Contractor through a change order. A per occurrence deductible of five thousand dollars (\$5,000) per each claim shall be the responsibility of the Contractor or subcontractor causing the loss. The cost of the deductible may not be included in any change order or billing to the Owner.

§ 11.3 SenSys LIABILITY INSURANCE PROGRAM (BLIP)

At any time prior to the start of the Work, Owner reserves the right and may elect to insure the general liability portion of this project under the SenSys Liability Insurance Program. If the Owner makes this election, Owner will notify the Contractor in writing.

§ 11.3.1 General Liability insurance will be provided under the SenSys Liability Insurance Program (BLIP) with a minimum combined single limit of two million dollars (\$2,000,000) each occurrence applicable to the Work and an annual aggregate limit of liability of four million dollars (\$4,000,000) applicable solely to the onsite construction of the Work. The policy shall include coverage for any and all of the following: bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, and products and completed operations. Further, the policy shall include coverage for the hazards commonly referred to XCU. The products and completed operations coverage shall extend for ten (10) years

past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provision. Excess liability will include \$25M in limits.

§ 11.3.2 All contractors on all tiers of construction will be covered under the policy and shall comply with program requirements outlined in the BLIP Insurance Manual provided during bid process and upon award of contract. This contract language must be included in all contracts issued to contractors on any tier of construction.

§ 11.3.3 Unless approved in writing by the BLIP provider, losses payable by this insurance are non-recoverable costs to the Contractor through a change order. A deductible of five thousand dollars (\$5,000) per claim shall be the responsibility of the Contractor or subcontractor causing the loss. The cost of the deductible may not be included in any change order or billing to the Owner.

§ 11.3.4 For all off-site operations, General Liability insurance with a minimum combined single limit of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate covering liability arising from operations performed away from the Project site, or from services performed for others, and for exposures not covered by the BLIP. The policy shall include coverage for any and all of the following: bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, and products and completed operations. Further, the policy shall include coverage for the hazards commonly referred to as XCU. The products and completed operations coverage shall extend for ten (10) years past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provision.

§ 11.3.5 If BLIP is not provided on this project, General Liability insurance with a minimum combined single limit of two million dollars (\$2,000,000) each occurrence applicable to the Work and an annual aggregate limit of liability of four million dollars (\$4,000,000) applicable solely to the construction of the Work. The policy shall include coverage for any and all of the following: bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, and products and completed operations. Further, the policy shall include coverage for the hazards commonly referred to as XCU. The products and completed operations coverage shall extend for ten years past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provision.

§ 11.3.6 If a Contractor or subcontractor is required by the Specifications for their scope of work and/or their contract to furnish engineering drawings and calculations stamped by a qualified licensed design professional, the licensed design professional must provide evidence of Professional Liability insurance.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 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.

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

§ 11.5.1 Builder's Risk Insurance

Owner has secured and will maintain Builder's Risk insurance with a limit of liability equal to the final completed value of the Work. The coverage shall be written on an all risk of direct physical loss of or damage to insured property damage basis and shall include coverage for flood, water damage, earthquake and earth movement.

This insurance shall cover at the Work construction site, at any temporary off-site storage location, and while in transit, any and all materials, equipment, machinery, tools, and supplies, including buildings, and all temporary structures at the construction site, to be used in or incidental to the fabrication, erection, testing, or completion of the Work.

This insurance shall not cover tools, machinery, plant and equipment, including spare parts and accessories, whether owned, loaned, hired, or leased, and property of a simi Jar nature not destined to become a permanent part of the completed insured project.

This insurance shall cover the insured property against all direct damage, except but not limited to, war and related causes, nuclear perils, infidelity of employees, mysterious disappearance, and ordinary wear and tear. The insurance may exclude the cost of making good any faulty workmanship, material, construction, or design, but is intended specifically to cover loss or damage arising as a consequence of these perils.

This insurance may also cover against consequential losses that may occur if there is a delay in the completion of the Work resulting from an insured peril. Unless approved in writing by the OCIP provider, losses payable by this insurance are non-recoverable costs to the Contractor through a change order. A deductible of five thousand dollars (\$5,000) per claim shall be the responsibility of the Contractor or subcontractor causing the loss. The cost of the deductible may not be included in any change order to the Owner.

§11.5.2 Rights of Insured Against Other Insured

To the extent damages are covered by the Builder's Risk policy, the Owner, Contractor, and subcontractor waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policies shall provide for such waiver of subrogation by endorsement or otherwise.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect 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 Contractors 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 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 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with 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 shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party and to the other party's partners, successor, assigns and legal representatives regarding covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 and except as set forth in the Agreement, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract, but has the right to examine any such documents and may adjust the Contract Sum and Contract Time for any additional required services.

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

§ 13.3 WRITTEN NOTICE

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 or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available 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.

§ 13.5 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 entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and Approvals as provided for in the Contract Documents. 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 Architect.

§ 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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction 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;
- .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 unless there is a bona fide dispute.
- .4

§ 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, 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 160 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' 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 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.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is in breach of a material provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as 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 in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this Section 14.4 shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of a notice of such termination for convenience, the Contractor shall immediately, in accordance with the instructions from the Owner, proceed with the performance of the following duties regardless of delay in determining or adjusting amounts due under this Section 14.4.

- .1 cease operation as specified in the notice;
- .2 place no further orders and enter into no further subcontracts for materials, labor services or facilities except as necessary to complete continued portions of the Contract;
- .3 terminate all subcontractors and orders to the extent they relate to the Work terminated;
- .4 proceed to complete the performance of Work not terminated; and
- .5 take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

§ 14.4.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of the termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits.

§ 14.4.4 The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the Owner has against the Contractor under the Contract, and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

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, 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

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later; provided, however, that the claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Architect and the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a claim. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.2. If a Claim is reserved, the resolution of Claims and the Dispute Procedures described in this Article 15 shall not commence until a written notice from the claimant is received by the Architect. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to claimant that will facilitate prompt verification and evaluation of the Claim.

§ 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. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If at any time the Contractor believes it has been delayed in the performance of the Work and wishes to make a Claim for an increase in the Contract Time, the Contractor must give written notice of the Claim to the Owner and Architect not more than ten business days after the cause of the delay occurs. The Contractor's Claim shall include a statement of the reasons for the delay, the time impact of the delay, an estimate of the cost to accelerate the Work to make up any time lost by the delay, and the probable effect of the delay on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 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, and had an adverse effect on the scheduled construction. Acceptable data for substantiating a claim for additional time due to abnormal weather conditions will be the records of the National Oceanographic and Atmospheric Administration (NOAA) for the prior ten year. In the absence of NOAA records for a specific Project site, upon mutual agreement, local official records will be the basis. Furthermore the effect of such abnormal weather must be demonstrated.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3 and 10.4 shall be referred to the Owner for a decision in consultation with the Architect. An initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered.

§ 15.2.2 The Owner, in consultation with the Architect, will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the Contractor, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the Contractor that the Owner is unable to resolve the Claim if the Owner and Architect lack sufficient information to evaluate the merits of the Claim.

§ 15.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from the Contractor or from persons with special knowledge or expertise who may assist Owner in rendering a decision.

§ 15.2.4 If the Owner requests the Contractor to provide a response to a Claim or to furnish additional supporting data, the Contractor shall respond, within ten days after receipt of such request or as mutually agreed to, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.1.0.4, 9.1.0.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 **If** a dispute arises out of or relating to this Contract or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties shall endeavor to resolve their Claims by mediation with a mutually agreed upon private mediator. The parties shall endeavor in good faith to settle the dispute in an amicable manner within 45 days of submission to mediation. The parties agree that if such mediation fails, the dispute will be settled by a court of competent jurisdiction unless the parties agree to participate in other alternative dispute resolution including arbitration.

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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