

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

## General Conditions of the Contract for Construction

[Draft Date April 20, 2021]

Dated for reference purposes as of the [ ] day of [ ] in the year Two Thousand [ ].

**for the following PROJECT:**

*(Name and location or address)*

As set forth in the applicable Work Order.

**THE OWNER:**

*(Name, legal status and address)*

[Amazon.com Services LLC] (or as otherwise set forth in the applicable Work Order)

c/o Amazon.com, Inc.

410 Terry Ave. N

Seattle, WA 98109-5210

Attn: Real Estate Manager

With a copy to:

[Amazon.com Services LLC]

c/o Amazon.com, Inc.

410 Terry Ave. N

Seattle, WA 98109-5210

Attn: General Counsel (Real Estate)

With an e-mail copy to:

global-lease-abstraction@amazon.com,

notifyreflegal@amazon.com,

na-realestate@amazon.com,

opsrelegalnotice@amazon.com, and

ops-legal-construction@amazon.com

**THE CONTRACTOR:**

[ ]

[ ]

[ ]

Attn: [ ]

**THE ARCHITECT:**

*(Name, legal status and address)*

As set forth in the applicable Work Order.

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**ADDITIONS AND DELETIONS:**

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

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For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

These General Conditions of the Contract for Construction (the "General Conditions") are made a part of that certain Agreement between the Owner and Contractor identified in the applicable Work Order (or, if no reference is made in such Work Order, the Agreement executed with these General Conditions) (the "Agreement"). For each Project, the Contract Documents consist of (i) the Agreement, (ii) these General Conditions, (iii) Drawings and Specifications identified in the applicable Work Order or Proposal, (iv) Addenda issued prior to execution of the Work Order, (v) the applicable Work Order or Proposal, (vi) other documents listed in the Agreement or the applicable Work Order, and (vii) Modifications issued after execution of the Agreement or the applicable Work Order. A Modification is (1) a written amendment to the Work Order 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 Owner or the Architect that does not increase costs or construction time, which if issued by the Architect has been approved in writing by the Owner. Unless specifically enumerated in the applicable Work Order, the Contract Documents do not include the advertisement or invitation to bid, instructions to bidders, request for proposals ("RFP") or request for qualifications ("RFQ"), sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

For each Project, the Contract Documents form the "Contract for Construction" or the "Contract." Except as provided to the contrary in the applicable Work Order or a Modification, the Contract represents the entire and integrated agreement between the parties hereto for the Project 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, including the Development Manager, 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

For each Project, the term "Work" means all reasonably and necessarily inferable construction and services required of the Contractor by the Contract Documents (including, without limitation, all work, labor, materials, tools, equipment, transportation, procedures, techniques, and supplies), whether completed or partially completed, and whether completed by the Contractor, Subcontractors, Sub-subcontractors, Suppliers, or any other entity for whom the Contractor is responsible under or pursuant to 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, including Final Completion of the Work in accordance with the Drawings and Specifications to achieve a complete and functioning Project in compliance with the Contract Documents. The Work may constitute the whole or a part of the Project, as described in the applicable Work Order.

#### § 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 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models

(including BIM models), sketches, drawings, specifications, and other similar materials whether in physical or digital formats.

*(Paragraphs deleted)*

§ 1.1.8 (Intentionally omitted).

### § 1.1.9 Prime Consultants

In addition to the Architect and its consultants, the Owner may retain other project consultants such as a structural engineer, a geotechnical engineer, a civil engineer, an interiors or tenant improvement architect, an interior designer or others, collectively referred to as "Prime Consultants." Upon Owner's notice to Contractor, such Prime Consultants shall have the authority provided the "Architect" under the Contract to clarify and interpret issues related to the portion of the work they are employed by the Owner to oversee and which do not increase the Cost of the Work or extend the Contract Time. All provisions of the Contract, though they may refer to the Architect only, shall be construed as also referring to the applicable Prime Consultants or the Development Manager where and when appropriate for Project administration purposes.

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

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity, voidness, illegality, or unenforceability of any provision of the Contract Documents shall not affect or invalidate the Contract or any remaining provisions, which shall continue to maintain their vitality and validity, and the Contract shall be construed as if the invalid, void, illegal, or unenforceable provision had never been a part of the Contract. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid, void, or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal, valid, and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 All obligations of Owner and Contractor hereunder not fully performed as of and intended to survive the termination of the Agreement will survive the termination of the Agreement for a period of three (3) years, including but not limited to, indemnification, confidentiality, lien, termination payment, damage to existing structure and property, and post Substantial Completion obligations.

§ 1.2.1.3 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- (a) Modifications issued after execution of the applicable Work Order,
- (b) The applicable Work Order and its Exhibits,
- (b) The Agreement, as amended, including its Exhibits,
- (c) These General Conditions,
- (d) Addenda, if any, with those of later date having precedence over those of earlier date,
- (e) Modifications to the Drawings and Specifications issued after execution of the applicable Work Order,
- (f) Specifications, Drawings, and Addenda issued prior to execution of the applicable Work Order,
- (g) Specifications and Drawings as noted in the applicable Work Order.

In the event of any conflict or discrepancy between or among different versions of the same Contract Document, the most recently issued version takes precedence over a previous version. In the case of any conflict or discrepancy between Contract Documents, the more stringent provision will control; provided that the Specifications shall govern as to materials, workmanship, performance, and installation; and Drawings shall govern as to location, arrangement, shape, or dimension.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Specifications are divided into sections for convenience only. Neither the Owner nor the

Architect are obliged to define the limits of any subcontract, and will not enter into work scope disputes between the Contractor and Subcontractors.

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

**§ 1.2.4** Execution of a Work Order by the Contractor is a representation by the Contractor that the Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work therein, to enter into the applicable Work Order, and to accomplish the Work for an amount not in excess of the GMP within the Contract Time provided for in the Contract Documents. The Contractor further represents and warrants that prior to execution of the applicable Work Order it has visited and examined the Project site, examined all physical, legal, and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same, including (i) the nature, location and character of the Project site, including all observable structures and obstructions thereon, both natural and man-made; (ii) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (iii) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the GMP and Contract Time required by the Contract Documents. THE FAILURE OF THE CONTRACTOR TO FULLY ACQUAINT ITSELF WITH ANY PROVISION OF THE CONTRACT DOCUMENTS, AND ITEMS (i), (ii) AND (iii) IN THIS SECTION 1.2.4, SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, AND WITHIN THE GUARANTEED MAXIMUM PRICE AND THE CONTRACT TIME AS PROVIDED FOR IN THE CONTRACT DOCUMENTS.

**§ 1.2.5** Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in any place, or an inconsistency or ambiguity between the Specifications and Drawings, or internally within the Specifications or Drawings arises, then it shall be the duty of the Contractor to make written inquiry (a request for information) ("RFI") of the Architect and Owner as to what was intended. To avoid potential delays, the Contractor shall ensure that it reviews the Specifications and Drawings for any inconsistencies and ambiguities sufficiently in advance of performing the part of the Work described therein so that an RFI is issued as soon as possible before that part of the Work is required to be performed. No increase in the GMP or Contract Time will be granted for costs or delays resulting from the failure of the Contractor to timely issue an RFI.

If any item or material shown on the Drawings is omitted from the Specifications, or vice-versa (except when the Drawings and Specifications clearly exclude such omitted item) and when such item or material is clearly required to complete the detail shown or specified, the Contractor shall furnish and install such item or material of the type and quality established by the balance of the detail shown and specified at no increase to the GMP. If there is any conflict as to the quantity or quality of material or the level of service, the Contractor shall provide the greater quantity or better quality of materials and the highest level of service at no increase to the GMP.

**§ 1.2.6** Where a typical or representative detail is shown on the Drawings, this detail shall constitute the standard for workmanship and material throughout the corresponding parts of the Work.

**§ 1.2.7** Any summary of Work as outlined in the Specifications shall not be deemed to limit the Work required by the Contract Documents. The Contractor and each Subcontractor shall be responsible for thoroughly examining all Drawings, including all details, plans, elevations, sections, schedules, and diagrams, as well as, all measurements and dimensions, for each particular type of Work and coordinating the Work described in the Drawings with the related Specifications. The Contractor shall also be responsible for determining the exact scope of work for each type of work and for checking and rechecking cross-references to any work excluded from any division. The GMP is deemed to be based on a complete installation. When additional details or instructions are required to complete the Work, the Contractor is deemed to have accounted for completion of such work in the GMP, consistent with the obligations set forth in Article 5 of the Agreement.

### **§ 1.3 Capitalization**

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

## § 1.4 Interpretation

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

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

§ 1.5.1 The Owner (unless otherwise indicated) shall be deemed the owner of the Instruments of Service, including the Drawings and Specifications, and will, as among the Contractor, Architect and Owner, retain all common law, statutory, and other reserved rights including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and Suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's copyrights or other reserved rights. To the extent the Owner-Architect Agreement is inconsistent with this Section 1.5.1, the Owner-Architect Agreement controls as between the Owner and Architect. As between the Owner and Contractor, this Section 1.5.1 shall control.

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

## § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Sections 10.2.9 and 15.1.3.1, where the Contract Documents require a party to notify or give notice to the other party, such notice shall be provided in writing delivered by (a) personal delivery, (b) certified U.S. mail, with postage prepaid and return receipt requested, (c) overnight courier service, or (d) e-mail transmission, with a verification copy sent within one (1) business day by any of the methods set forth in clauses (a), (b), or (c) above, to the designated representative of the party to whom the notice is addressed, as set forth in the applicable Work Order. All notices to the Owner must be addressed to the attention of the General Counsel. A party may change its notice address at any time by delivery of notice to the other party.

*(Paragraph deleted)*

## § 1.7 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## § 1.8 Building Information Models Use and Reliance

The Owner reserves the right to require the Contractor to include terms necessary to implement BIM services for the Work through incorporation of a modified AIA E203-2013, Building Information Modeling and Digital Data Exhibit, or similar exhibit, in the applicable Work Order sufficient to establish protocols for the development, use, transmission, and exchange of BIM models. The Contractor shall include any as-built BIM models in the records delivered to the Owner pursuant to Section 3.12.12. Use of BIM does not relieve the Contractor of any of its duties and responsibilities to the Owner under the terms of the General Conditions or otherwise.

## § 1.9 CONFIDENTIALITY

The Contractor will comply with the terms of any nondisclosure agreement executed by the Contractor in favor of the Owner (or the Owner's affiliates) ("NDA"). The Contractor and its agents and representatives (i) will protect and keep confidential the existence of the Contract (including, without limitation, all Work Orders), its terms and conditions and any other information obtained from the Owner in connection with the Contract or related to the Work that is identified as confidential or proprietary or that, given the nature of such information or the manner of its disclosure, reasonably should be considered confidential or proprietary (including but not limited to all information relating to the Owner's technology, customers, business plans, marketing activities, and finances), (ii) will use such information only for the purpose(s) for which it was originally disclosed and in any case only for the purpose of fulfilling its obligations under the Contract, (iii) will protect and keep confidential under the NDA all Phase 1 environmental reports provided to the Contractor related to the Work, and (iv) will return all such information to the Owner promptly upon the termination of the Contract. All such information will remain the Owner's exclusive property, and the Contractor will

have no rights to use such information except as expressly provided herein. The Contractor will not use any trade name, trademark, service mark, logo or commercial symbol, or any other proprietary rights of the Owner or any of its affiliates in any manner without prior written authorization of such use by a Vice President of the Owner. The Contractor will not issue press releases or publicity relating to the Project, the Owner, or the Contract or reference the Owner or its affiliates in any brochures, advertisements, client lists, or other promotional materials. The Contractor shall cause its Subcontractors, subconsultants, Suppliers, and Sub-subcontractors to comply with the provisions of this Section 1.9 and for such purposes all references herein to "Contractor" shall mean the applicable Subcontractor, subconsultant, Supplier, or Sub-subcontractor. At the Owner's request, the Contractor shall require Subcontractors, subconsultants, Suppliers, and Sub-subcontractors to execute and deliver to the Owner nondisclosure agreements in a form provided by the Owner.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the applicable Work Order and is referred to throughout the Contract Documents as if singular in number. The Owner shall appoint an individual named in the applicable Work Order as its representative for the Project ("Owner's Representative"). Notwithstanding anything to the contrary in the Contract, no person or entity may bind the Owner in any manner with respect to the Contract other than (i) the Owner's Representative; (ii) the president or a Vice President of the Owner, and (iii) any other representative of the Owner that is expressly granted such authority in the applicable Work Order or other document executed by the Owner (and then only to the extent of such grant). Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" includes its successors in interest. The Owner may designate an entity in the applicable Work Order or Contract Documents as the "Development Manager" as its day-to-day representative, but the Development Manager is not authorized to bind Owner or act as Owner's agent. The Owner may change the Development Manager at any time upon notice to Contractor.

*(Paragraph deleted)*

**§ 2.1.1.1** The Owner's designation of the Development Manager is not intended to create any contractual relationship between the Contractor and the Development Manager, nor confer any third-party beneficiary rights upon the Contractor with relation to the Development Manager. Neither the presence of, nor the monitoring or observations of the Development Manager or the Owner's Representative shall limit or reduce the Contractor's liability for defects in the Work, and it is understood that the Contractor will be solely and completely responsible for the Work, compliance with the Contract Documents, and the working conditions on the Project site, including safety, during the performance of the Work.

**§ 2.1.1.2** The day-to-day communications between the Owner and Contractor, including all written authorizations and written communications shall be directed to the Owner and, if one is designated in the applicable Work Order, the Development Manager.

**§ 2.2** (Intentionally omitted).

*(Paragraphs deleted)*

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. If the Contractor becomes aware of any such approvals or permits that are the Owner's responsibility, the Contractor shall promptly notify the Owner and Architect of the requirement.

**§ 2.3.2** The Owner shall retain an architect, engineer, or professional consultant, lawfully licensed in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the applicable Work Order and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** (Intentionally omitted).

**§ 2.3.4** Unless otherwise set forth in an applicable Work Order, the Owner shall furnish, upon the Contractor's reasonable written request and to the extent reasonably accessible and in the Owner's possession, surveys describing physical characteristics, legal limitations and utility locations for the Project site, and a legal description of the Project

site. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner, but only to the extent such reliance is reasonable and not contrary to other information known by the Contractor, and shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall carefully review all information furnished by the Owner for apparent discrepancies. The Contractor will not rely on information in the survey if it is reasonably uncertain of the accuracy of the information in that survey. The Contractor shall immediately notify the Owner of any possible errors, inconsistencies, omissions, or inaccuracies in the survey.

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

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one (1) copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.3.7** The Owner's participation in the Project shall in no way relieve the Contractor of its duties and responsibilities under the Legal Requirements or the Contract Documents.

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

If, after notice from the Owner and seven (7) days to cure (or shorter period in cases of emergency where immediate response is required to protect against actual or potential damage or injury to people or property), 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 fails to carry out Work in accordance with the Contract Documents, or disregards the instructions of the Owner or the Architect based on the requirements of the Contract Documents, then 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; provided however, that the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise its right for the benefit of the Contractor or any other person or entity except to the extent required by Section 6.1.3. Any such order issued by the Owner which is determined to have been inappropriate shall not be deemed a breach of the Contract by the Owner but shall be deemed to be a suspension for the convenience of the Owner.

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

**§ 2.5.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents (including maintaining the construction schedule) and fails within a seven- (7-) day period (or shorter period in cases of emergency where immediate response is required to protect against potential damage or injury to people or property) after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven- (7-) day period (or shorter period in cases of emergency), without prejudice to other remedies the Owner may have, correct such default or neglect and/or undertake completion of all or a portion of the Work. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from the GMP and payments then or thereafter due the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for any additional services made necessary by such default, neglect, or failure. The right of the Owner to correct the Work pursuant to this Section shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of others. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within fifteen (15) days after request therefor. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

**§ 2.5.2** The Owner may require the Contractor to furnish from time to time written evidence that the Contractor can fulfill the requirements of the Contract Documents (including maintaining the construction schedule). Failure of the Contractor to provide such adequate assurances within a reasonable time, but in no case longer than fourteen (14) days after Owner's request, shall entitle the Owner to suspend the Work, carry out the Work, and/or terminate the Contract.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

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

Contractor or the Contractor's authorized representative. The term "Contractor Parties" means the Contractor and the Subcontractors, Sub-subcontractors, and Suppliers, and anyone directly or indirectly employed by any of them or anyone for whose acts they may otherwise be liable.

§ 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 its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner, the Architect, or the Development Manager in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor shall be and operate as an independent contractor in the performance of the Work and shall not have the authority to enter into agreements or undertakings on behalf of the Owner. The Agreement will not be construed to create a partnership, joint venture, agency, employment, fiduciary, or any other relationship between the Owner and the Contractor. The Contractor will not represent itself to be an employee, representative, or agent of the Owner.

§ 3.1.5 The Contractor shall forward communications to the Owner, the Architect, the Development Manager, and the Owner's Representative as called for herein.

§ 3.1.6 Until the earlier of (i) the Owner commencing operations within the Work site, which shall mean shipping product from the site to customers or to other facilities of the Owner and shall not mean construction or installation of the Owner's property, receiving products, or normal test shipping of product, or (ii) Final Completion, in no event shall the Owner have control over, charge of, or any responsibility for the construction means, methods, techniques, sequences or procedure, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

§ 3.1.7 To the extent mutually agreed between the Owner and the Contractor, some elements of the Work may be designed by the Contractor or its Subcontractors or Suppliers in accordance with Section 10.4.1 of the Agreement. Such design-build services shall utilize licensed design professionals as required by law and good practice. If a Design Responsibility Matrix is included in a Work Order, the Owner and Architect shall work with the Contractor to keep current a Design Responsibility Matrix that describes the separate design responsibilities of the Architect, Prime Consultants and the Contractor. The Design Responsibility Matrix, if any, shall be made a part of the Contract by Work Order.

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

§ 3.2.1 By executing the applicable Work Order, the Contractor warrants that it has closely inspected the Project site as well as the conditions of adjacent properties and has recorded to its satisfaction the observable physical conditions of existing properties, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents. Claims for additions to the Contract Time or the GMP because of the failure of the Contractor to adequately familiarize itself with conditions at the Project site will not be permitted.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work and continuously during the execution of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Sections 2.3.4 and 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project site affecting it and shall carefully compare and verify such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly notify the Owner and the Architect of any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner and the Architect may require, but in any event in sufficient time so as not to delay the Work. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with the Legal Requirements, but the Contractor shall promptly notify the Owner and the Architect of any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner and the Architect may require. Such relief of responsibility for knowledge of the Legal Requirements does not extend to the Contractor or its Subcontractors or Suppliers when providing design-build services or the design-build systems furnished by the Contractor directly or any temporary works or facilities required for the performance of the Work. The Contractor shall not be liable to the Owner for damage resulting from errors, inconsistencies, or omissions in the Contract Documents, unless the Contractor recognized such error, inconsistency, or omission and fails to notify the Owner and the Architect. If the Contractor performs any construction activity knowing it involves an error, inconsistency or omission in the Contract Documents, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor may make a Claim as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for nonconformities of the Contract Documents to the Legal Requirements unless the Contractor recognized such error, inconsistency, omission, or difference and failed to notify the Owner and Architect.

§ 3.2.5 The Contractor hereby specifically acknowledges and declares that upon agreement as to the GMP for the Work, such agreement constitutes a representation by the Contractor that to the best of its knowledge that the Drawings, Specifications and addenda do not vary with the Legal Requirements. The Contractor further acknowledges that, having carefully examined all Drawings, Specifications, and other documents, to the best of its knowledge there are no material discrepancies among the Contract Documents.

### § 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 in accordance with the Contract Documents, all Legal Requirements, and the construction standards and practices for the industry. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and coordinating all portions of the Work under the Contract, unless the Contract Documents give specific instructions otherwise concerning these matters. The Contractor agrees to cooperate and coordinate with any Separate Contractor, including reasonable cooperation in scheduling the use of shared items such as freight elevators, cranes and loading areas.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor Parties 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. The Contractor has the responsibility to ensure that all Suppliers, Subcontractors, and Sub-subcontractors, and their agents and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate the Work with that of all others on the Project including deliveries, off-loading, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with the Owner and the Architect and all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.3.4 The Contractor shall have the responsibility to coordinate the Work with the utility service providers, municipal and/or off-site contractors related to the Project and, in the absence of other special provisions of Contract Documents to the contrary, shall be required to coordinate with said entities the physical street/right-of-way work and connection to the structures and/or extensions from the structures to the off-site and/or on-site utilities so that the Work

is properly sequenced and functional for the intended use and purpose thereof. Such coordination and supervision costs incidental thereto, are incidental to the Work and part of the GMP.

§ 3.3.5 The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all Work without delay or revision. The Contractor shall establish and maintain existing lot lines, restrictions and benchmarks. The Contractor shall establish and maintain all other lines, levels, and benchmarks necessary for execution of the Work and take necessary steps to prevent dislocation or destruction.

#### § 3.4 Labor and Materials

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

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

§ 3.4.2.1 The Contractor must submit to the Owner and the Architect all information required by the Specifications relating to substitutions. In addition to information required by the Specifications, the Contractor shall submit to the Owner and the Architect information as to (i) the adjustment in accordance with the Contract Documents in the GMP, in the event the substitution is acceptable and (ii) the adjustment, if any, in the Contract Time, and any Milestone Dates if included in the construction schedule in the event the substitution is acceptable.

§ 3.4.2.2 Substitutions and alternates may be rejected without liability to the Owner or the Architect.

§ 3.4.2.3 The Owner shall be entitled to any cost savings through a deductive adjustment of the GMP in the amount of the cost savings as a result of approvals of any substitution of products or major components or systems.

§ 3.4.2.4 If the Contractor makes requests for substitutions, the Contractor thereby: (i) represents that the Contractor has personally investigated the proposed substitute product and determined that it is either equal or superior in all respects to that specified in the Contract Documents, and that it is compatible with all substrates and related work (as used in this sentence, "superior" could mean advantageous to the Owner in other ways, such as lower cost, provided such advantages have been accepted by the Owner and are without reasonable objection from the Architect); (ii) represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified in the Contract Documents; (iii) certifies that the cost data presented is complete and includes all related costs under the Contract except the Architect's design costs and waives all claims for additional costs related to the substitution which subsequently becomes apparent; and (iv) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 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. The Owner may require in writing that the Contractor remove from the Work any employee or other person that the Owner considers objectionable. However, neither this authority of the Owner nor a decision made in good faith to exercise or not to exercise such authority shall create a duty or responsibility of the Owner to the Architect, the Contractor, Subcontractors, or Sub-subcontractors, or their agents, employees, or other persons performing portions of the Work, or to any other person. To the extent permitted by the Legal Requirements and at the Owner's expense and not as a Cost of the Work, the Contractor's personnel and the Subcontractors' and Sub-subcontractors' personnel shall be subject to background checks, drug tests, and other procedures and requirements requested by the Owner.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and other individuals associated with the Project or the Work.

§ 3.4.5 The Contractor shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its judgment as an experienced contractor to adopt and implement policies and practices designed to avoid

work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony.

### **§ 3.5 Warranty**

**§ 3.5.1** In addition to any other warranty provisions contained in the Contract Documents, the Contractor warrants to the Owner 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 performed in a skillful and workmanlike manner, free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. All Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved or authorized, will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by Owner abuse, alterations to the Work not executed by the Contractor, improper or insufficient Owner maintenance, improper Owner 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. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents.

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

**§ 3.5.3** Materials shall conform to manufacturer's standards in effect at the date of execution of the applicable Work Order and shall be installed in strict accordance with manufacturer's directions. For all Work items, including those covered by an express warranty in the Specifications, the Contractor shall require the applicable Subcontractor or Sub-subcontractors performing the Work or installing the required product to provide the warranties required by the Specifications.

**§ 3.5.4** The Contractor shall cause warranties from Suppliers, equipment sellers, or manufacturers, and from Subcontractors or Sub-subcontractors furnishing materials, equipment, or labor for the Work to be made jointly to the Owner and the Contractor. The Contractor will execute any documents or take such action as may be necessary to ensure that the Owner receives the benefits of the warranties from Subcontractors, Sub-subcontractors, and Suppliers. If no express warranty is provided in the Specifications, the Contractor shall obtain and furnish to the Owner fully executed warranties from all Subcontractors, Sub-subcontractors, and Suppliers. The Contractor shall be responsible for enforcing any and all warranties given by Subcontractors, Sub-subcontractors, and Suppliers to the extent enforceable by the Contractor for the Owner's benefit. The Contractor agrees to assign to the Owner at Substantial Completion any and all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties. If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one- (1-) year period following Substantial Completion, referred to in Section 12.2. The applicable Work Order may include a list of any extended warranties required by the Owner, or a reference to where in the Contract Documents a list of such extended warranties can be found.

**§ 3.5.5** Notwithstanding the foregoing assignment, prior to final acceptance of the Project by the Owner, the Contractor shall deliver to the Owner via the Architect three (3) bound volumes of all guarantees and warranties on material furnished by all manufacturers and Suppliers to the Contractor and all of its Subcontractors and Sub-subcontractors. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed. The documentation must also clearly describe proper operational and maintenance activities required to sustain said warranties. The guarantees and warranties herein shall not be construed to modify or limit in any way any rights or actions which the Owner may otherwise have against the Contractor or anyone else by law or statute or in equity.

### **§ 3.6 Taxes**

The Contractor may charge and the Owner will pay applicable federal, state, county, city, municipal, or local sales, consumer, use and similar taxes the Contractor is legally obligated to charge 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 ("Taxes") provided that such Taxes are stated on the original invoice that the Contractor provides to the Owner and the Contractor's invoices state such Taxes separately and meet the appropriate tax requirements for a valid tax invoice. The Owner may provide the Contractor an exemption certificate acceptable to the

relevant taxing authority, in which case the Contractor shall not collect the Taxes covered by such certificate, and if the GMP assumed that such Taxes would be collected, the GMP shall be reduced by the amount of such Taxes. The Contractor will be solely responsible for all other taxes or fees (including interest and penalties) arising from the Contract and Work. The Owner shall maintain the right to deduct or withhold any taxes that the Owner determines it is obligated to withhold from any amounts payable to the Contractor under the Contract, and payment to the Contractor as reduced by such deductions or withholdings will constitute full payment and settlement to the Contractor of such amounts. Throughout the term of the Contract, the Contractor will provide the Owner with any forms, documents, or certifications as may be required for the Owner to satisfy any information reporting or withholding tax obligations with respect to any payments under the Contract.

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

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

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

§ 3.7.3 Except as provided in Section 3.2.3 for design-build services and systems, it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with the Legal requirements. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Owner and the Architect, and necessary changes shall be accomplished by appropriate Modification. Such relief of responsibility for ascertaining compliance with the Legal Requirements does not extend to the Contractor or its Subcontractors, Sub-subcontractors, or Suppliers when providing design-build systems or the design-build systems furnished by the Contractor directly.

*(Paragraphs deleted)*

§ 3.7.4 If the Contractor performs Work (including, without limitation, the installation of any materials or equipment) knowing it to be contrary to the Legal Requirements, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction that would otherwise be incurred (including fines and penalties).

### § 3.7.5 Concealed or Unknown Conditions

Subject to the limitations and conditions established herein, if the Contractor encounters conditions at the Project 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 five (5) days after first observance of the conditions. Failure to provide such notice shall conclusively bar any Claim related to such alleged condition. The Architect, with assistance of other Prime Consultants and in consultation with the Owner, will promptly investigate such conditions and, if the Owner and the Architect determine 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, the Contractor may request an equitable adjustment in the GMP or Contract Time, or both in accordance with Articles 7 and 8 and/or other provisions of the Agreement. In response to such request the Owner may, in its sole discretion, terminate the Contract for convenience in accordance with Section 14.4. If the Owner and the Architect determines that the conditions at the Project 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 and the Architect shall promptly notify the Contractor, stating the reasons. If the Contractor disputes such determination or recommendation, the Contractor may proceed as provided in Article 15. Claims shall not be allowed in connection with a concealed or subsurface condition that does not differ materially from those conditions disclosed or discovered by (a) prior inspections and reviews by the Contractor for the Contract; (b) inspections and reviews that the Contractor had the opportunity to make in accordance with industry standards in connection with the Project; or (c) the Contract Documents.

§ 3.7.6 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 immediately notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly commence an investigation of the alleged human remains or existence of burial markers, archaeological sites or wetlands. Upon confirmation of such conditions not indicated in the Contract Documents, the Owner shall promptly take such action as the Owner deems reasonably 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 GMP and Contract Time arising from the existence of such remains or features may be made as provided in Article 15. In response to such request the Owner may, in its sole discretion, terminate the Contract for convenience in accordance with Section 14.4.

### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the GMP all Allowance amounts 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 An Allowance is a stated amount included in the GMP for a specific scope of the Work that at the time the Allowance amount is established, is not sufficiently designed or specified to allow an accurate cost estimate. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Project site and all required Taxes paid on such items at the time of purchase, less applicable trade discounts, and the cost of labor for installation;
- .2 Contractor's costs for overhead, profit, and other expenses contemplated for stated Allowance amounts shall be included in the GMP but not in the Allowances;
- .3 Upon final determination of the actual cost of an Allowance amount, the Owner and the Contractor shall promptly enter into a Change Order to appropriately adjust the GMP to reflect the amount, if any, by which such actual cost exceeds or is less than the stated Allowance amount. In no event shall any unused Allowance amount be allocated to another category of the Work;
- .4 If Work covered by an Allowance is on-going over the course of the Project, the Contractor shall provide the Owner a monthly update of all Allowance expenditures and forecast of projected savings or over-run in the Allowance sum; and
- .5 If Contractor estimates, expects, or projects an over-run on any Allowance item, the Contractor shall immediately provide written notice of such estimated, expected, or projected over-run to the Owner, Owner's Representative, and the Development Manager, if any, which notice shall include backup documentation for the overage (e.g., subcontractor or supplier bids, or related labor and equipment reports), and any other documentation reasonably requested by the Owner.

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

§ 3.8.4 Where Unit Prices are established, the price includes furnishing, fabrication, installation, and product waste of such items by the Contractor in the required quantity.

### § 3.9 Project Manager and Superintendent

§ 3.9.1 Unless otherwise stated in an applicable Work Order, the Contractor shall employ a competent Project Manager and Superintendent satisfactory to the Owner and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall be in charge of all construction operations. The Project Manager and Superintendent shall represent the Contractor, and communications given to the Project Manager or Superintendent shall be as binding as if given to the Contractor. The Superintendent shall devote full-time attention to the requirements of the Project until Substantial Completion is achieved.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed Superintendent and Project Manager. Within fourteen (14) days of receipt of the information, the Owner or the Architect may notify the Contractor, stating whether the Owner has reasonable objection to the proposed personnel.

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

§ 3.9.4 The Superintendent shall keep a daily journal describing in detail all construction activity, weather conditions, persons entering the Project site, Subcontractors and Sub-subcontractors working on the Project site, number of workers, equipment on site, deliveries, Work accomplished, problems encountered, and all other information important to the construction process and as the Owner may reasonably require. The daily journal shall be available at all times to the Owner and Architect, and upon request, copied in its entirety and delivered to each. All photos/videos and all other records documenting progress or quality of Work shall be available for copy by the Owner and Architect upon request.

§ 3.9.5 The Project Manager identified in the applicable Work Order shall be the principal contact person for the Contractor and shall have primary responsibility for coordinating and supervising all services and work performed by the Contractor under the Contract. The Project Manager shall participate in all Project meetings and sign all Change Orders, Applications for Payment, and Certificates of Substantial Completion and Final Completion to indicate its review and approval thereof.

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

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule Milestone Dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity and the activities of the Contractor, Subcontractors, and Suppliers at all levels; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.1.1 The construction schedule shall utilize scheduling software acceptable to the Owner and shall clearly show all activities, durations, predecessors and successors with related sequencing logic, critical path activities, Float, areas of responsibility, and any other pertinent information deemed necessary by the Owner. The construction schedule shall not exceed the required date of Substantial Completion and the required date of Final Completion as established in the applicable Work Order. The construction schedule shall provide for expeditious and practicable execution of the Work. The construction schedule shall not be modified or extended without the prior approval of the Owner in each instance. If the construction schedule is not available to be included as an exhibit to the applicable Work Order, the Contractor shall work diligently to provide the construction schedule to the Owner for review and approval, subject to Section 3.10.1.4, as soon as reasonably practicable.

§ 3.10.1.2 The construction schedule shall be of a critical path method type, acceptable to the Owner and Architect, that shall also (i) provide a graphic representation of all activities and events that will occur during the performance of the Work; (ii) identify each phase of construction and occupancy; (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents; and (iv) include time loss for Normal Expected Weather whether shown in the Contractor's logic and durations or not. The schedule shall be regularly updated by the Contractor to reflect Project progress and conditions and any such updates shall be promptly provided to the Owner in electronic and hard copy.

§ 3.10.1.3 The construction schedule shall be reviewed on a weekly basis and updated monthly for submittal with the Application for Payment. Each updated construction schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original construction schedule. If any construction schedule submitted sets forth a date for achieving Substantial Completion or Milestone Dates beyond the dates required by the Contract Documents and as may be extended pursuant to the Contract Documents, then the Contractor shall submit to the Owner for its review and approval a narrative description of the means and methods which the Contractor proposes to employ to expedite the progress of the Work to achieve Substantial Completion by the required date of Substantial Completion or the Milestone Dates.

§ 3.10.1.4 The Owner's review, comment and/or approval of any schedule submittal shall not transfer any of the Contractor's responsibilities to the Owner or relieve the Contractor of any of its obligations. The Contractor alone shall remain responsible for the work flow and schedule logic, how early to start activities, adjusting forces, equipment, and work schedules to ensure completion of the Work within the time(s) specified in the Contract Documents. Upon review and approval by the Owner of the Milestone Dates, if any, the construction schedule shall be

deemed part of the Contract Documents. If not approved for reasonable cause, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted 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 anticipated probable delays. The accepted construction schedule shall be updated by Contractor as necessary to reflect actual conditions as set forth in Section 3.10.1 or updated upon request by the Owner. In the event that any such updated schedule indicates any delays due to no fault of the Owner, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any such updated schedule constitute an adjustment in the Contract Time or the GMP unless any such adjustment is approved in writing by the Owner and authorized pursuant to Change Order or Construction Change Directive.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's and the Owner's approval. The submittal schedule shall (i) be coordinated with the construction schedule, and (ii) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in GMP or extension of Contract Time based on the time required for review of submittals. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies or review of any required deferred submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect, which shall not exceed the Contract Time as may be amended only by Change Order. The Contractor shall promptly notify the Owner and Architect of any proposed changes in the construction schedule or of any event which could delay performance or supplying of any item of the Work and shall indicate the expected duration of the delay, the anticipated effect of the delay on the construction schedule and the action being taken to correct the delay situation.

**§ 3.10.3.1** The Contractor shall meet the Contract Time, modified only by executed Change Orders. The Contractor shall provide sufficient material, equipment, and labor to meet the completion times in the schedule. All work not in the critical path at the commencement of the Project shall be scheduled and completed so as not to effect or delay the specific work or the Project. Non-critical path work not completed as scheduled or completed out of sequence shall not be the basis of a claim for delay or damages.

**§ 3.10.3.2** If the Contractor falls behind the schedule, or if the Work is delayed due to Normal Expected Weather or any other cause other than those described in Section 8.3.1, the Contractor shall take such steps as may be necessary to improve progress and otherwise eliminate or minimize such delays and to comply with the construction schedule. Such steps may include an increase in: (i) the number of construction workers, equipment, materials; (ii) in the number of shifts; (iii) use of overtime operations; (iv) supplement any lagging crew or sub-trade; and (v) re-sequencing Work. The Contractor shall submit to the Owner and Architect such recovery schedule or schedules to demonstrate the manner in which the agreed rate of progress will be regained. If the Contractor desires or is required to carry on Work at night or outside the normal working hours, the Contractor must obtain approval from the appropriate jurisdiction. The cost required to bring the Project back on schedule when the Project is delayed or behind schedule shall not increase the GMP and Contractor shall not in such event be entitled to claims for loss of efficiency, acceleration, trade stacking or other impact damages, except only as may be allowed pursuant to Section 8.3.

**§ 3.10.4** The Contractor's overall schedule shall include and accommodate for time lost due to seasonal weather conditions that typically occur in the area in which the Project is located over the duration of the Project, as determined using historical weather data available from the National Oceanic Atmospheric Administration, including rain, snow, ice, hail, wind, or other extreme conditions that might impact critical-path activities and prevent Work from being performed ("Normal Expected Weather"). The Contractor shall notify the Owner of any days (together with dates, description of work activities impacted, *etc.*) which it claims are outside or beyond the Normal Expected Weather and impacted the critical path at the next construction meeting, shall review and justify the assertion to the Owner, and may (if appropriate) submit a Claim in accordance with Articles 8 and 15. Conditions outside or beyond Normal Expected Weather will constitute an Excusable Delay only if critical-path activities are negatively impacted.

**§ 3.10.5** In the event the Work has not progressed or reached the level of completion required by the Contract Documents, unless excused pursuant to Section 8.3, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction.

- .1 The Contractor shall not be entitled to an adjustment in the GMP in connection with corrective measures required by the Owner under or pursuant to this Section 3.10.5.
- .2 The Owner may exercise its rights under 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 Project completion date or dates set forth in the applicable Work Order.

**§ 3.10.6** During the progress and performance of the Work, the Contractor shall attend and participate in weekly status meetings at the Project site (unless another location is specified by the Owner) scheduled by the Owner or the Architect to review progress of the Work, to discuss the Contractor's progress reports, to obtain the necessary Owner's or Architect's approval and generally keep the Owner and Architect informed and involved in the decision-making process. At each Project status meeting, the Contractor must present an updated four- (4-) week progress schedule which clearly updates and identifies the progress of the Project. The Contractor shall furnish to the Owner and the Architect written minutes of each meeting within five (5) days thereafter.

### **§ 3.11 Documents and Samples at the Project Site**

**§ 3.11.1** The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The location of all new and existing piping, valves, conduit, cabling, and utilities as located during the course of construction shall be appropriately marked until the actual field location dimensions and coordinates are incorporated on the as-built drawings, and mechanical and electrical deviations and changes shall be included. The Contractor shall note on the as-built drawings any changes made to the building enclosure design documents during construction. The documents shall include all architectural, mechanical, electrical, structural, and civil as-built drawings, whether changes occur or not. These documents, as well as the approved permit set of plans, shall be available to the Owner and the Architect at the Project site and reviewed with them on a monthly basis. Upon Final Completion of the Work, the Contractor shall transfer all as-built information in a clear and legible manner as described in the Contract Documents and in compliance with all requirements of local governmental entities, shall certify that these documents reflect complete and accurate "as-built" conditions and shall deliver (i) a paper copy of the documents as well as the approved permit set of plans in good condition, (ii) the approved permit set of plans, and (iii) the as-built documents, Shop Drawings, Specifications, Addenda, maintenance manuals and warranties to the Owner in accordance with the provisions of the Contract Documents. Satisfactory maintenance of up-to-date as-built drawings on a monthly basis will be a requirement for approval of progress payments.

**§ 3.11.2** Copies of the approved plans and permits shall be forwarded to the Contractor upon receipt. The Contractor shall maintain and keep such documents in original condition at the Project site at all times. Upon Final Completion, the Contractor shall deliver all original approved plans and permits to the Owner, including copies of the signed-off permits which the Contractor and/or its Subcontractors have obtained.

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

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

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

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

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

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect (and if requested, with copies to the Owner), Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Owner and the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and frequency and in such sequence and flow rate consistent with the submittal schedule as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor shall mark all submittals as reviewed for compliance with the Contract Documents and approved by the Contractor prior to submitting them to the Architect indicating that the Contractor has satisfied its responsibilities under the Contract Documents for review of the submittal. Submittals not bearing such mark and Contractor's indication of approval may be returned without action, which will not constitute an Owner-caused delay to the Contractor. At the time of submission, the Contractor shall notify the Owner and the Architect of any deviation in the Shop Drawings, Product Data, or Samples from the requirements of the Contract Documents. So far as practicable, each Shop Drawing or Product Data submittal shall bear a cross reference note referring to Drawing or detail numbers on the Drawings showing the same Work in order to facilitate checking of Shop Drawing or Product Data and their prompt return to the Contractor. Shop Drawings for interrelated Work shall be submitted at approximately the same time. The Contractor shall keep accurate records of the receipt, review and delivery of all submittals and shall submit to the Owner twice monthly reports on the status of their review, identifying the location and the causes of any failure to promptly receive such submissions and suggesting responsibility. The Contractor shall make all corrections requested by the Architect and, when requested by the Architect, provide a corrected submittal without change in the GMP or extension of Contract Time.

**§ 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, the Work of applicable Subcontractors, and of the Contract Documents. The Contractor's review and approval of such Shop Drawings, Product Data, Samples, and similar submittals prior to submittal to the Owner and/or the Architect, constitutes a representation that the Contractor has coordinated the Work addressed in the submittal with the work of others and that no conflicts result other than those that may be specifically noted for the Architect's attention in the submittal. Where penetrations in the Work occur from mechanical, electrical, or for other equipment, the Contractor shall review Shop Drawings and verify size, location, and sealant means of said penetrations.

**§ 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 or accepted by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has, with the Owner's written approval, 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 or acceptance 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 notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** Except to the extent of any design/build obligations imposed by the Contract Documents, the Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

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

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

*(Paragraphs deleted)*

**§ 3.12.11** To the extent requested by the Owner, the Owner shall be copied on submittals and formal requests for information from the Contractor which the Owner may review with the Architect or other design consultants. The Owner is not expected to undertake the reviews or provide responses normally performed by the Architect, the Prime Consultants, or the other design consultants. The Owner's distribution or comments to such submittals shall not be construed to be conducted for the purpose of determining conformance with the Contract Documents, or codes, or accuracy and completeness of other details such as dimensions and quantities, or for substantiating instruction for installation or performance of equipment or systems. The Owner's distribution or comments to the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12, nor shall they constitute approval of any construction means, methods, techniques, sequences, or procedures.

**§ 3.12.12** The Contractor shall maintain, in good order and on a current basis, a record copy of all subcontracts, purchase orders, Drawings marked to record all as-built changes made during construction, Specifications, addenda, Change Orders, and other modifications; Shop Drawings; Product Data; Samples; submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of subcontracts or Work. These records shall be available to the Owner and the Architect, and, at Final Completion of the Project, delivered to the Owner.

### **§ 3.13 Use of Project Site**

**§ 3.13.1** The Contractor shall confine operations at the Project site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

**§ 3.13.2** The Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation at or near the Project site which are intended to remain undamaged; and on adjacent property, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair at the Contractor's expense any damage, including that to the adjacent property, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If the Contractor fails or refuses to repair the damage within a reasonable period of time, not to exceed thirty (30) days, the Owner may have the necessary work performed and charge the cost to the Contractor.

**§ 3.13.3** Without limitation of any other provision of the Contract Documents, the Contractor shall comply with all rules and regulations promulgated by the Owner, Landlord, or the underlying owner of the Project site and shall comply with the Owner's (or Owner's affiliate's) obligations as tenant (or subtenant) under the lease of the Project site (together, the "Lease Requirements"), as may be amended from time to time, in case the Owner is making improvements to the Project site for purposes of occupancy as a tenant in connection with the use and occupancy of the Project site. The Contractor shall immediately notify the Owner if, during the performance of the Work, the Contractor finds compliance with any of the portion of the Lease Requirements to be impractical, or the extent to which the Contractor believes it is entitled to request reimbursement for compliance, setting forth the problems and estimated costs associated with such compliance and suggesting alternatives through which the same results intended by such portions of the Lease Requirements can be achieved. After execution of the applicable Work Order, the Owner may, in the Owner's sole discretion, adopt rules and regulations. Such rules and regulations shall not unreasonably hinder the

Contractor's performance of the Work. The Contractor's reasonable costs associated with adherence to rules and regulations not typically required for projects similar to the Project are reimbursable with the Owner's written approval, in the Owner's reasonable discretion.

**§ 3.13.4** The Contractor shall assure free, convenient, unencumbered, and direct access to and through the buildings and surrounding common areas on or in the vicinity of the Project site. The Contractor shall keep the Project site in a clean and neat condition. To the extent practicable, the Contractor shall keep the Project site and surrounding areas free of dust and debris. The Contractor shall also ensure that its employees, and the Subcontractors and Suppliers and their employees, are familiar with and strictly comply with the plans prepared for site management and traffic flow ("Site Management Plan"), including, without limitation, the parking restrictions set forth therein.

**§ 3.13.5** The Contractor shall assign space to its Subcontractors and Suppliers for storage of their materials, and storage of all materials shall be confined to those spaces. Such designated spaces shall be consistent with the Site Management Plan prepared by the Contractor and approved by the Owner prior to commencement of the Work. Should the Owner direct the Contractor at any time to move such materials in a manner inconsistent with the Site Management Plan, the cost of such move by the Contractor may constitute a Change in the Work.

**§ 3.13.6** No signs shall be erected or maintained on the Project site displaying the name of the Contractor or its Subcontractors or Suppliers without the prior written approval of the Owner.

**§ 3.13.7** Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, or damage is solely the responsibility of the Contractor.

**§ 3.13.8** Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the Project site and (ii) the building in the event of partial occupancy as more specifically described in Section 9.9.

**§ 3.13.9** The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. The Contractor shall, wherever possible, keep the main entry roadway open and accessible for public use. The Contractor shall accelerate its operations in such a manner that minimizes interruption of driveways. The Contractor shall protect the adjacent property and the public at all times from hazards from their work in a manner conforming to all agencies of jurisdiction. Use or changes in use of the offsite area(s) shall not be the basis for increasing the GMP.

**§ 3.13.10** The Contractor's use of any rights-of-way, offsite areas, or adjacent lot shall be acceptable to the Owner, the jurisdictional authorities at the Project location, and adjacent property owners, and in compliance with any agreements between the Owner and its neighbors. To the extent the Work damages any rights-of-way, offsite areas, or adjacent lot, the Contractor shall completely restore such areas to their condition existing prior to such damage. The Contractor shall confine operations in such a manner that minimizes area and duration of off-site encumbrances, including sidewalks, alleyways, roadways, and adjacent property.

**§ 3.13.11** Without prior approval of the Owner, the Contractor shall not permit any workers to use any newly constructed or existing facilities at the Project site, including without limitation, lavatories, toilets, lobby entrances and parking areas other than those designated by the Owner.

### **§ 3.14 Cutting and Patching**

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

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

Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

**§ 3.14.3** Any existing structures and facilities, including but not limited to buildings, landscaping, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction work of the Contractor, shall be patched, repaired or replaced by the Contractor to the satisfaction of the Owner and the Architect, the owner of such structures and facilities, and governmental authorities having jurisdiction. In the event a governmental authority requires that the repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such requirement and it shall pay for such Work as a Cost of the Work within the GMP.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At the Owner's request and, in any event, at the 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** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

**§ 3.16.1** Neither the Contractor nor the Architect nor any of their respective Consultants, Subcontractors, Sub-subcontractors, Suppliers, agents, employees, nor other persons or entities performing portions of the Work for, or on behalf of, the Contractor or the Architect shall provide access to the Project site to any person or party without the express written consent of the Owner. The Owner hereby consents to the Contractor and the Architect providing access to any Prime Consultant or Separate Contractor for the purpose of completing such entities services or work on the Project.

**§ 3.16.2** The Owner shall have the right to access any part or parts of the Project in order to do whatever work is necessary to complete work not included in the Contract Documents. In accordance with any partial or phased completion and occupancy allowed by the Contract Documents, the Contractor shall ensure that the Work is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Owner, Owner's property manager and employees, lenders, service providers, representatives, invitees, consultants, and other authorized users prior to Substantial Completion in accordance with the accepted schedule. The Contractor shall coordinate its efforts with Owner's occupancy of the premises under this paragraph in such a way as to minimize impact to all parties.

### **§ 3.17 Royalties, Patents and Copyrights**

**§ 3.17.1** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for 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 patent, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect and the Owner.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, Prime Consultants, Architect, Architect's consultants, Landlord, Amazon.com, Inc. and any Additional Indemnified Parties set forth in the applicable Work Order, and their respective officers, directors, agents, shareholders, partners, managers, members, affiliates, owners, successors, and employees (individually, each an "Indemnified Party" and collectively the "Indemnified Parties"), from, for, and against third-party claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work including, without limitation, losses from fraud, breach of contract, violations of law, gross negligence and willful misconduct (hereinafter "Indemnity Claims").

**§ 3.18.2** FOR THE SOLE PURPOSE OF EFFECTING THE INDEMNIFICATION OBLIGATIONS UNDER THE CONTRACT AND NOT FOR THE BENEFIT OF ANY THIRD PARTIES UNRELATED TO THE INDEMNIFIED

PARTIES, THE CONTRACTOR SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY THAT MAY BE GRANTED IT UNDER ANY APPLICABLE WORKERS COMPENSATION OR INDUSTRIAL IMMUNITY LAWS. THIS PROVISION HAS BEEN EXPRESSLY AND MUTUALLY NEGOTIATED. Further the indemnification obligations under the Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

**§ 3.18.3** If Indemnity Claims are caused or alleged to be caused in part by any joint or concurrent negligent act (either active or passive), willful misconduct, omission, or breach of contract by the Indemnified Parties, the Contractor shall indemnify, defend, and hold harmless the Indemnified Parties from such Indemnity Claims only to the extent such Indemnity Claims do not arise out of or result from the negligence, willful misconduct, or breach of contract of the Indemnified Parties. In no event shall the Contractor be obligated to indemnify an Indemnified Party for Indemnity Claims which arise out of or result from the sole negligence, willful misconduct, or breach of contract of such Indemnified Party or its agents, servants, or independent contractors who are directly responsible to such Indemnified Party, excluding Contractor herein.

**§ 3.18.4** The Owner shall notify the Contractor of any action, administrative, or legal proceeding or investigation as to which this indemnification may apply, and the Contractor, at Contractor's expense shall assume on behalf of the Owner or Indemnified Parties, and conduct with due diligence and in good faith, the defense thereof with counsel reasonably satisfactory to the Owner or Indemnified Parties, provided that (i) the Owner or Indemnified Parties shall have the right to be represented therein by advisory counsel of its own selection and at its own expense, and (ii) if the defendants in any such action include the Contractor and the Owner or the Indemnified Parties, and if the Owner or Indemnified Parties reasonably concludes the Contractor has a conflict of interest and cannot adequately represent the Owner or Indemnified Parties, then the Owner or the Indemnified Parties shall have the right to select separate counsel to participate in the defense of such action on their own behalf and the cost shall be at the Contractor's expense. In the event of failure by the Contractor to fully perform in accordance with this Section 3.18.4, the Owner or the Indemnified Parties may, at the option of any of them, and without relieving the Contractor of its obligations hereunder, so perform, but all costs and expenses (including, but not limited, to attorneys' fees and expert fees) so incurred by the Owner or the Indemnified Parties in that event shall be reimbursed by the Contractor to the Owner or the Indemnified Parties, together with interest on the same from the date that any such expense was paid by the Owner or Indemnified Parties until reimbursed in full by the Contractor, at the rate of interest provided in the Agreement.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

**§ 4.1.2** The Owner at its option may, upon notice to the Contractor, delegate all or part of any of the Architect's responsibilities under this Article 4 to the Owner, Development Manager, or any other person or entity identified by Owner in such notice. Effective as of the date of such notice, the term "Architect" as used in Article 4 shall mean the delegate named by the Owner for such delegated responsibility. If the Owner delegates some or all of Architect's responsibilities under this Article 4, the delegate identified by the Owner will not be required to be licensed to practice architecture unless otherwise required by law.

**§ 4.1.3** The Architect may from time to time issue additional Drawings and Specifications to provide coordination and conforming details and otherwise issue additional Drawings and Specifications necessary to complete the Project (all such additional Drawing and Specifications are referred to as "Additional Drawings and Specifications"). To the extent that the Additional Drawings and Specifications are (i) more specific and detailed than the Drawings and Specifications and (ii) (a) reasonably necessary to coordinate or provide conforming details for the architectural, structural, mechanical, electrical, plumbing, and other plans, specifications, and addenda included with the Drawings and Specifications or (b) necessary to accurately reflect the scope, quality, quantity, function, or intent reflected in the Drawings and Specifications (all such matters described in (a) and (b) preceding are herein called "Completion Details"), and to the extent that Completion Details are not changes to the Work, the Contractor shall not be entitled to an increase in the GMP or extension of Contract Time related thereto. The Contractor acknowledges that the Contractor has extensively reviewed and analyzed the Drawings and Specifications. In determining the GMP, the Contractor has taken into account the fact that necessary Completion Details may be included in the Additional Drawings and Specifications.

## § 4.2 Administration of the Contract

§ 4.2.1 If authorized by the Owner to do so, the Architect will provide administration of the Contract as described in the Contract Documents during construction until the date the Architect issues the final Certificate for Payment, and with the Owner's concurrence, from time to time during the one- (1-) year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Prime Consultants may provide limited contract administration as described herein.

§ 4.2.2 The Architect will visit the Project site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner may also regularly visit the Project site to make such decisions and to issue such directives or information as necessary to the administration of the Work in accordance with the Contract Documents. However, the Owner and the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner and 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. The presence of the Owner, the Architect, or the Development Manager on the Project site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirements of the Contract Documents of any kind, including notice, have been met or waived.

§ 4.2.3 On the basis of the Project site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Architect nor the Owner will 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

Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and Suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

§ 4.2.6 The Owner and the Architect each has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner or the Architect considers it necessary or advisable, such party will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Owner or 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 Owner or the Architect to the Contractor, Subcontractors, Sub-subcontractors, Suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review 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, 3.12, or other provisions of the Contract. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 (Intentionally omitted).

§ 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 with the Owner's review and concurrence 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 Project site.

§ 4.2.11 The Architect, to the extent requested by the Owner, will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of Owner. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations as soon as reasonably practicable, but not more than fifteen (15) days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Owner's decisions, in consultation with the Architect, 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 RFIs 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 Project 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 not engaged by the Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a contract with a Subcontractor to perform a portion of the Work at the Project site or a person or entity with a lower-tier subcontract to perform a portion of the Work at the Project 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.

§ 5.1.3 A Supplier is a person or entity who has a contract with Contractor or a Subcontractor to provide any equipment, supplies, materials, or other goods in connection with the Work and who is not a Subcontractor or a Sub-subcontractor. The term "Supplier" is referred to throughout the Contract Documents as if singular in number and means a Supplier or an authorized representative of the Supplier.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the persons or entities proposed for each principal portion of the Work, including

those who are to furnish materials or equipment fabricated to a special design. The Owner will promptly notify the Contractor whether the Owner, after due consideration, has an objection to any such proposed person or entity or requires additional time for review. Failure of the Owner to provide notice within the fourteen- (14-) day period shall constitute notice of no reasonable objection.

**§ 5.2.1.1** It is the Contractor's sole responsibility to pre-qualify and determine the capability of all Subcontractors, Sub-subcontractors and Suppliers to perform the Work, their financial capacity, and whether bids are complete and in compliance with the Contract Documents, and thus all persons or entities proposed by the Contractor to be Subcontractors, Sub-subcontractors, or Suppliers shall be responsible persons or entities of suitable experience, ability and licensed to perform the Work proposed to be subcontracted to it.

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

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor or Supplier was reasonably capable of performing the Work and met the approval of the Contractor, and provided (i) the GMP was based on the proposed but rejected Subcontractor's or Supplier's price and (ii) reasonable backup evidencing so is provided the Owner, the GMP and the 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 or Supplier's Work. However, no increase in the GMP or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously identified and not objected to by the Owner pursuant to Section 5.2.1 without the prior written consent of the Owner, which consent the Owner shall not unreasonably withhold.

**§ 5.2.5** At the Owner's request, the Contractor shall provide the Owner within ten (10) days of such request with a true and complete copy of any executed subcontract(s) or supply contract(s) requested by the Owner, including all modifications thereto.

**§ 5.2.6** The Contractor shall first pay out of payments received under the Contract (and secure the discharge of any liens asserted by) all persons furnishing labor, equipment, materials, or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors, Sub-subcontractors, or Suppliers). The Contractor agrees that provided the Owner has paid the Contractor for all undisputed sums in accordance with the Contract, the Owner has the right to a lien free Project. The Owner may, at its discretion, after providing the Contractor with notice and a two- (2-) day period for the Contractor to cure, make joint payments to the Contractor and its creditors. The Owner reserves the right, in the event a claim is made against the Owner arising out of any obligation incurred by the Contractor under the Contract or in connection with performance of the Work, to withhold payments due to or become due to the Contractor in such amounts as are necessary to cover the claim and any costs or expenses arising in connection with the legal settlement thereof. The Contractor further agrees that if any lien or claim is filed or made against the Project site, Project, or the Owner as a result of Contractor's failure to meet its obligations, and if the Owner has made payment to the Contractor of all undisputed sums due under the Contract, the Owner upon fourteen (14) days prior notice shall have the right to settle said lien or claim directly and deduct the cost of the settlement from payments due the Contractor, provided that the Contractor within such fourteen- (14-) day period has not settled such lien or claim or bonded around such lien claim in a manner satisfactory to the Owner.

### **§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract

agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Except as permitted by the Owner, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Notwithstanding any provision of Section 5.3.1, any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor or any Supplier shall be pursuant to a written subcontract or purchase agreement between Contractor and such Subcontractor or Supplier (or Subcontractor and its Sub-subcontractor or Supplier), which shall be prepared on a form satisfactory to Owner in all respects. Each such subcontract or agreement shall contain provisions that:

- .1 require that such Work be performed in accordance with the requirements of the Contract Documents;
- .2 require the Subcontractor, Sub-subcontractor, or Supplier to carry and maintain insurance coverage in amounts which are customary to the industry and sufficient to protect the Owner, and to file certificates of such coverage with the Contractor;
- .3 require the Subcontractor, Sub-subcontractor, or Supplier to submit certificates and waivers of liens for Work completed by it and by Sub-subcontractors or for materials provided by a Supplier as a condition to the disbursement of the progress payment next due and owing;
- .4 require submissions to the Contractor or Subcontractor, as the case may be, of applications for payment in a form approved by the Owner, together with clearly defined invoices and billings supporting all such applications under each subcontract to which the Contractor is a party;
- .5 require each Subcontractor, Sub-subcontractor, or Supplier to furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of the reports required herein; and
- .6 require that each Subcontractor, Sub-subcontractor, or Supplier continue to perform under its subcontract or agreement in the event the Contract is terminated and the Owner elects to take an assignment of its subcontract or agreement and requests such Subcontractor, Sub-subcontractor, or Supplier to continue such performance.

§ 5.3.2 The Contractor shall be fully and solely responsible to the Owner for all acts and omissions of the Subcontractors, Sub-subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work, just as the Contractor is responsible for the Contractor's own acts and omissions.

§ 5.3.3 All responsibilities and obligations of the Contractor under the Contract Documents shall also apply to all Subcontractors and Sub-subcontractors to the extent that they relate to the portion of the Work performed by such Subcontractors or Sub-subcontractors. Any specific requirement in the Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor or Sub-subcontractor is added for emphasis only and is hereby deemed to include a Subcontractor and Sub-subcontractor. The omission of a reference to a Subcontractor or Sub-subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor or Sub-subcontractor under the Contract Documents or the applicable subcontract.

#### § 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 or for convenience pursuant to Section 14.4, and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract with respect to that Work that has yet to be performed.

§ 5.4.2 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

*(Paragraph deleted)*

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors and third-party vendors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project

with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site.

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

**§ 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 and the Contractor shall conduct the Work so that operations of both sustain the least interference and delay. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement with the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

*(Paragraph deleted)*

**§ 6.2 Mutual Responsibility**

**§ 6.2.0** The Owner shall have the right to invite the Landlord (if any) to attend and participate in all meetings with the Contractor, Subcontractors, the Architect, and project managers that concern the Project or any aspect of the Project, including, without limitation, the Project budget.

**§ 6.2.1** The Contractor shall afford the Owner and the Owner's or Landlord's 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. If the Contractor receives items from a Separate Contractor or from the Owner for storage, erection, or installation by the Contractor and the Contractor does not object to the receipt of such items, the Contractor shall thereafter be held responsible for the care, storage, and any necessary replacement of such items received. The Contractor shall be responsible for damage, loss, or theft of items stored at the Project site by separate contractors or the Owner in the event such damage, loss, or theft results from the acts or omissions of the Contractor, Subcontractors, Suppliers, or their agents or employees, or any other persons or entities performing portions of the Work for the Contractor, and as set forth in the applicable Work Order.

**§ 6.2.2** If part of the Contractor's Work depends upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not then apparently discoverable.

**§ 6.2.2.1** The Contractor shall be responsible for communicating to the Owner problems and anticipated problems with any Separate Contractor which may impede the progress of the Project. The Contractor may receive a copy of specifications, drawings, and the schedules for work performed under separate contracts and the Contractor shall review these documents for coordination purposes.

**§ 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. Subject to the limitations of Articles 4 and 8, the Contractor shall not be responsible for a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14 with respect to such party's work.

§ 6.2.6 The Contractor shall notify the Owner immediately of any damage, defects, or deficiencies of Owner-furnished, Contractor-installed equipment upon receipt of such equipment by the Contractor.

### § 6.3 Owner's Right to Clean Up

§ 6.3.1 If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and 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. The Contractor shall not be entitled to any adjustments to the GMP or the Contract Time or any other additional compensation or extensions of time for work performed, which is additional to or different from the Work specified in the Contract Documents, unless such additional or different work is authorized by a Change Order or a Construction Change Directive or other written authorization signed by the Owner prior to the additional or different work being commenced. Any change request first submitted after the work is performed will not be accepted or paid. In the event that the Owner and Contractor agree that work must be commenced prior to agreement on any additional cost, the Contractor shall obtain the Owner's written authorization to proceed before commencing any additional work. The procedures and methods set forth in this Article 7 and in Article 8 for determining and establishing adjustments to the GMP and the Contract Time shall also govern any Contractor Claims for additional compensation and/or extensions of time for performance.

§ 7.1.1.1 Upon Owner's request, the Contractor shall provide pricing for any proposed change within seven (7) days of the Owner's request, or within such longer time as mutually agreed between the parties.

§ 7.1.2 A Change Order shall be a written agreement between the Owner and Contractor; a Construction Change Directive shall be in writing 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 Architect with written approval of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with authorized changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or Work Order. No course of conduct or dealing between the parties, and no express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alternation of or addition to the Work, shall constitute a change in the Contract Documents or a change in the GMP or Contract Time provided for in the Contract Documents unless it has been included in a Change Order, Construction Change Directive, or Work Order. Nothing in this provision shall preclude the Contractor from seeking a change in the GMP or Contract Time in accordance with the provisions of Articles 7 and 15.

§ 7.1.4 Overtime, when specifically requested and authorized by the Owner and not as a corrective measure, shall be paid for by the Owner on the basis of the premium portion of payment only, plus the cost of insurance and taxes based on the premium payment. Contractor's Fee will not be applied to overtime unless the Owner has (a) caused an acceleration or delay of the Project requiring overtime to maintain the construction schedule or (b) issued a Construction Change Directive that requires overtime or impacts the Project such that overtime is required to maintain the construction schedule.

### § 7.2 Change Orders

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

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

§ 7.2.2 Methods used in determining adjustments to the GMP may include those listed in Section 7.3.3.

§ 7.2.3 Neither the GMP nor Contract Time shall be affected by a Change Order except as specifically set forth in the Change Order. The GMP adjustment, if any, for any change agreed to in writing by the Owner and Contractor on a

particular Change Order shall constitute full and total payment for such change and for the effect of the change on the remainder of the Project, and no other claim or cost shall be made on account of the Cost of the Work, the Contractor's Fee, or the GMP as a result of such Change Order except as set forth therein.

**§ 7.2.4** Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change, including but not limited to delay or acceleration damages and overhead expenses related to Contractor's principal office or offices other than the Project site office, profit, and any and all adjustments to the GMP and the Contract Time.

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

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Owner or the Architect and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the GMP 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 GMP and Contract Time being adjusted accordingly. All Construction Change Directives shall be resolved in a subsequent Change Order.

**§ 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 equitable adjustment to the GMP, the adjustment shall be based on one of the following methods:

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

**§ 7.3.4** If the Contractor does not respond within seven (7) days regarding the method for adjustment in the GMP, the Owner, in consultation with the Architect, shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the GMP, Contractor's Fee as set forth in the applicable Work Order. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and/or the Architect may prescribe, an itemized accounting of expenditures and savings attributable to the change together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or industry standard, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes (this does not include Taxes due on progress, final, or retainage payments), directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change, which shall only be applicable to Change Orders that change the Contract Time of the Project.

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

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and 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 GMP or Contract Time.

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the GMP shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, Contractor's Fee shall be applied to the net increase, if any, with respect to that change. As used in this Section 7.3.8, "net increase" shall mean the cost to the Contractor plus any actual restocking, return, or other charges assessed by vendors to the Contractor, less any discounts available to the Contractor.

§ 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. For any portion of such cost that remains in dispute, such dispute shall be resolved in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor reach agreement upon the adjustments, such agreement shall be effective immediately and documented in a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order.

#### § 7.4 Minor Changes in the Work

The Architect may, with the written approval of the Owner, order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the GMP or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the GMP or Contract Time, the Contractor shall notify the Owner and the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Owner or the Architect that such change will affect the GMP or Contract Time, the Contractor waives any adjustment to the GMP or extension of the Contract Time.

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

§ 8.1.2 The Commencement Date of the Work is the date established in the applicable Work Order or Notice to Proceed.

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

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

§ 8.1.5 Final Completion shall occur upon completion of the Work, including all Punch List items, and the Owner's acceptance of the Work in accordance with Section 9.10.

#### § 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 Work Order, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner by Article 11. 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 in accordance with the construction schedule and shall achieve Substantial Completion within the Contract Time. The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations, and weekend

and holiday work as may be necessary to ensure the production of the Work in accordance with the required date of Substantial Completion and the approved construction schedule. If the Contractor substantially fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) fails to meet the construction schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations, or days of work, as a Cost of the Work within the GMP.

**§ 8.2.4** After Substantial Completion, the Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Final Completion, satisfying all requirements necessary for the Owner's acceptance of the Project, on or before the required date of Final Completion set forth in the applicable Work Order. If a required date of Final Completion is not set forth in the applicable Work Order, the Contractor shall achieve Final Completion within thirty (30) calendar days after Substantial Completion unless otherwise agreed to in writing by the Owner. The timing of all Work to be performed by the Contractor after Substantial Completion, including but not limited to Punch List items, shall be coordinated with the Owner.

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

**§ 8.3.1** Unless otherwise provided in any applicable Work Order, if the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate Contractor; or by changes ordered in the Work by the Owner (collectively "Compensable Delays"); or (2) by labor disputes beyond the Contractor's control, fire, unavoidable delay in deliveries (if the Contractor acted with reasonable diligence to assure timely delivery by having placed orders and by follow-up and expediting procedures that would assure timely delivery), unavoidable casualties, conditions outside or beyond Normal Expected Weather documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control (collectively "Excusable Delays") then in either case, the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time, taking into consideration, without limitation, any Float in the critical-path construction schedule. The Contractor acknowledges and agrees that equitable adjustments in the Contract Time and equitable adjustments to the GMP pursuant to Section 8.3.3 will be permitted for a delay only to the extent such delay (a) is not caused by the Contractor or its Subcontractors or its Suppliers, (b) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, or (c) could not be avoided or mitigated by reasonable work-around or precautionary measures. If there is a concurrent delay to the critical path attributable to the Contractor and Owner, it will be proportionately allocated between the Owner and the Contractor based on the percent of impact caused by each party. The Contractor further agrees that its right to receive an extension of time for Excusable Delays pursuant to the provisions of this Section 8.3 shall be the Contractor's sole and exclusive remedy with regard to any delays or interferences with the Contractor's schedule for completion of the Work, and Contractor hereby waives any and all claims for monetary damages arising out of or related to any such delay or interference, including, without limitation, claims for delay damages, and any other form of time-related damages, or any other claimed direct or consequential damages of any type or nature whatsoever. The part of a concurrent delay allocated to the Owner is an Excusable Delay. Any adjustment in the Contract Time shall be limited to the impact of a delay on the critical path of the construction schedule.

If at any time the Contractor becomes aware that the Work is being delayed in a material way (regardless of the cause or potential responsibility), the Contractor shall give the Owner notice of the delay ("Notice of Delay"). The Notice of Delay shall be given as soon as reasonably possible, but no later than seven (7) days after the Contractor becomes aware of the delay. Notices of Delay shall be numbered to facilitate tracking them to resolution. The parties agree to place a high priority and emphasis on resolving issues that may be causing delay to minimize any impact to the construction schedule and costs.

Any Notice of Delay shall provide the following information to the extent it is then known by the Contractor:

- a. Identify the activity that is being delayed and when the delay started.
- b. State the working days of Float the delayed activity has in the most current schedule.
- c. Provide facts, circumstances, and analysis to support the conclusion delay is occurring.
- d. Identify the issue that is causing the delay, supported by relevant facts and analysis.
- e. State what action, if any, the Owner can take to stop or prevent the delay.
- f. Describe the action being taken to resolve, cure, or reduce the impact of the issue causing delay.
- g. Describe the options that exist for minimizing cost and schedule impacts as a result of the delay.

- h. Describe the options that exist for avoiding delay to achieving Substantial Completion by the required date of Substantial Completion.
- i. Describe the records that are being kept about the delay and its impacts.

The Contractor shall update any open and unresolved Notice of Delay regularly whenever new information is available. The update shall be in the form of a numbered revision to the original Notice of Delay and address each of the listed topics.

In the event of multiple delays occurring at one time, if only one delay issue is causing delay to the critical path activity at the time and the other delay issues are only using available Float for different activities, those other issues are not considered to be delaying the Project, and there is no concurrent delay.

In the event the Owner has an obligation to complete an activity or take some action by a certain date, failure to do so does not constitute a delay to the Contractor's Work unless it delays a critical path activity.

**§ 8.3.1.1** "Float" is defined as the number of days by which a Work activity identified in the construction schedule could be delayed from its "early start date" until the date upon which the Work activity would become a critical path activity. Any Float, slack time, or contingency within the construction schedule is not for the exclusive use of either the Owner or the Contractor, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet the required date of Substantial Completion. Use of such jointly owned Float shall be on a first come, first served basis and may be applied to delays caused (without limitation) by third parties.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15. That the Owner or the Architect may be aware of the occurrence of the delay through means other than the Contractor's Notice of Delay shall not constitute a waiver of a timely Notice or Claim.

**§ 8.3.3** The Contractor shall be entitled to an equitable adjustment in the GMP for Compensable Delays. If delay has been caused by events other than Compensable Delays, no adjustment shall be made to the GMP. No adjustment to the GMP shall be allowed for delay which is concurrent with delay caused by the Contractor or its Subcontractors or Suppliers.

To be entitled to an equitable adjustment in the GMP for Compensable Delays, the Contractor must have (i) been in a state of readiness to proceed with or continue the Work at the time of the delay to that activity and (ii) made all reasonable efforts to reduce the amount of delay by re-sequencing the Work or other means. In the event certain reasonable efforts to reduce delay would cause a material increase in the Contractor's costs for the Work, the Contractor shall discuss the available options with the Owner and jointly decide the best course of action, which might reasonably require an increase in the GMP related to the selected option.

No equitable adjustment in the GMP or Contract Time is due for an Owner delay or failure of performance that only reduces available schedule Float for an activity.

**§ 8.3.4** No Claim for adjustment of the GMP or additional compensation for extra, affected, impacted, or inefficient work or lack of productivity will be allowed where the Contractor does not keep and maintain contemporaneous, complete, and accurate time records for labor and equipment and contemporaneous, complete, and accurate records for materials or where such records do not contemporaneously segregate and allocate by time, location, and work activity the time and cost for each element of such Work, labor, or equipment. The Contractor's failure to keep and maintain such records constitutes a waiver of any Claim or request by the Contractor for adjustment of the GMP for any alleged loss of efficiency, morale, fatigue, labor rhythm, learning curve, constructive acceleration, trade stacking, concurrent operations, dilution of supervision, ripple effect, cumulative impact, or similar damages.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Guaranteed Maximum Price**

**§ 9.1.1** The GMP is stated in the applicable Work Order and, including authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

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

§ 9.1.3 The Owner at its option may, upon notice to the Contractor, delegate all or part of any of the Architect's responsibilities under this Article 9 to the Owner, Development Manager, or any other person or entity identified by the Owner in such notice. Effective as of the date of such notice, the term "Architect" as used in Article 9 shall mean the delegate named by the Owner for such delegated responsibility. If the Owner delegates some or all of the Architect's responsibilities under this Article 9, the delegate identified by the Owner will not be required to be licensed to practice architecture unless otherwise required by law.

## § 9.2 Schedule of Values

Before the first Application for Payment may be submitted, the Contractor shall submit to the Owner and the Architect a schedule of values allocated to various portions of the Work which in the aggregate equals to the total GMP, divided so as to facilitate payments to Subcontractors and Suppliers (at a minimum by CSI division), supported by such evidence of correctness as the Architect may direct or as required by the Owner. The schedule of values, when approved by the Owner and the Architect, shall be used to monitor the progress of the Work and as a basis for Applications for Payment as adjusted by the latest approved Change Orders. Change Order values shall be broken down into the individual line items in the schedule of values. Any changes to the schedule of values shall be submitted to the Owner or the Architect and supported by such data to substantiate its accuracy as the Owner or the Architect may require, and unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

## § 9.3 Draft Payment Applications and Applications for Payment

§ 9.3.1 The Contractor shall submit to the Architect an itemized draft payment application by the times set forth in the Contract for operations completed in accordance with the schedule of values. The draft payment application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require (such as copies of requisitions, and releases and waivers of liens from Subcontractors, Sub-subcontractors and Suppliers) and shall reflect retainage if provided for in the Contract Documents. After receiving a draft payment application that complies with the Contract, the Owner shall have three (3) days after receipt to object to or reject such draft payment application. After such three- (3-) day period has passed without objection or rejection from the Owner, such draft payment application will become an Application for Payment. If a draft payment application is submitted on a Saturday, Sunday, or holiday, the three- (3-) day period above shall not commence until the next business day occurring after the draft payment application was submitted. The draft payment application and subsequent Application for Payment shall be in a format acceptable to the Owner and the Architect. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed and value yet to be completed. Values for materials and equipment stored off the Project site shall be shown in a separate column. All blanks and columns must be filled in, including every percentage completed figure.

§ 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, but not yet included in Change Orders. Until they are included in Change Orders, those requests shall be documented separately in the schedule of values in a way that allows the GMP to be verified while still tracking the cost to the appropriate line items in the schedule of values.

§ 9.3.1.2 Draft payment applications and subsequent Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or Supplier.

§ 9.3.1.3 No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor or Supplier for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor or Supplier is subject to withholding from the Subcontractor or Supplier under the subcontract for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor or Supplier, the Owner, and the Architect notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor or Supplier payment, and pay the Subcontractor or Supplier promptly after the Subcontractor or Supplier satisfactorily completes the remedial action identified in the notice.

**§ 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 Project 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 Project site at a location approved in writing. Payment for materials and equipment stored on or off the Project 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 Project site, for such materials and equipment stored off the Project site.

**§ 9.3.3** The Contractor warrants that title to all Work will pass to the Owner upon the receipt of payment therefor by the Contractor, free and clear of any and all liens, claims, security interests, or encumbrances whatsoever, and that the vesting of such title shall not impose any obligations on the Owner or relieve the Contractor of any of its obligations under the Contract Documents, and that the Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by the Owner in the manner set forth in the Contract Documents, and that no Work covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the Project site or furnishing materials and equipment for the Project, that is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. The Contractor further warrants that upon submittal of a draft payment application or subsequent 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 any and all liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, Suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

**§ 9.3.4** Attached to each draft payment application and subsequent Application for Payment shall be the following:

- .1 executed Conditional Release of Lien and Waiver of Lien Rights from Contractor and all Subcontractors, Sub-Subcontractors, and Suppliers who performed Work or delivered materials or equipment with a value of \$5,000 or more during the period covered by such application;
- .2 executed Unconditional Releases of Lien and Waivers of Lien Rights from Contractor and all Subcontractors, Sub-subcontractors, and Suppliers who performed and were paid for Work or provided and were paid for any materials or equipment with a value of \$5,000 or more for the Work through the date of the previous month's application; and
- .3 other documents or information required by the Owner;

such that at the time of a draft payment application and subsequent Application for Payment the Unconditional and Conditional Releases of Lien and Waivers of Lien Rights for the Project shall be current for all materials provided to and Work performed on the Project through the current month's application. The Owner's obligation to pay the Contractor the amount requested in the correct Application for Payment shall be subject to the Owner's receipt of both such Releases of Lien and Waiver of Lien Rights, which must be reasonably satisfactory to the Owner. All Releases of Lien and Waiver of Lien Rights and all stop payment documents shall comply with all applicable laws of the place where the Project is located, including required statutory forms.

The Contractor shall at all times comply with the requirements of all lien laws and statutes of the place where the Project is located, so that the Contractor receives all notices of the right to claim a lien thereunder. For purposes of such statutory requirements, the Owner's name, address, and phone number shall be as set forth in the applicable Work Order. The Contractor shall maintain a log of all such notices of the right to claim a lien received with respect to the Project, including the party sending such notice and the date received. The log shall also include complete listings of all Subcontractors, Suppliers, and material vendors contracted directly with the Contractor for the Project that could have lien rights without notice to the Contractor.

**§ 9.3.5** The Contractor shall attach to the final draft payment application and subsequent Application for Payment an executed and acknowledged Conditional Release of Lien and Waiver of Lien Rights in a form reasonably acceptable to the Owner covering the entire Work performed for the Project and shall also attach executed and acknowledged (i) Conditional Release of Lien and Waiver of Lien Rights from all Subcontractors, Sub-subcontractors, and Suppliers who performed and were paid for any Work or provided and were paid for any materials for the Work through the date of the final draft payment application and subsequent Application for Payment and (ii) Unconditional Release of Lien

and Waiver of Lien Rights from all Subcontractors, Sub-subcontractors, and Suppliers who performed and were paid for Work or provided and were paid for any materials for the Work through the date of the prior final application in a form reasonably acceptable to the Owner from those Subcontractors, Sub-subcontractors and Suppliers who provided work, materials, or equipment valued in excess of \$5,000 to the Project, which shall cover the entire Work performed for the Project. Concurrently with receipt of final payment from the Owner, the Contractor shall execute, acknowledge and deliver to the Owner an Unconditional Release of Lien and Waiver of Lien Rights in a form approved by the Owner, which shall cover the entire Work performed for the Project.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** If directed by the Owner, the Architect will, within seven (7) days after receipt of the Contractor's Application for Payment (after the draft payment application process set forth in Section 9.3), either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. All payments are subject to review, inspections, and reasonable requirements of the Owner's lender, which requirements shall be submitted to the Contractor promptly following mutual execution of the Contract or upon execution of the applicable loan documents, for the Contractor's review. If after Substantial Completion there are minor items of Work either not complete or not in conformity with the Contract Documents (*i.e.*, "Punch List" items), then the Owner may withhold from final payment an amount equal to one hundred fifty percent (150%) of the reasonable cost to correct or complete such items of Work.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and Suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the GMP. The representations in this Section 9.4.2 are solely to and for the benefit of the Owner and its lender, if any, and may only be relied upon by the Owner and its lender, and shall not relieve the Contractor of any liability or responsibility under the Contract for incomplete or defective Work or Work that is otherwise not in accordance with the Contract Documents.

#### **§ 9.5 Decisions to Withhold Certification**

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors and/or Suppliers for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- .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 unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents;
- .8 any claims that the Owner has against Contractor under or in connection with the Contract Documents or the Work;
- .9 failure of the Contractor to provide updated status reports and progress schedules;
- .10 imposition of liquidated damages (if any); or
- .11 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment.

§ 9.5.2 If the Contractor disputes the Owner's or the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor must submit a Claim in accordance with Article 15.

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

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

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect with Owner's concurrence has issued a Certificate for Payment and if the Contractor has submitted all documentation required by the Contract Documents, including lien releases, the Owner shall make payment of all amounts certified and approved by the Owner which payment shall be in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall be entitled to withhold payment to the extent provided by the Contract Documents, notwithstanding the issuance of a Certificate for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor and Supplier as may be required by the law of the place where the Project is located (including any prompt payment requirements), but in no event later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor or Supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work or materials supplied by the Supplier. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.2.1 The Contractor shall obtain properly executed releases from all Subcontractors, Suppliers, or Sub-subcontractors who may have valid lien rights in accordance with, and to the fullest extent possible under, applicable law.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and Suppliers amounts paid by the Owner to the Contractor for subcontracted Work or materials supplied. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and Suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or Supplier, except as may otherwise be required by law.

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

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

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

#### § 9.6.8 LIENS

§ 9.6.8.1 If at any time, a lien is filed on the Project arising out of the Work, and provided the Contractor has been paid for undisputed amounts due under the Contract Documents, the Contractor, within ten (10) days after the date of the filing of such lien, and to the Owner's satisfaction and in accordance with the mechanic's lien laws of the place where the Project is located, shall discharge and remove the lien or post a bond satisfactory to the Owner for such lien or claim of lien and shall indemnify, defend, and hold harmless the Owner from all loss, liability, damage, costs, or expense, including, but not limited to, reasonable attorney's fees, expert fees, and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier, together with interest on the same from the date the Owner paid Contractor until reimbursed by the Contractor at the rate of interest provided in the Agreement. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.6.8.2 The Contractor shall promptly notify the Owner of any action, administrative or legal proceeding, or investigation as to which Section 9.6.8.1 may apply, and provided the Owner is not in default of its payment obligations to the Contractor, the Contractor, at Contractor's expense, shall assume on behalf of the Owner, and conduct with due diligence and in good faith, the defense thereof with counsel reasonably satisfactory to the Owner. In the event of failure by the Contractor to fully perform in accordance with this Section 9.6.8.2, the Owner, has the option of, and without relieving the Contractor of its obligations hereunder, to so perform, but all costs and expenses, including but not limited to attorneys' fees and expert fees, so incurred by the Owner in that event shall be reimbursed by the Contractor to the Owner, together with interest on the same from the date any such expense was paid by the Owner until reimbursed by the Contractor at the rate of interest provided in the Agreement.

§ 9.6.8.3 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor removes the lien or obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in a form and substance satisfactory to the Owner, and (iii) in an amount not less than one hundred fifty percent (150%) of such lien claim, or such amount as may be allowed by the law of the place where the Project is located. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.6.8, including without limitation the duty to defend and indemnify the Owner. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and are not a Cost of the Work and shall not be part of, or cause any adjustment to, the GMP.

§ 9.6.8.4 Notwithstanding anything to the contrary contained herein, and to the extent permitted by the law of the place where the Project is located, if the Contractor does not promptly post the bond, the Owner may withhold one hundred and fifty percent (150%) of the amount of such lien until such lien is discharged or the Owner is protected by bond satisfactory to the Owner in the amount of at least one hundred and fifty percent (150%) of the amount of the lien or other means satisfactory to the Owner. If no monies are available to be withheld, the Contractor shall within three (3) consecutive calendar days refund to the Owner one hundred and fifty percent (150%) of the amount of such lien(s), or such amount as may be allowed by the law of the place where the Project is located.

§ 9.6.8.5 To the extent not prohibited by law, the Contractor shall and hereby does subordinate all of its lien rights and shall ensure that all of its Subcontractors, Sub-subcontractors, and Suppliers shall subordinate all of their lien rights, to the mortgage(s) or liens or deeds of trust securing payment of sums now or hereafter borrowed by the Owner for the Work and the land. Any Subcontractor, Sub-subcontractor, or Supplier that refuses to so subordinate its lien rights must be specifically approved in advance and in writing by Owner. At the request of the Owner, and to the extent not prohibited by law, the Contractor shall execute such additional documents as may be reasonably requested from time

to time by the Project's lender to give effect to the provisions hereof and shall use its best efforts to cause the Subcontractors, Sub-subcontractors, Suppliers, and other parties furnishing labor or materials for the Work to subordinate their liens to such aforesaid sums.

**§ 9.6.8.6** Notwithstanding anything in Sections 9.6.8.1 to 9.6.8.5 to the contrary, and in the event the Contractor fails to make payments to its Subcontractors or Suppliers in accordance with the Contract and does not provide justifiable reasons to the Owner upon Owner's request, the Owner may, at the Owner's sole discretion, elect to make any payment requested by the Contractor on behalf of a Subcontractor or a Supplier, jointly payable to the Contractor and each Subcontractor and/or Supplier. The Contractor and such Subcontractor or Supplier 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 (a) contract between the Owner and a Subcontractor or Supplier, (b) obligations from the Owner to such Subcontractor or Supplier, or (c) rights in such Subcontractor or Supplier against the Owner. The Contractor agrees to sign such additional documents and take such action as the Owner shall deem necessary to carry out the intent of this Section 9.6.8.

### **§ 9.7 Failure of Payment**

**§ 9.7.1** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days (7) after receipt of the Contractor's Application for Payment, and the Owner, through no fault of the Contractor, does not pay the Contractor within twenty-one (21) days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the GMP shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### **§ 9.8 Substantial Completion**

**§ 9.8.1** Unless otherwise defined in an applicable Work Order, 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, subject only to minor Punch List items that do not adversely affect such use, provided, in addition, that as a condition precedent to Substantial Completion, the Contractor shall provide the Owner with a schedule of all permits required for the Work and occupancy of the Project and, attached to such schedule, a copy of each such permit. The term "Substantial Completion" or "Substantially Complete" is further defined as the date certified respectively, by the Owner when (i) the Owner and/or the Architect working with the Contractor have prepared a Punch List of Work remaining to be performed and has established sufficient reserves for purposes of completing such Punch List items, (ii) all required governmental or regulatory inspections applicable to the Work have been conducted and all approvals required for occupancy have been obtained from all authorities having jurisdiction over the Project, including any permits specified in the applicable Work Order, issued by the appropriate authorities; and (iii) all other conditions precedent to achieving Substantial Completion required under the Contract Documents have been met. Any such occupancy or use described above shall not negate or change the responsibility of the Contractor to the Owner for satisfactory completion of the Work nor shall such occupancy or use negate any insurance provisions required hereunder.

**§ 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 Owner and/or the Architect, working with the Contractor shall prepare a comprehensive list of Punch List items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct the Punch List items. 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** The Owner and/or the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's and/or the Architect's inspection discloses any item, whether or not included on the list of Punch List items, 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 Owner and/or the Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and/or the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Owner, in conjunction with the Architect, will prepare a Certificate of Substantial Completion that shall establish the Substantial Completion date;

establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish any and all items on the Punch List accompanying the Certificate. Warranties required by the Contract Documents shall commence at Substantial Completion or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Contractor shall complete all items within the earlier of the required date of Final Completion set forth in the applicable Work Order or thirty (30) days after issuance of the Certificate of Substantial Completion; provided, however, if certain items cannot be completed due to the unavailability of necessary labor or materials, the Contractor shall have such additional time as is reasonably required to complete such items. All Work to be performed by the Contractor after Substantial Completion, including but not limited to Punch List items, shall be coordinated with the Owner and shall be performed after-hours unless otherwise approved in writing by the Owner. If the Contractor fails to complete any items within such thirty- (30-) day period, the Owner reserves the right to promptly after such thirty- (30-) day period have the items completed by other contractors at the Contractor's cost and recover those costs from the Contractor.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

**§ 9.8.6** The Work shall not be considered Substantially Complete if incomplete and nonconforming items are so numerous and so located as to make occupancy highly inconvenient. If the Owner must occupy the premises despite such inconvenience and disruption, the Owner may cause the issuance of the Certificate of Substantial Completion but may withhold certification of the current Application for Payment until such nonconforming and incomplete items have been reduced to a reasonable number.

### **§ 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 notwithstanding that the time for completion of such portions may not have expired, provided such occupancy or use is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete. When the Contractor considers a portion substantially complete, the Owner working with the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2.

**§ 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 be construed as Substantial Completion and shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

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

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and the Architect will promptly make such inspection. When the Owner and the Architect find the Work acceptable and all Punch List items complete under the Contract Documents and the Contract fully performed, and if the Contractor has submitted all documentation required by the Contract Documents, including the required lien releases, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work including Punch List items has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner with a copy to the Architect all closeout documents and all other deliverables required by the Contract Documents, and such documents have been received and accepted by the Owner, including (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the

insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, any guarantees, training, manuals, operation instructions, certificates, spare parts, maintenance manuals and stock, specified excess material, as-built drawings, and other documents, training, or items required by the Contract Documents or local governmental entities, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Not later than five (5) days after final payment, the Contractor shall file with the county recorder where the Project is located an Unconditional Lien Release and Waiver of Lien Rights on behalf of the Contractor and all Subcontractors.

**§ 9.10.3** If, after Substantial Completion Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect with a copy to the Owner 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**

*(Paragraphs deleted)*  
(Intentionally omitted).

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a Supplier, shall constitute a waiver of claims by that payee except those previously submitted in full compliance with all requirements of the Contract Documents 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 initiate, maintain, and supervise the safety precautions and programs ("Safety Programs") to ensure the safe completion of the Work and the construction and installation of any Owner's property and compliance with all applicable Legal Requirements (including all reporting requirements), and to perform such tasks as may be prudent under the circumstances (including adequate supervision and training of all persons on the Project). Such Safety Programs shall include identification of the Competent Person responsible for implementation of the Safety Programs, as well as safety-based pre-qualification criteria for Subcontractors. "Competent Person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them, as further described in 29 CFR 1926.32(f), and by way of training and/or experience, is knowledgeable of applicable standards, is capable of identifying workplace hazards relating to the specific operation, and has the authority to correct them. Notwithstanding the forgoing, if the Work is insured by an Owner-sponsored Owner Controlled Insurance Program ("OCIP"), the Safety Programs must include applicable OCIP requirements. If this Agreement, any Work Order, Proposal, or instructions from Owner's personnel give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate and be solely responsible for the safety thereof at the Project. If the Contractor determines that: (a) such means, methods, techniques, sequences, or procedures may not be safe, (b) the specified procedures deviate from what the Contractor considers to be good construction practice, (c) following the procedures will affect any warranties, (d) or the Contractor objects to the procedures, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect and the Owner shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Owner or the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. In the event a Separate Contractor violates

the Safety Programs, the Contractor shall have the authority to immediately stop the Separate Contractor's work and, if necessary, remove the Separate Contractor from the Project. The Contractor shall provide e-mail notice to the Owner of any Separate Contractor's violations of the Safety Programs and the Owner shall, if necessary, assist the Contractor in removing the Separate Contractor from the Project, and shall require the Separate Contractor to remedy the violation prior to resuming work. If any Separate Contractors perform work after Contractor's normal working hours, the Contractor may initiate a Change Order for additional general conditions costs to provide afterhours supervision of Separate Contractors.

**§ 10.1.1** During the construction of the Work and through the guaranty or warranty period (referenced in Section 3.5), the Owner may, at its cost and expense, audit the Contractor's compliance with its Safety Program. In addition, the Owner may require, at the Owner's cost and expense to be set forth in a Change Order, the Contractor to engage an independent, full-time safety quality assurance manager (from a list of vendors to be provided to the Contractor) dedicated full-time to the Project for the duration of construction whose role will include (i) regular site visits to meet with the Competent Person identified in the Safety Program and any field safety managers to review the Safety Program and its implementation, (ii) conducting site walks and hazard analyses for critical activities, and (iii) providing weekly reports to the Contractor and the Owner. The Owner's notice to the Contractor shall be treated as a Construction Change Directive and shall identify a list of vendors from which the Contractor can select a safety quality assurance manager.

**§ 10.1.2 Safety Data.** The Contractor shall include in each Application for Payment information relating to (i) hours worked on the Project; (ii) lost time; (iii) any Safety Event that occurred; (iv) any regulatory visits and/or notifications of violations or citations; (v) any written safety warnings or citations issued on the Project (including any corrective actions); and (vi) any other data on safety reasonably requested by Owner (collectively, "Safety Data"). Safety Data shall also be provided in a format reasonably acceptable to Owner within five (5) business days of Owner's request.

## **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** Subject to the provisions of Section 10.1, the Contractor shall take all reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees involved 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 Project site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the Project site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give, and shall cause its Subcontractors and Suppliers to 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** Subject to the provisions of Section 10.1, the Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor.

**§ 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 to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not

attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 (Intentionally omitted).

§ 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.

*(Paragraphs deleted)*

§ 10.2.8 Subject to the provisions of Article 14, 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 from or by any cause.

**§ 10.2.9 Safety Incident Notifications**

The Contractor shall provide e-mail notice, and verbal notice in the event of a fatality, to the Owner's Representative, and Development Manager as soon as reasonably possible after becoming aware of (i) an occurrence of those events described in OSHA 1904.7(a) General recording criteria (or any other event requiring notice to a regulatory agency), (ii) any event that triggers the need for emergency first responders to the Project, including ambulance, police, and/or fire brigade, (iii) a regulatory citation or notice of violation being issued with respect to the Work, or (iv) a Serious Safety Event (defined below) (each of (i)-(iv) being a "Safety Event"), but in any event the Contractor shall use commercially reasonable efforts to provide such notice not later than two (2) hours after a Safety Event. The Contractor shall use commercially reasonable efforts to provide, within twenty-four (24) hours after a Safety Event, a written outline of the incident details and immediate actions taken to prevent reoccurrence. The Contractor shall use commercially reasonable efforts to provide a written incident investigation report within seven (7) days of a Safety Event, which report shall include the incident description, root causes analysis, and corrective action plan to prevent reoccurrence (an "Investigation Report"), provided, in the event of a fatality, the Investigation Report shall be delivered within thirty (30) days of the event. "Serious Safety Event" means an unplanned or uncontrolled event where someone's health or safety is seriously endangered or threatened, including immediate or imminent exposure to incidents such as:

- .1 a substance escaping, spilling, or leaking;
- .2 an implosion, explosion, or fire;
- .3 gas or steam escaping, or a pressurized substance escaping;
- .4 electric shock (from anything that could cause a lethal shock, not including shocks due to static electricity, from extra low voltage equipment, or from defibrillators used for medical reasons);
- .5 the fall or release from height of any equipment, substance, or thing;
- .6 damage to or collapse, overturning, failing, or malfunctioning of any equipment that is required to be used pursuant to Legal Requirements;
- .7 the collapse or partial collapse of a structure; or
- .8 the collapse or failure of an excavation or any shoring supporting an excavation.

Note: People may be put at serious risk even if they were some distance from the incident (for example, from a gas leak).

**§ 10.3 Hazardous Materials and Substances**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials ("Known Environmental Conditions"). If the Contractor encounters Hazardous Materials other than the Known Environmental Conditions 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 Project site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Alternatively the Owner may, in its sole discretion, terminate the Contract for convenience in accordance with Section 14.4. Unless otherwise required by the

Contract Documents, the Owner shall furnish in writing to the Contractor the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor will promptly reply to the Owner in writing stating whether or not it has reasonable objection to the persons or entities proposed by the Owner. If the Contractor has a reasonable objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume. By Change Order, the Contract Time shall be extended appropriately and the GMP shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The phrase "rendered harmless" means that levels of asbestos or polychlorinated biphenyls or any other hazardous or regulated substance or material, are less than any applicable exposure standard set forth in the applicable OSHA, Environmental Protection Agency (EPA), state regulation, or other applicable environmental laws or regulations of the place where the Project is located. The Contractor agrees not to knowingly or negligently cause any fill or other materials to be incorporated into the Work that are hazardous, toxic, or regulated substances or made up of any items that are hazardous, toxic or regulated, in each case under any federal, state, local, municipal, or other applicable law (collectively, "Hazardous Materials"). The Contractor shall not use contaminated soil as backfill. The Contractor's obligations with respect to Known Environmental Conditions shall not be subject to the terms of this Section but shall be governed by the other requirements of the Contract Documents.

**§ 10.3.2.1** The Contractor shall not knowingly incorporate or cause to be incorporated into the Work any asbestos or lead containing materials, petroleum products that would constitute or create a Hazardous Materials exposure or release condition and/or any other Hazardous Materials or products of any kind. The Contractor will provide certification to the Owner at completion of the Project stating that no such products or materials of any kind were knowingly incorporated into the Work. Said certification shall be in the form of a letter and shall be provided by the Contractor and each of the Subcontractors prior to the release of their respective final retainage.

**§ 10.3.2.2** The Contractor shall protect, indemnify, defend, and hold harmless the Owner from, for, and against any and all claims, actions, liabilities, fines or penalties, losses, costs, and expenses, including attorneys' fees, even if such claims are groundless, fraudulent, or false, arising out of any actual or alleged (a) spilling, dumping, release, and/or improper or illegal disposal of Hazardous Materials, whether at or upon the Project site or at another undetermined site pursuant to the performance of the Contract or (b) pollution or contamination of the land or waters with Hazardous Materials as a result of performance of the Contract. It is expressly agreed and understood that such protection, defense, and indemnification shall apply and extend to claims made by any governmental entities or agencies (including federal, state, local, or municipal) with jurisdiction over the Work.

**§ 10.3.3** Except to the extent of the Contractor, Contractor's employees and agents, Supplier's, or Subcontractor's negligence or willful action, or the Contractor's failure to immediately provide notice to Owner regarding the Hazardous Materials (other than Known Environmental Conditions) as set forth in Section 10.3.1, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work in the area affected by Hazardous Materials (other than Known Environmental Conditions) if in fact the material or substance presents a significant risk of bodily injury or death as described in Section 10.3.1 and that risk has not been abated within a reasonable period of time after its discovery, provided that such claim, damage, loss, or expense is attributable to actual bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), caused by such Hazardous Materials, except the Owner shall have no such obligations to the extent that any such claims, damages, losses, or expenses are due to the fault or negligence of the party seeking indemnity or its Subcontractor, a Sub-subcontractor, a Supplier to any of them or anyone directly or indirectly employed by any of them.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the Project site unless such materials or substances are specifically required by the Contract Documents and are not customarily used by the Contractor, Subcontractor, or Supplier in its work.

**§ 10.3.5** The Contractor shall indemnify the Owner for the costs, damages, and expenses the Owner incurs (1) for remediation of materials or substances the Contractor brings to the Project site and negligently handles or intentionally mishandles, 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 or breach of the Contract on the part of the Contractor or its Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, the Contractor is held liable by a government agency for the cost of remediation of Hazardous Materials solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all reasonable cost and expense thereby incurred.

#### § 10.4 Emergencies

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

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.0 OWNERS RIGHT TO ELECT AN OWNER CONTROLLED INSURANCE PROGRAM

§ 11.0.1 The Owner has the sole discretion to have the Project insured under an Owner Controlled Insurance Program ("OCIP"). If the Owner elects to include the Project under an OCIP, the election will be made no later than the commencement of Work on the Project. If the Owner does not elect to include the Project under an OCIP, the provisions below in sections 11.1 Contractors Liability Insurance and 11.2 Owners Liability Insurance shall apply.

#### § 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies having a rating of no lower than "A-VII" in the then-current edition of the AM Best Rating Guide and lawfully authorized to do business in the jurisdiction where the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor. The Indemnified Parties shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. As used herein, the "Contractor" shall mean the Contractor or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including the Contractor's construction equipment, and including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.1.8;
- .9 Claims for damages insured by professional liability coverage; and
- .10 Claims for damages insured by contractor's pollution liability coverage.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in this Article 11 or such limits specified in the applicable Work Order, unless greater limits are required by law, then such limits required by law shall be provided. Coverages shall be written on an occurrence basis, except for coverages specified in Sections 11.1.1.9 and Section 11.1.1.10, and all coverages shall be maintained without interruption from the date of commencement of the Work until the dates specified in Section 11.1.6.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner or Owner's agent as reasonably directed by Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required

by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (i) the Owner and the Indemnified Parties as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (ii) the Owner and the other Indemnified Parties as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 11.1.5** The Owner is not responsible for the tools and equipment of the Contractor, Subcontractors, and Sub-subcontractors. Each of these parties is responsible for insuring its own equipment and tools. Contractor shall maintain the insurance described in Section 11.1.1 and as follows:

- .1 Commercial General Liability Insurance (including premises/operations; independent contractor's protective; products and completed operations; and broad form property damage) with coverage in a combined single limit in the minimum amount of \$2 million per occurrence, \$4 million general aggregate per project, and \$4 million Products and Completed Operations or as established in the applicable Work Order;
- .2 Products and completed operations coverage, which shall include broad form property damage and XCU endorsements and shall be maintained as provided in Section 11.1.6;
- .3 Automobile Liability Insurance in the amount of \$1 million combined single limit for all owned, non-owned and hired autos;
- .4 Umbrella general liability coverage in the minimum amount of (a) \$10 million, provided that the GMP under the applicable Work Order does not exceed \$5 million, (b) \$20 million, provided that the GMP under the applicable Work Order does not exceed \$10 million, (c) \$25 million, provided that the GMP under the applicable Work Order does not exceed \$25 million, or (d) coverage equal to the cost of the Project when the GMP under the applicable Work Order exceeds \$25 million or as established in the applicable Work Order;
- .5 The policies furnished in compliance with Sections 11.1.5.1 through 11.1.5.4 shall be primary insurance to any other liability insurance of the Owner;
- .6 Worker's compensation coverage as required by law, and employer's liability coverage in the amount of \$1 million;
- .7 Contractor's Professional Liability Insurance coverage with minimum limits of (a) \$2 million per claim and aggregate, (b) \$5 million per claim and aggregate if the Contractor is responsible for any professional engineering or architectural design Work, including the subcontracting of such Work, or (c) as established in the applicable Work Order, with all coverage retroactive to the earlier of the date of the Agreement or commencement of the Work. Professional Liability Insurance for design/build work as provided in Section 11.5;
- .8 Contractor's Pollution Liability Insurance coverage with minimum limits of \$1 million per claim and in the aggregate, or as established in the applicable Work Order with all coverage retroactive to the earlier of the date of the Agreement or the commencement of Work. If the Work includes the penetration of a slab or foundation (excluding penetrations for securing of racks, mezzanine, or conveyors), or excavation of soil or removal of underground or above ground storage tanks, the Contractor will provide Pollution Liability Insurance coverage with minimum limits of \$5 million per claim and aggregate, or as established in the applicable Work Order, with all coverage retroactive to the earlier of the date of the Agreement or the commencement of Work; and
- .9 Owner and the other Indemnified Parties (as defined in Section 3.18.1) shall be included as additional insureds on the policies required pursuant to Sections 11.1.5.1 through 11.1.5.4, and 11.1.5.8. The obligation of the Contractor as set forth in Section 3.18.1 shall be specifically referenced in the insurance certificates as being incorporated in the insurance coverage provided to the Owner under this

Article. The additional insured endorsement(s), by which the Owner and the other required parties are named as additional insureds for the commercial general liability/products and completed operations policies, (a) shall be issued on Form CG2010 (04/13) or equivalent, and (b) shall be supplemented by a CG 2037 (04/13) ADDITIONAL INSURED – OWNERS, LESSEE OR CONTRACTORS – COMPLETED OPERATIONS endorsement.

The Contractor shall deliver originals of such additional insured endorsements to the Owner concurrently with its delivery of certificates of insurance for those policies.

**§ 11.1.6** All insurance provided by the Contractor hereunder shall be primary and not contributing with any coverage carried by the Owner. Each policy shall contain all applicable conditions, definitions, exclusions and endorsements related to this Project as are generally considered to be industry standard for projects of this scope and scale in the metropolitan area in which the Project is located. The policies provided by the Contractor shall provide that any obligation imposed upon the insured (including, without limitation, the liability to pay premiums, as well as the responsibility for all deductible amounts) shall be the sole obligation of the Contractor and not of any other insured. The Contractor shall require each insurer under each policy provided by the Contractor to waive all rights of subrogation against the Owner, any right of set-off or counterclaim, and any other right to deduction, whether by attachment or otherwise.

**§ 11.1.7** All required coverages shall remain in force for the benefit of the Owner for claims arising out of the Work under the Contract for at least twenty-four (24) months after Final Completion, except for completed operations coverage which shall extend for a period of six (6) years from Substantial Completion.

**§ 11.1.8** Unless modified by an applicable Work Order, Subcontractors and Sub-subcontractors, if any, shall comply with all requirements in this Section 11.1 except as set forth in the Subcontractor and Sub-subcontractor Minimum Insurance Limits attached hereto as Schedule 1. If the Work relates to a facility owned by the Owner or its affiliates, the greater of the limits in Section 11.1.5 or Schedule 1 shall apply only to Subcontractors and Sub-subcontractors, except that umbrella general liability coverage required by Section 11.1.5.4 shall be provided in the minimum amount of \$5 million or as established in the applicable Work Order.

## **§ 11.2 Owner's Liability Insurance**

**§ 11.2.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

*(Paragraphs deleted)*

## **§ 11.3 Property Insurance**

**§ 11.3.1** Unless otherwise provided in the applicable Work Order, the Owner shall be responsible for providing "all-risk" coverage in the amount of the initial GMP, plus the value of subsequent Contract Modifications and the cost of materials supplied or installed by others and owned or to be owned by the Owner, comprising total value for the entire Project at the Project site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3, whichever is later. This insurance shall include the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors as loss payees, as their interests may appear. Liability of the Owner (and Owner's insurance) shall not extend to cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as "construction equipment" that may be on the Project site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment.

*(Paragraphs deleted)*

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earth movement, flood (provided, however, the Owner may elect to not carry earth movement or flood coverage, in which case Owner shall release the Contractor from any damages resulting from earth movement or flood that would have otherwise been covered by such insurance coverage), windstorm, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable Legal Requirements, testing, commissioning and start-up and shall cover reasonable compensation for the Owner's, Architect's and Contractor's services and expenses required as a result of such insured loss. Property

insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as "construction equipment" that may be on the Project site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall notify the Contractor prior to commencement of the Work. The Contractor may then affect insurance that will protect the interests of the Contractor, Subcontractors, and Sub-subcontractors in the Work, and by appropriate Change Order the reasonable cost thereof shall be charged to the Owner.

§ 11.3.1.3 The property insurance provided by the Owner shall have a deductible as set by Owner from time to time, and only for losses under the care and control of the Contractor, the Contractor shall pay costs not covered because of such deductibles up to \$25,000 per occurrence except to the extent set forth in the applicable Work Order.

§ 11.3.1.4 This property insurance shall cover portions of the Work in transit and stored off site.

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

§ 11.3.2.1 The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against the Owner's loss of use of the Owner's property, or the inability to conduct normal operations, due to fire, hazards or other causes of loss, however caused. Such insurance shall exclude the Contractor's loss of use and the Contractor shall have no right to claim loss of use under any such insurance maintained by the Owner. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused, to the extent covered and paid for by any loss of use insurance carried by the Owner.

§ 11.3.3 Before an exposure to loss may occur, the Owner shall provide the Contractor with a Certificate of Insurance that includes insurance coverages required by Section 11.3 if requested by the Contractor. Each policy required under Section 11.3 shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until notice (ten (10) days' prior notice for nonpayment of premium) has been given to the Owner. The Owner shall endeavor to provide the Contractor thirty (30) days' prior notice before any cancellation, material change or lapse of such coverage.

### § 11.3.4 Waivers of Subrogation

§ 11.3.4.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss occurring prior to Final Completion, to the extent those losses are (a) covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance held by the Owner pursuant to Section 11.3.5, (b) covered by any property insurance carried by the Contractor (or any Subcontractor or Sub-subcontractor), or (c) with respect to construction equipment, such losses would be covered if the Contractor (or the applicable Subcontractor or Sub-subcontractor) carried property insurance for the full replacement value of such construction equipment. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.4.1 shall provide, and not prohibit, this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.4.2 (Intentionally Omitted).

### §11.3.5 Adjustment and Settlement of Insured Loss

§ 11.3.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner to be disbursed as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.5.3. As used in Section 11.3.5, "fiduciary" shall mean the exercise of due care in the handling of all proceeds and all other obligations or duties

contained in Section 11.3, and in accordance with the Contract Documents on behalf of the Contractor but shall not be construed to impose the duties of a trustee or to create a trust consisting of the proceeds. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.5.2 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, deposit proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.5.3 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

#### § 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. The Owner may elect to require the Contractor to bond certain Subcontractors and/or Suppliers. If the Owner so elects, the Owner agrees to increase the GMP for bond costs to the extent not previously included in the GMP.

§ 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 Professional Liability Insurance – Design Build Subcontractors

§ 11.5.1 Except as otherwise provided in a Work Order, for the portions of the Work which include design or use of design-build subcontractors, the Contractor shall require and ensure that the Subcontractor shall procure, maintain and pay for Professional Liability Insurance covering damages by reason of any negligent act, error or omission committed or alleged to have been committed by the Subcontractor or anyone for whom Subcontractor is legally liable, including coverage for liability assumed by contract. If the Work relates to a facility leased by the Owner or its affiliates, such Professional Liability Insurance shall include minimum limits as set forth in the Subcontractor and Sub-subcontractor Minimum Insurance Limits attached hereto as Schedule 1. If the Work relates to a facility owned by the Owner or its affiliates, such Professional Liability Insurance shall include minimum limits of \$5 million per claim and aggregate for mechanical (including fire protection), electrical and curtain wall enclosure, and \$2 million per claim and aggregate for all other design-build sub-trades. Coverage shall be retroactive to the earlier of the date of the Agreement or the commencement of such design-build work. Professional liability coverage shall be provided by annual policy or policies to be renewed for a continuous period of two (2) years following the Final Completion Date of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date. Should the Subcontractor change insurance carriers during such term, the design-build subcontractor shall provide continuous and uninterrupted coverage as herein provided and shall without demand provide Owner with proof of same.

*(Paragraph deleted)*

### 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 Owner's or the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or the Architect, be uncovered for the Owner's or 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 Owner or the Architect has not specifically requested to examine prior to its being covered, the Owner or 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, the Contractor shall be entitled to an

equitable adjustment to the GMP and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## **§ 12.2 Correction of Work**

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

The Contractor shall promptly correct Work rejected as defective or failing to conform to the Contract Documents by the Owner, the Architect, or governmental inspections having jurisdiction on Work, 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 labor, materials, additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's and 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 (1) year after Substantial Completion of the Work, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. All machinery, equipment, and building systems used by the Contractor or any Subcontractors prior to Substantial Completion shall be restored to the same condition, if necessary at no cost to the Owner.

**§ 12.2.2.2** The one- (1-) 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- (1-) year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2; provided, however, the warranty provisions of the Contract Documents and the Contractor's obligations under this Section 12.2 shall be extended as to any corrective Work (but only for the specific items corrected) for the time specified in the Contract Documents from the date the corrective Work is completed. Without limitation, manufacturer's warranties on equipment shall supplement warranties specified in the Contract Documents.

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

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

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one- (1-) 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. The warranties given herein by the Contractor are in addition to any manufacturers' warranties that may be available to the Owner (which manufacturers' warranties the Contractor shall supply to the Owner on or before Substantial Completion).

**§ 12.2.6** If, during the guarantee or warranty period, any material, equipment, or system requires corrective Work because of defects in materials or workmanship, and if the Contractor remains on the Project site or if the corrective Work constitutes an emergency (a threat to human health or safety, or property or the launch-date of business operations), the Contractor shall undertake all required corrective Work within forty-eight (48) hours after receiving the notice and work diligently until the corrective Work is completed. In all other situations, if during the guarantee or

warranty period, any material, equipment, or system requires corrective Work because of defects in materials or workmanship, the Contractor shall, within forty-eight (48) hours after receiving the notice, respond, to the Owner with a detailed plan for performing all required corrective Work. If the Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within five (5) days after receiving notice or if the Contractor commences such Work but does not pursue it in an expeditious manner, the Owner may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to the Owner or may perform such Work and/or obligations and charge the costs thereof to the Contractor. The Contractor shall correct any defects noted by the Owner and if it is later determined that such defects were the responsibility of others, the Owner will pay the Contractor an amount calculated in accordance with Section 7.3.4 of these General Conditions. The obligations of the Contractor or any Subcontractor under the terms and provisions of the Contract Documents shall not be limited to the payments made by the surety (if any) under the provisions of the Contract. Ten (10) months following Substantial Completion, the Contractor shall accompany the Owner on an inspection of the Project and the Contractor shall promptly correct any defective or non-conforming Work.

### **§ 12.3 Acceptance of Nonconforming Work**

**§ 12.3.1** If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the GMP 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, excluding that jurisdiction's choice of law rules.

### **§ 13.2 Successors and Assigns**

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

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to (a) a lender providing financing for the Project, (b) to any of its affiliates, (c) in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets, or any similar transaction, or (d) to any person or entity succeeding to the Owner's interest in or to the property on which the Project is located. In such event, the assignee shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### **§ 13.3 Rights and Remedies**

**§ 13.3.1** Except as expressly limited in the Contract Documents, 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.

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

### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory selected by the Owner, or with the appropriate public authority. The Owner shall pay the costs of structural tests and inspections by the independent testing laboratory, geotechnical tests, system commissioning, membrane testing, air infiltration testing, and curtain wall performance testing. Unless otherwise provided in the Contract Documents, including the applicable Work Order, the Contractor shall pay the costs of the main building permit and the building official inspections covered by that permit, and other tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and

inspections are to be made so that the Architect may be present for such procedures. The Owner shall also bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure but not limited to, including those of repeated procedures and compensation for the Owner's and the Architect's services and expenses, shall be at the Contractor's expense.

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

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

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Owner's and Architect's observation of tests or inspection of Work shall not relieve the Contractor of any of its obligations under the Contract Documents.

### **§ 13.5 Interest**

**§ 13.5.1** Payments due and unpaid under the Contract Documents shall bear interest from the date that is five (5) business days after receipt of notice that such amount is past due in accordance with the terms of the Contract if and only to the extent provided in the Contract.

### **§ 13.6 Construction Lender Requirements**

**§ 13.6.1** The Contract may be amended in any respect, including, without limitation, procedures for payment, assignment, change orders, lien releases, and termination as may be reasonably required by any construction or permanent lender who may from time to time have a mortgage or deed of trust on the Project or have outstanding a loan commitment on the Project upon agreement by the Contractor, such agreement to not unreasonably be withheld, conditioned, or delayed. The Contractor also agrees to timely provide any such lender with any documents and information it reasonably requires within the limits afforded the Owner in the Agreement. The Contractor shall make every reasonable effort to conform its documentation in support of progress payments to the requirements of the lender under the construction loan agreement. If requested by the Owner, Contractor agrees to (i) execute a "Contractor's Letter of Consent of Assignment" or similar document and (ii) provide the construction lender such certificates or such other reasonable documents relating to the completion of the Work in compliance with applicable codes, ordinances, rules and regulations, in such form as may be required by the lender.

**§ 13.6.2** Any and all mortgages for the construction of the Project now or hereafter placed upon the property which the Contractor furnishes materials or labor shall be a lien prior to and superior to any lien the Contractor, Subcontractor or Supplier may now have or hereafter acquire by virtue of furnishing labor and materials, and any mechanics or materialmen's liens so acquired shall be subordinate to and is hereby subordinate to any and all such mortgages, to the extent permitted by the law of the place where the Project is located. The Contractor shall furnish, in a form acceptable to lender, verification of said subordination.

### **§ 13.7 Work Product; Work For Hire**

**§ 13.7.1** The Owner owns all rights, including without limitation, any intellectual property rights in and to everything the Contractor makes, conceives, develops, discovers, reduces to practice or fixes in a tangible medium of expression, alone or with others in the course of the Contractor's engagement by the Owner, including without limitation, all deliverables (but not including the Contractor's means, methods or Contractor's business administration)

("Engagement Work Product"). Any and all Shop Drawings, physical and electronic models, documents, renderings, drawings, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, Supplier or distributor (collectively, the "Tangible Work Product" and together with the Engagement Work Product, the "Work Product") is the sole and exclusive property of the Owner. The Owner owns all right, title, and interest (including, but not limited to, all copyrights and any other intellectual property rights) in the Work Product immediately upon creation of any Work Product or any part thereof. The Contractor shall deliver the Work Product or requested parts of the Work Product to the Owner upon Final Completion or earlier request of the Owner. To the maximum extent allowed by law, all Engagement Work Product will be considered "works made for hire" and accordingly, the Owner will be considered the author of Engagement Work Product under the federal copyright laws. The Work Product has been specially ordered and commissioned by the Owner as "work made for hire" for copyright purposes, or, to the extent any Work Product does not so qualify, the Contractor hereby grants, assigns and transfers to the Owner all of the Contractor's right, title, and interest of any kind in and to the Work Product and the copyright thereof, and all renewals and extensions of the copyright that may be secured now or in the future and the Contractor shall require a similar assignment to the Owner from all Subcontractors, Sub-subcontractors, manufacturers, Suppliers and distributors that produce any Work Product. The Contractor grants the Owner a perpetual, world-wide, royalty-free, non-exclusive license under its rights to make, have made, use, sell, offer to sell, distribute, modify, create derivative works of, and sublicense (through multiple tiers of sub licensees) any other intellectual property owned or licensable by the Contractor for the Owner's use and enjoyment of the Work Product, including the right to design and build structures without Contractor based on the Work Product.

### **§ 13.8 Damage To Existing Structures and Property**

**§ 13.8.1** The Contractor shall conduct the operations so as not to damage adjacent structures, existing structures, any work installed either by the Contractor or by other contractors, or any personal property of the Owner or others. If any such damage is related to its operations, the Contractor shall repair and make good as new the damaged portions at its own expense, and the Contractor shall be liable for the damage caused.

### **§ 13.9 Manufacturers' Requirements**

**§ 13.9.1** The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications, as applicable, and that the materials and equipment shall function as intended by the manufacturer. Prior to Final Completion, the Contractor shall obtain a statement from the manufacturer approving the Contractor's installation of all materials and equipment for which a warranty is required under the Contract Documents. If the Owner seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer fails to honor its warranty based, in whole or in part, on a claim of defective installation, the Owner shall be entitled to enforce any claim for defective installation against the Contractor.

### **§ 13.10 Waiver of Jury Trial.**

TO THE EXTENT PERMITTED BY LAW, AND EXCEPT FOR DISPUTES WHOSE VENUE IS IN SEATTLE, WA, THE CONTRACTOR AND THE OWNER WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN THE CONTRACTOR AND THE OWNER ARISING OUT OF THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

## **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 thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work on behalf of the Contractor, for any of the following reasons only:

- .1 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .2 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
- .3 Because the Owner fails to pay the Contractor as provided in Section 9.7.1.

**§ 14.1.2** Notwithstanding Section 14.1.1, in the event the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work on behalf of the Contractor due to issuance of an order of a court or

other public authority having jurisdiction that requires all Work to be stopped or failure to obtain governmental approval for the Project or Work, the Contractor may not terminate the Contract until first providing the Owner fourteen (14) days' notice along with a proposal for the Contractor's reasonable costs to remain on the Project until such order is lifted or such approval is obtained. If an agreement is not reached on the Contractor's proposal within the fourteen- (14-) day period, the Contractor may terminate the agreement and recover pursuant to Section 14.1.3.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon fourteen (14) days' notice to the Owner and Architect, and provided the cause for termination is not cured or corrected by the Owner or the Architect within such fourteen- (14-) day period, terminate the Contract and recover from the Owner payment for Work executed, including the pro-rata or proportionate part of the Contractor's Fee (as defined in the applicable Work Order) for Work performed. If the Contractor terminates the Contract, it will use commercially reasonable efforts to mitigate its losses and costs.

**§ 14.1.4** If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work on behalf of 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 fourteen (14) additional days' notice to the Owner and the Architect, and provided the cause for termination is not cured or corrected by the Owner or the Architect within such fourteen- (14-) day period, 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 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or Suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 disregards or does not comply with the Legal Requirements;
- .4 fails to provide to the Owner a construction schedule, construction schedule updates, weekly progress reports, certificates of insurance or any required payment and performance bond in the form and within the time required under the Contract Documents;
- .5 fails to achieve Substantial Completion or Final Completion on or before the dates specified in the Contract Documents or otherwise fails to adhere to the construction schedule in performing the Work;
- .6 has been paid for undisputed amounts and fails to remove Mechanic's Liens, pursuant to Section 9.6.8 or as so notified by the Owner or is otherwise in substantial breach of a provision of the Contract Documents that impacts the Cost of the Work or extension of Contract Time;
- .7 breaches any of its confidentiality obligations, including, but not limited to those set forth in the NDA; or
- .8 otherwise is in substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 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 (7) days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the Project site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor or leased by the Contractor for the Project;
- .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 unless and until the Work is finished.

**§ 14.2.4** If the unpaid balance of the GMP for Work performed prior to termination exceeds costs of finishing the Work, including but not limited to compensation for the Owner's and 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 for, but only to the extent of, Work properly performed by the Contractor, if applicable, but in no event

shall the Contractor be entitled to any payment in excess of the amount that would have been payable to the Contractor if the Owner had terminated the Contract pursuant to Section 14.4. 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 Owner, upon application.

**§ 14.2.5** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Owner shall be entitled to recover its damages resulting from such termination, including, but not limited to, all costs in excess of the GMP, including attorney's fees and consulting compensation for the Architect's and the Owner's Representative's services and expenses made necessary thereby and, if Substantial Completion is not achieved by the required date of Substantial Completion (as adjusted pursuant to the Contract Documents), liquidated damages for delay as set forth in the Agreement. All amounts paid pursuant to this Section 14.2.5 shall be certified by the Owner upon application.

**§ 14.2.6** It is recognized that if the Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors on account of the Contractor's insolvency, such circumstance could impair or frustrate the Contractor's performance of the Contract. Accordingly, the parties to the Contract agree that at any time that Owner has reasonable concerns about the financial stability of the Contractor, the Owner shall be entitled to request of the Contractor or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents and the Contractor shall have seven (7) business days to provide such assurances. The Contractor's failure to comply with such request shall entitle the Owner to (a) withhold payment until the Contractor provides such reasonable assurances as the Owner shall require, and/or (b) to terminate the Contract immediately and to the accompanying rights thereunder. The Owner shall be entitled to recover its damages resulting from such termination including, but not limited to, all costs incurred by the Owner in excess of the GMP and, if Substantial Completion is not achieved by the required date of Substantial Completion, liquidated damages for delay as set forth in the Agreement.

### **§ 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 GMP and Contract Time shall be adjusted for increases and decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the GMP shall include applicable adjustments to the Contractor's Fee, as defined in the applicable Work Order. No adjustment shall be made to the extent

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

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

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. If the Owner terminates for cause and that termination is determined to be improper, then the termination will be deemed a termination for convenience.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders;
- .4 not place any further orders or enter into any new subcontracts for materials, services or facilities; and
- .5 immediately turn over to the Owner the original (or a copy, equal in quality to the original) of all of the Contractor's records, files, documents, materials, drawings and any other items relating to the Project, whether located on the Project site, at the Contractor's office or elsewhere.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to payment for Work properly executed; and costs reasonably incurred by reason of such termination, including costs attributable to termination of Subcontracts; along with reasonable overhead and profit in the form of the pro-rata or proportionate part of the Contractor's Fee on the Work performed.

## § 14.5 Limitation on Termination Claims

§ 14.5.1 In connection with any termination of the Contract, whether by the Owner for convenience or cause or by the Contractor for cause, it is agreed and understood that: (i) no Fee shall be due or payable with respect to unperformed Work; (ii) in no event shall the Owner be liable for lost profits or overhead; and (iii) in no event shall the Contractor be entitled to a termination payment that would in the aggregate with all prior payments by the Owner to the Contractor exceed the GMP, including any written Change Orders and work authorized by the Owner in writing.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A "Claim" is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. Claims must be initiated by Notice of Claim. The responsibility to substantiate Claims shall rest with the Contractor.

*(Paragraphs deleted)*

§ 15.1.2 (Intentionally omitted).

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 In the event that the Contractor believes it has a Claim against the Owner for additional compensation, additional time or some other remedy arising out of or in connection with the Contract Documents, the Work or the actions or omissions of the Owner (or the parties for whom the Owner is responsible), the Contractor shall give notice ("Notice of Claim") to the Owner of such Claim within fifteen (15) days of when the Contractor first knew, or reasonably should have known, of the event or condition giving rise to the apparent claim. In the event the Claim is the result of failure to mutually agree on the adjustment of the GMP or Contract Time for changes addressed in Articles 7 and 8, the time period for the Notice of Claim starts at the time the parties agree there is an impasse. No Claim for additional time shall be allowed unless the Notice of Delay procedures described in Section 8.3.1 have been followed. The Notice of Claim shall describe the nature and impact of the Claim in reasonable detail. For purposes of this provision, giving notice to the Owner shall be deemed to mean notice delivered by (a) personal delivery, (b) certified U.S. mail, with postage prepaid and return receipt requested, or (c) overnight courier service, with proof of delivery, to the Owner, Development Manager, and the Architect at the addresses set forth in the Contract Documents or such other person or location as Owner may designate in writing from time to time.

§ 15.1.3.2 The Contractor shall use commercially reasonable efforts to include the following in a Notice of Claim: (i) the date and description of the event giving rise to the request for an adjustment or interpretation of Contract terms, a payment of money, an extension of time or other relief with respect to the terms of the Contract Documents; (ii) a statement of the nature of the impacts to the Contractor and its Subcontractors, if any; (iii) a detailed written breakdown and calculation of the adjustment in the GMP sought by the Contractor for itself and for others, if any, together with documents and substantiation for all adjustments, including but not limited to the AIA G701 (showing the original GMP, proposed change in the GMP, and the proposed new GMP), an updated schedule of values, an updated total Project estimate, any backup documentation for the overage (e.g., subcontractor or supplier bids, or related labor and equipment reports), and any other documentation reasonably requested by the Owner; (iv) a detailed written analysis and explanation of the amount of any adjustment to the Contract Time, then known and sought by the Contractor, together with an analysis of the construction schedule showing the claimed impact on the Contractor's ability to achieve Substantial Completion by the required date of Substantial Completion; (v) a detailed written analysis and explanation, together with documents and substantiation for any other request relief with respect to the terms of the Contract Documents; and (vi) a detailed statement of all provisions of the Contract Documents upon which the Notice of Claim is based. The Contractor shall update any Notice of Claim with each weekly report to the Owner until such time as the foregoing detail has been received by the Owner in the Owner's reasonable discretion.

§ 15.1.3.3 No course of conduct or dealing 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 shall form the basis of any Claim for an increase in any amount due under the Contract Documents or a change in the Contract.

§ 15.1.3.4 All Claims made by the Contractor or by any Subcontractor or Sub-subcontractor through the Contractor shall be accompanied by a certification by an officer of the Contractor having overall responsibility for the

Contractor's affairs stating (i) the Claim is made in good faith; (ii) the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; and (iii) the amount requested accurately reflects the contract adjustment for which the Contractor believes the Owner is liable. For Claims by Subcontractors or Sub-contractors the Contractor may not rely on Subcontractor or Sub-subcontractor certifications but must conduct an independent evaluation sufficient to certify the claim as stated above. False or inaccurate certification of a Claim will entitle the Owner to recover its costs of defending such Claim including but not limited to attorney, accountant and expert fees.

**§ 15.1.3.5 THE CONTRACTOR'S FAILURE TO GIVE NOTICE OF CLAIM WITHIN THE FIFTEEN- (15-) DAY PERIOD AND IN STRICT COMPLIANCE WITH THE OTHER REQUIREMENTS SET FORTH IN THIS ARTICLE 15 SHALL CONSTITUTE AN ABSOLUTE AND COMPLETE WAIVER, RELEASE AND BAR OF SUCH CLAIM, EXCEPT WHERE SUCH WAIVER, RELEASE OR BAR IS PROHIBITED BY APPLICABLE LAWS.**

#### **§ 15.1.4 Continuing Contract Performance**

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

**§ 15.1.4.2** (Intentionally omitted).

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the GMP, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4 or Claims where a Construction Change Directive has authorized the Work.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. No Claim for additional time shall be allowed unless the Notice of Delay procedures described in Section 8.3.1 have been followed.

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

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

Except as otherwise set forth in these General Conditions, the Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. Except as otherwise provided in the Work Order, this mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for expenses related to Contractor's principal office or offices other than the Project site office including the compensation of personnel stationed at such offices, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. However, nothing contained in this Section 15.1.7 shall (a) preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, (b) if no amount for liquidated damages has been inserted into the relevant Work Order, preclude an award for other damages recoverable by the Owner pursuant to the terms of the Agreement in the event of the Contractor's failure to achieve Substantial Completion on time, (c) waive any damages incurred by the Owner due to a breach of the NDA or of any of the Contractor's confidentiality obligations in the Contract Documents, (d) limit in any way the parties' indemnification obligations set forth in the Contract Documents with respect to third-party claims, (e) limit in any way

a party's rights and remedies related to the other party's gross negligence or willful misconduct, or (f) waive any damages to the extent covered by insurance or insurance required to be carried under the Contract.

§ 15.2 (Intentionally omitted).

*(Paragraphs deleted)*

**§ 15.3 Resolution of Claims and Disputes**

**§ 15.3.1** The Owner and Contractor shall first endeavor to directly negotiate resolution of Claims and disputes arising out of or related to the Contract ("Dispute"). If the Owner and Contractor do not resolve the Dispute through direct negotiation, any and all Disputes shall be decided through arbitration, which unless the parties mutually agree otherwise or unless otherwise required by applicable law, shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules ("Rules") specified below and in effect on the date of this Agreement. A demand for arbitration shall be made to the other party in accordance with Section 15.3.17 and filed with the AAA. The party filing a notice of demand for arbitration must assert in the demand all Disputes then known to that party on which the arbitration is permitted to be demanded. The time, date, and place of the arbitration hearing shall be set in the sole discretion of the arbitrator(s), provided that there shall be at least ten (10) business days prior notice of the hearing.

**§ 15.3.2** Good faith participation in direct negotiation is a condition precedent to the filing of a demand for arbitration. Accordingly, a demand for arbitration shall be made no earlier than the date notification is received from one of the parties stating that efforts at direct negotiation have been unsuccessful, and in no event shall it be made after the date when the institution of legal or equitable proceedings of the Dispute would be barred by the applicable statute of limitations. For statute of limitations purposes, the demand for arbitration to the other party shall constitute the commencement of legal or equitable proceedings of the Dispute.

**§ 15.3.3** The Owner may join the Contractor as a party to any litigation or arbitration with any other person/entity and to which Owner is a party that may involve adjudication of the alleged fault, responsibility, or breach of contract of the Contractor. The Contractor agrees to waive arbitration and proceed with and submit to litigation in a court of competent jurisdiction if litigation is required to join all parties necessary or beneficial to the full and final resolution of any claim, dispute or controversy, to avoid inefficiencies, or to avoid the risk of inconsistent outcomes.

**§ 15.3.4** For all Disputes where the aggregate amount in controversy, including consolidated disputes, is less than \$10 million, the arbitration proceedings shall be conducted by a single arbitrator, provided that the arbitrator shall be an attorney validly licensed to practice law in a jurisdiction in the United States, with no less than ten (10) years of experience in construction and/or design-related matters, and listed on the AAA's National Construction Panel and/or an equivalent national panel of arbitrators designated for large and complex construction disputes.

**§ 15.3.5** For all Disputes where the aggregate amount in controversy, including consolidated disputes, is \$10 million or more, the arbitration proceedings shall be conducted by a panel of three (3) arbitrators, provided that at least one (1) arbitrator shall be an attorney validly licensed to practice law in a jurisdiction in the United States, with no less than ten (10) years of experience in construction and/or design-related matters, and all three (3) arbitrators shall be listed on the AAA's National Construction Panel and/or an equivalent national panel of arbitrators designated for large and complex construction disputes.

**§ 15.3.6** The AAA Rules for Fast Track Procedures shall apply where the aggregate amount in controversy, including consolidated disputes, is \$100,000 or less. The AAA Rules for Regular Track Procedures shall apply where the aggregate amount in controversy, including consolidated disputes is more than \$100,000 but less than \$10 million. The AAA Rules for Procedures for Large, Complex Construction Disputes shall apply where the aggregate amount in controversy, including consolidated disputes, is \$10 million or more.

**§ 15.3.7** It is the intent of the parties that, barring extraordinary circumstances, any arbitration under the AAA Rules for Regular Track Procedures and Procedures for Large, Complex Construction Disputes shall be concluded within one (1) year of the date the arbitrator(s) are appointed. Unless the parties otherwise agree, the total time of the arbitration hearing (exclusive of any preliminary hearing time) under the AAA Rules for Procedures for Large, Complex Construction Disputes shall not exceed fifteen (15) hearing days, or one hundred (100) hours, whichever is less, with the time to be equitably divided between the parties by order of the arbitrator(s). Unless the parties otherwise agree, the total time of the arbitration hearing (exclusive of any preliminary hearing time) under the AAA Rules for

Regular Track Procedures shall not exceed seven (7) hearing days, or fifty (50) hours, whichever is less, with the time to be equitably divided between the parties by order of the arbitrator. The parties may, upon mutual agreement, extend or modify these time limits, or in the absence of mutual agreement the arbitrator(s) may extend or modify these time limits upon a showing of good cause.

**§ 15.3.8** The parties and the arbitrator(s) shall treat all aspects of the arbitration and other related proceedings, including, but not limited to, discovery, testimony, evidence, the record of the proceedings, briefs, and the decision or award, as strictly confidential and not subject to disclosure to any third party or entity, other than to the parties, the arbitrator(s) and the AAA. The sole exception is that a final monetary award, without any supporting decision or rationale, may be submitted to a court of competent jurisdiction in order to enter judgment on the award under Section 15.3.16. The hearings shall be conducted privately, and in a private setting, with no persons permitted to participate or be present except the parties, their designated counsel and representatives, the arbitrator(s), witnesses, a reporter of the proceedings (if requested and paid for by a party) and representatives of the AAA.

**§ 15.3.9** The arbitrator(s) shall issue a written decision that includes a reasoned statement of decision or opinion stating or setting forth the essential facts and legal bases supporting the disposition within ten (10) business days after the close of the arbitration hearing.

**§ 15.3.10** Within fifteen (15) days of receipt of the written decision, either party will have the right to file with the arbitrator(s) and simultaneously serve on the other party a written motion to reconsider. The arbitrator(s) may request the nonmoving or responding party to file a written response within ten (10) days after receipt of that request; no response should be submitted unless so requested by the arbitrator(s), but the arbitrator(s) shall have no authority to consider the motion without making a request for a response. The arbitrator(s) thereupon will reconsider the issues raised by the motion and response (if any) and either confirm or alter their decision, which will then be final, binding and conclusive upon the parties. The costs of such motion for reconsideration and written opinion of the arbitrator(s), including attorneys' fees, shall be awarded solely against the moving party if its motion does not result in a substantive alteration of the arbitrator(s)'s decision.

**§ 15.3.11** The parties expressly intend, agree and acknowledge that the parties knowingly, unequivocally and absolutely waive, and the arbitrators are not empowered to grant, any and all right to bring any demand, claim or action against the other for exemplary, treble (or other multiple) or punitive damages in any form, under any theory of recovery.

**§ 15.3.12** Either party may file, and the arbitrator(s) shall consider and act on, pre-hearing motions. The arbitrator(s) shall hear and determine any preliminary issue of law asserted by any party to be dispositive of any claim or defense, in whole or in part, in the manner that a court would hear and dispose of a motion to dismiss for failure to state a claim, or for summary judgment, pursuant to such terms and procedures as the arbitrator(s) deem appropriate.

**§ 15.3.13** The arbitrator(s) may consolidate an arbitration conducted under this Section 15.3 with any other arbitration to which either party is a party provided that (i) the arbitration agreement governing the other arbitration permits consolidation, (ii) the arbitrations to be consolidated substantially involve common questions of law or fact, and (iii) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.3.14** The arbitrator(s) may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required or beneficial 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. Notwithstanding this Section or Section 15.3.13, in no event shall any arbitration under this Agreement be conducted on a class or representative basis.

**§ 15.3.15** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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

§ 15.3.17 All notices under this Section 15.3 may be made by telephone or other electronic communication with later confirmation in writing.

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

§ 15.4 The Contractor may not demand arbitration against the Owner on any Claim or Dispute under the Contract after the expiration of three hundred sixty-five (365) days from Substantial Completion. This contractual period of limitation takes precedence over any contrary or conflicting statutory provision or rule of law applicable to any Claims or Disputes which the Contractor may seek to bring.

§ 15.5 The Contractor acknowledges that disputes between the Owner and Landlord (if any) may become subject to arbitration under the provisions of lease between the Owner and Landlord, and if requested by the Owner to do so, the Contractor shall participate in and become a party to any such arbitration proceeding and agrees to be bound by any final and binding arbitration decision rendered therein. This Section shall apply only to issues and claims directly relating to the Contractor and only so long as the Contractor has the opportunity and rights to fully participate in any arbitration, including, but not limited to, selection of arbitrators.

#### ARTICLE 16 CODE OF CONDUCT

§ 16.1 The Contractor acknowledges that the Owner's Code of Business Conduct and Ethics posted at <http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-govConduct> and Code of Standards and Responsibilities posted at <http://www.amazon.com/gp/help/customer/display.html?ie=UTF8&nodeId=200885140> (as either may be modified from time to time, the "Code") prohibits the paying of bribes to anyone for any reason, whether in dealings with governments or the private sector. The Contractor will not violate or knowingly permit anyone to violate the Code's prohibition on bribery or any applicable anti-corruption laws in performing under the Contract Documents. The Owner may immediately terminate or suspend performance under the Contract Documents if the Contractor breaches this Article 16. The Contractor will maintain true, accurate, and complete books and records concerning any payments made to another party by the Contractor under the Contract Documents, including on behalf of the Owner. The Owner and its designated representative may inspect the Contractor's books and records to verify such payments and for compliance with this Section.

§ 16.2 The Architect acknowledges that Owner's Code of Business Conduct and Ethics posted at <http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-govConduct> and Code of Standards and Responsibilities posted at <http://www.amazon.com/gp/help/customer/display.html?ie=UTF8&nodeId=200885140> (as either may be modified from time to time, the "Code") prohibits the paying of bribes to anyone for any reason, whether in dealings with governments or the private sector. The Architect will not violate or knowingly permit anyone to violate the Code's prohibition on bribery or any applicable anti-corruption laws in performing under the Contract Documents. The Owner may immediately terminate or suspend performance under the Contract Documents if the Architect breaches this Article 16. The Architect will maintain true, accurate, and complete books and records concerning any payments made to another party by the Architect under the Contract Documents, including on behalf of the Owner. The Owner and its designated representative may inspect the Architect's books and records to verify such payments and for compliance with this Section.

§ 16.3 The Contractor represents and warrants that the Contractor and its financial institution(s) are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the US Government (e.g., the US Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list and the US Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.

§ 16.4 The Architect represents and warrants that the Architect and its financial institution(s) are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the US Government (e.g., the US Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list and the US Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.



## SCHEDULE 1

### Subcontractor and Sub-subcontractor Minimum Insurance Limits

Trade/Scope of Work	CGL	Auto	Employer's Liability	Workers' Comp
Shoring, Earthwork, Demolition and Utilities	\$5MM Occurrence \$5MM Aggregate	\$1MM	\$1MM	As Required by Applicable Law
Building/Load Bearing: Framing and Masonry	\$5MM Occurrence \$5MM Aggregate	\$1MM	\$1MM	As Required by Applicable Law
Crane (Excluding Loader Cranes)	\$5MM Occurrence \$5MM Aggregate	\$1MM	\$1MM	As Required by Applicable Law
HVAC, Electrical, Plumbing, Mechanical and Life Safety	\$2MM Occurrence \$4MM Aggregate	\$1MM	\$1MM	As Required by Applicable Law
Elevator and Escalator	\$2MM Occurrence \$2MM Aggregate	\$1MM	\$1MM	As Required by Applicable Law
Roofing, Siding, Flashing and Curtain Wall	\$2MM Occurrence \$2MM Aggregate	\$1MM	\$1MM	As Required by Applicable Law
Non-Specified	\$1MM Occurrence \$2MM Aggregate	\$1MM	\$1MM	As Required by Applicable Law

**Additional Requirements:**

- **General Requirements:** The general insurance requirements for Subcontractors and Sub-subcontractors are contained in the Agreement to which these Subcontractor and Sub-subcontractor Minimum Insurance Limits are attached.
- **Limited Work:** No specified minimum insurance limits shall apply to a Subcontractor or Sub-subcontractor if the work to be performed by such Subcontractor or Sub-subcontractor is (i) less than \$25,000 and (ii) not a trade specifically listed in the chart above.
- **Professional Liability/E&O:** Design and design/build subcontractors, including Subcontractors or Sub-subcontractors providing professional design or engineering services, are also required to procure and maintain professional liability insurance coverage (including contractual liability insurance) with a minimum limit of \$1 million, provided, however all architects are required to carry a minimum limit of \$2 million.
- **Pollution Liability:** If (a) the work required of the Subcontractor or Sub-subcontractor involves, in whole or in part remediation, abatement, transportation or disposal of hazardous materials/substances or contaminants (as defined by applicable law, statutes, codes, regulations or ordinances), demolition or renovation that may involve materials containing hazardous materials/substances or contaminants, or (b) the Subcontractor's or Sub-subcontractor's primary business is providing demolition services, or (c) the Subcontractor or Sub-subcontractor is performing any grading, earthwork, subsurface or related work, then such Subcontractor or Sub-subcontractor shall maintain Contractor's Pollution Liability insurance of not less than \$1 million per occurrence and name all parties required to be named herein as additional insures. Such policy must include coverage for disposal at non-owned disposal sites.
- **Umbrella/Excess Limits:** If the Work relates to a facility leased by the Owner or its affiliates, Subcontractors or Sub-subcontractors may satisfy these Subcontractor and Sub-subcontractor Minimum Insurance Limits by any combination of primary liability and excess liability coverage that results in the same protection to Owner and its affiliates.

*(Paragraphs deleted)*

# Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 18:43:54 ET on 01/21/2022.

PAGE 1

**[Draft Date April 20, 2021]**

Dated for reference purposes as of the [ ] day of [ ] in the year Two Thousand [ ].

**for the following PROJECT:**

...

As set forth in the applicable Work Order.

...

*(Name, legal status and address)*

**[Amazon.com Services LLC]** (or as otherwise set forth in the applicable Work Order)

c/o Amazon.com, Inc.

410 Terry Ave. N

Seattle, WA 98109-5210

Attn: Real Estate Manager

With a copy to:

**[Amazon.com Services LLC]**

c/o Amazon.com, Inc.

410 Terry Ave. N

Seattle, WA 98109-5210

Attn: General Counsel (Real Estate)

With an e-mail copy to:

global-lease-abstraction@amazon.com,

notifyreflegal@amazon.com,

na-realestate@amazon.com,

opsrelegalnotice@amazon.com, and

ops-legal-construction@amazon.com

**THE CONTRACTOR:**

[ ]

[ ]

[ ]

Attn: [ ]

...

As set forth in the applicable Work Order.

**PAGE 2**

**15 CLAIMS AND DISPUTES**

**16 CODE OF CONDUCT**



## DEFINITIONS

*Number references refer to the Sections of these General Conditions where the term is defined. See also GC 1.2.3 for other meanings.*

- AAA: see GC 15.3.1.
- Addenda: see GC 1.1.1.
- Additional Drawings and Specifications: see GC 4.1.3.
- Additional Indemnified Parties: see GC 3.18.1 & Work Order, Paragraph 10.
- Agreement: see GC 1.1.1.
- Allowance: see GC 3.8.
- Application for Payment: see GC 9.3.
- Architect: the firm identified in the applicable Work Order & GC 4.1.1.
- Certificate for Payment: see GC 9.4.
- Certificate of Substantial Completion: see GC 9.8.4.
- Change Order: see GC 1.1.1 & GC 7.2.
- Claim: see GC 15.1.1.
- Code: see GC 16.1 & 16.2.
- Commencement Date: see GC 8.1.2.
- Compensable Delays: see GC 8.3.1.
- Completion Details: see GC 4.1.3.
- Conditional Release of Lien and Waiver of Lien Rights: as used GC 9.3.4.
- Construction Change Directive: see GC 7.3.1.
- Construction Documents: see GC 1.1.1.
- Contract (or Contact for Construction): see GC 1.1.2.
- Contract Documents: see GC 1.1.1.
- Contract Time: see GC 8.1.1.
- Contractor: the party identified on the first page of the Agreement & GC 3.1.1.
- Contractor Parties: see GC 3.1.1.
- Contractor's Fee: see GC 7.3.4 & elsewhere.
- Contractor's Letter of Consent of Assignment: as used GC 13.6.1.
- Design Responsibility Matrix: see GC 3.1.7.
- Development Manager: see GC 2.1.1.
- Dispute: see GC 15.3.1.
- Drawings: see GC 1.1.5.
- Engagement Work Product: see GC 13.7.1.
- Excusable Delays: see GC 8.3.1.
- Exhibits: see GC 1.2.1.3(b).
- Final Completion: see GC 8.1.5.
- Float: see GC 8.3.1.1.
- Guaranteed Maximum Price or GMP: see GC 9.1.
- Hazardous Materials: see GC 10.3.2.
- Indemnified Parties (or Party): see GC 3.18.1.
- Indemnity Claims: see GC 3.18.1.
- Instruments of Service: see GC 1.1.7.
- Known Environmental Conditions: see GC 10.3.1.
- Lease Requirements: see GC 3.13.3
- Legal Requirements: see GC 2.3.7 & elsewhere.
- General Conditions: see GC 1.1.1.
- Milestone Dates: see GC 3.10.1.
- Modification: see GC 1.1.1 & 1.1.2.
- Non-Disclosure Agreement or NDA: the document identified on the first page of the Agreement & see GC 1.9.
- Normal Expected Weather: see GC 3.10.4.
- Notice of Claim: see GC 15.1.3.1.
- Notice of Delay: see GC 8.3.1.
- Notice to Proceed: as used GC 8.1.2.
- OCIP: see GC 11.0.1
- Owner: the party identified in the applicable Work Order & GC 2.1.1.



- Owner's Representative: see GC 2.1.1.
- Prime Consultants: see GC 1.1.9.
- Product Data: see GC 3.12.2.
- Project: the endeavor identified in the applicable Work Order & GC 1.1.4.
- Project Manager: see GC 3.9.1.
- Punch List: see GC 9.4.1.
- RFI(s): see GC 1.2.5.
- Rules: see GC 15.3.1.
- Samples: see GC 3.12.3.
- Separate Contractor: see GC 6.1.1.
- Shop Drawings: see GC 3.12.1.
- Site Management Plan: see GC 3.13.4.
- Specifications: see GC 1.1.6.
- Subcontractor: see GC 5.1.1.
- Substantial Completion: see GC 9.8.1.
- Sub-subcontractor: see GC 5.1.2.
- Superintendent: see GC 3.9.1.
- Supplier: see GC 5.1.3.
- Tangible Work Product: see GC 13.7.1.
- Taxes: see GC 3.6.
- Unit Prices: see GC 3.8.4.
- Unconditional Release of Lien and Waiver of Lien Rights: as used GC 9.3.4.
- Work: see GC 1.1.3.
- Work Order: GC 1.1.1.
- Work Product: see GC 13.7.1.

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**Documents and Samples at the Project Site  
PAGE 9**

**Samples at the Project Site, Documents and  
PAGE 12**

~~The Contract Documents are enumerated in the~~ These General Conditions of the Contract for Construction (the "General Conditions") are made a part of that certain 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 identified in the applicable Work Order (or, if no reference is made in such Work Order, the Agreement executed with these General Conditions) (the "Agreement"). For each Project, the Contract Documents consist of (i) the Agreement, (ii) these General Conditions, (iii) Drawings and Specifications identified in the applicable Work Order or Proposal, (iv) Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract- Work Order, (v) the applicable Work Order or Proposal, (vi) other documents listed in the Agreement or the applicable Work Order, and (vii) Modifications issued after execution of the Agreement or the applicable Work Order. A Modification is (1) a written amendment to the Contract- Work Order 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, Owner or the Architect that does not increase costs or construction time, which if issued by the Architect has been approved in writing by the Owner. Unless specifically enumerated in the applicable Work Order, the~~ Contract Documents do not include the advertisement or invitation to bid, ~~Instructions to Bidders, instructions to bidders, request for proposals ("RFP") or request for qualifications ("RFQ"), sample forms, other information~~ furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

...

~~The Contract Documents form the Contract for Construction. The~~ For each Project, the Contract Documents form the "Contract for Construction" or the "Contract." Except as provided to the contrary in the applicable Work Order or a Modification, the Contract represents the entire and integrated agreement between the parties hereto for the Project 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~~ entities, including the Development Manager, 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.

...

~~The term "Work" means the construction and services required by the Contract Documents. For each Project, the term~~ "Work" means all reasonably and necessarily inferable construction and services required of the Contractor by the Contract Documents (including, without limitation, all work, labor, materials, tools, equipment, transportation, procedures, techniques, and supplies), whether completed or partially completed, and whether completed by the Contractor, Subcontractors, Sub-subcontractors, Suppliers, or any other entity for whom the Contractor is responsible under or pursuant to 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~~ obligations, including Final Completion of the Work in accordance with the Drawings and Specifications to achieve a complete and functioning Project in compliance with the Contract Documents. The Work may constitute the whole or a part of the ~~Project~~ Project, as described in the applicable Work Order.

...

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

#### ~~§ 1.1.8 Initial Decision Maker~~

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

#### ~~§ 1.1.8 (Intentionally omitted).~~

#### ~~§ 1.1.9 Prime Consultants~~

~~In addition to the Architect and its consultants, the Owner may retain other project consultants such as a structural engineer, a geotechnical engineer, a civil engineer, an interiors or tenant improvement architect, an interior designer or others, collectively referred to as "Prime Consultants." Upon Owner's notice to Contractor, such Prime Consultants shall have the authority provided the "Architect" under the Contract to clarify and interpret issues related to the portion of the work they are employed by the Owner to oversee and which do not increase the Cost of the Work or extend the Contract Time. All provisions of the Contract, though they may refer to the Architect only, shall be construed as also referring to the applicable Prime Consultants or the Development Manager where and when appropriate for Project administration purposes.~~

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~~§ 1.2.1.1 The invalidity, voidness, illegality, or unenforceability of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions, affect or invalidate the Contract or any remaining provisions, which shall continue to maintain their vitality and validity, and the Contract shall be construed as if the invalid, void, illegal, or unenforceable provision had never been a part of the Contract. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid, void, or unenforceable, then that~~

provision shall be revised to the extent necessary to make that provision ~~legal~~ legal, valid, and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 All obligations of Owner and Contractor hereunder not fully performed as of and intended to survive the termination of the Agreement will survive the termination of the Agreement for a period of three (3) years, including but not limited to, indemnification, confidentiality, lien, termination payment, damage to existing structure and property, and post Substantial Completion obligations.

§ 1.2.1.3 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- (a) Modifications issued after execution of the applicable Work Order,
- (b) The applicable Work Order and its Exhibits,
- (b) The Agreement, as amended, including its Exhibits,
- (c) These General Conditions,
- (d) Addenda, if any, with those of later date having precedence over those of earlier date,
- (e) Modifications to the Drawings and Specifications issued after execution of the applicable Work Order,
- (f) Specifications, Drawings, and Addenda issued prior to execution of the applicable Work Order,
- (g) Specifications and Drawings as noted in the applicable Work Order.

In the event of any conflict or discrepancy between or among different versions of the same Contract Document, the most recently issued version takes precedence over a previous version. In the case of any conflict or discrepancy between Contract Documents, the more stringent provision will control; provided that the Specifications shall govern as to materials, workmanship, performance, and installation; and Drawings shall govern as to location, arrangement, shape, or dimension.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Specifications are divided into sections for convenience only. Neither the Owner nor the Architect are obliged to define the limits of any subcontract, and will not enter into work scope disputes between the Contractor and Subcontractors.

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§ 1.2.4 Execution of a Work Order by the Contractor is a representation by the Contractor that the Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work therein, to enter into the applicable Work Order, and to accomplish the Work for an amount not in excess of the GMP within the Contract Time provided for in the Contract Documents. The Contractor further represents and warrants that prior to execution of the applicable Work Order it has visited and examined the Project site, examined all physical, legal, and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same, including (i) the nature, location and character of the Project site, including all observable structures and obstructions thereon, both natural and man-made; (ii) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (iii) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the GMP and Contract Time required by the Contract Documents. THE FAILURE OF THE CONTRACTOR TO FULLY ACQUAINT ITSELF WITH ANY PROVISION OF THE CONTRACT DOCUMENTS, AND ITEMS (i), (ii) AND (iii) IN THIS SECTION 1.2.4, SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, AND WITHIN THE GUARANTEED MAXIMUM PRICE AND THE CONTRACT TIME AS PROVIDED FOR IN THE CONTRACT DOCUMENTS.

§ 1.2.5 Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in any place, or an inconsistency or ambiguity between the Specifications and Drawings, or internally within the Specifications or Drawings arises, then it shall be the duty of the Contractor to make written inquiry (a request for information) ("RFI") of the Architect and Owner as to what was intended. To avoid potential delays, the Contractor shall ensure that it reviews the Specifications and Drawings for any inconsistencies and ambiguities sufficiently in advance of performing the part of the Work described therein so that an RFI is issued as soon as possible before that

part of the Work is required to be performed. No increase in the GMP or Contract Time will be granted for costs or delays resulting from the failure of the Contractor to timely issue an RFI.

If any item or material shown on the Drawings is omitted from the Specifications, or vice-versa (except when the Drawings and Specifications clearly exclude such omitted item) and when such item or material is clearly required to complete the detail shown or specified, the Contractor shall furnish and install such item or material of the type and quality established by the balance of the detail shown and specified at no increase to the GMP. If there is any conflict as to the quantity or quality of material or the level of service, the Contractor shall provide the greater quantity or better quality of materials and the highest level of service at no increase to the GMP.

§ 1.2.6 Where a typical or representative detail is shown on the Drawings, this detail shall constitute the standard for workmanship and material throughout the corresponding parts of the Work.

§ 1.2.7 Any summary of Work as outlined in the Specifications shall not be deemed to limit the Work required by the Contract Documents. The Contractor and each Subcontractor shall be responsible for thoroughly examining all Drawings, including all details, plans, elevations, sections, schedules, and diagrams, as well as, all measurements and dimensions, for each particular type of Work and coordinating the Work described in the Drawings with the related Specifications. The Contractor shall also be responsible for determining the exact scope of work for each type of work and for checking and rechecking cross-references to any work excluded from any division. The GMP is deemed to be based on a complete installation. When additional details or instructions are required to complete the Work, the Contractor is deemed to have accounted for completion of such work in the GMP, consistent with the obligations set forth in Article 5 of the Agreement.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Owner (unless otherwise indicated) shall be deemed the owner of the Instruments of Service, including the Drawings and Specifications, and will, as among the Contractor, Architect and Owner, retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers-Suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights-Owner's copyrights or other reserved rights. To the extent the Owner-Architect Agreement is inconsistent with this Section 1.5.1, the Owner-Architect Agreement controls as between the Owner and Architect. As between the Owner and Contractor, this Section 1.5.1 shall control.

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

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§ 1.6.1 Except as otherwise provided in Section 1.6.2, Sections 10.2.9 and 15.1.3.1, where the Contract Documents require one a party to notify or give notice to the other party, such notice shall be provided in writing delivered by (a) personal delivery, (b) certified U.S. mail, with postage prepaid and return receipt requested, (c) overnight courier service, or (d) e-mail transmission, with a verification copy sent within one (1) business day by any of the methods set forth in clauses (a), (b), or (c) above, to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement-addressed, as set forth in the applicable Work Order. All notices to the Owner must be addressed to the attention of the General Counsel. A party may change its notice address at any time by delivery of notice to the other party.

~~§ 1.6.2~~ Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

The parties shall agree upon protocols governing the transmission and use of ~~If the parties intend to transmit~~ Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~ form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

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~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. The Owner reserves the right to require the Contractor to include terms necessary to implement BIM services for the Work through incorporation of a modified AIA E203-2013, Building Information Modeling and Digital Data Exhibit, or similar exhibit, in the applicable Work Order sufficient to establish protocols for the development, use, transmission, and exchange of BIM models. The Contractor shall include any as-built BIM models in the records delivered to the Owner pursuant to Section 3.12.12. Use of BIM does not relieve the Contractor of any of its duties and responsibilities to the Owner under the terms of the General Conditions or otherwise.~~

#### **§ 1.9 CONFIDENTIALITY**

~~The Contractor will comply with the terms of any nondisclosure agreement executed by the Contractor in favor of the Owner (or the Owner's affiliates) ("NDA"). The Contractor and its agents and representatives (i) will protect and keep confidential the existence of the Contract (including, without limitation, all Work Orders), its terms and conditions and any other information obtained from the Owner in connection with the Contract or related to the Work that is identified as confidential or proprietary or that, given the nature of such information or the manner of its disclosure, reasonably should be considered confidential or proprietary (including but not limited to all information relating to the Owner's technology, customers, business plans, marketing activities, and finances), (ii) will use such information only for the purpose(s) for which it was originally disclosed and in any case only for the purpose of fulfilling its obligations under the Contract, (iii) will protect and keep confidential under the NDA all Phase 1 environmental reports provided to the Contractor related to the Work, and (iv) will return all such information to the Owner promptly upon the termination of the Contract. All such information will remain the Owner's exclusive property, and the Contractor will have no rights to use such information except as expressly provided herein. The Contractor will not use any trade name, trademark, service mark, logo or commercial symbol, or any other proprietary rights of the Owner or any of its affiliates in any manner without prior written authorization of such use by a Vice President of the Owner. The Contractor will not issue press releases or publicity relating to the Project, the Owner, or the Contract or reference the Owner or its affiliates in any brochures, advertisements, client lists, or other promotional materials. The Contractor shall cause its Subcontractors, subconsultants, Suppliers, and Sub-subcontractors to comply with the provisions of this Section 1.9 and for such purposes all references herein to "Contractor" shall mean the applicable Subcontractor, subconsultant, Supplier, or Sub-subcontractor. At the Owner's request, the Contractor shall require Subcontractors, subconsultants, Suppliers, and Sub-subcontractors to execute and deliver to the Owner nondisclosure agreements in a form provided by the Owner.~~

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~~§ 2.1.1~~ The Owner is the person or entity identified as such in the ~~Agreement~~ applicable Work Order 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.~~ appoint an individual named in the applicable Work Order as its representative for the Project ("Owner's Representative"). Notwithstanding anything to the contrary in the Contract, no person or entity may bind the Owner in any manner with respect to the Contract other than (i) the Owner's Representative; (ii) the president or a

Vice President of the Owner, and (iii) any other representative of the Owner that is expressly granted such authority in the applicable Work Order or other document executed by the Owner (and then only to the extent of such grant). 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, includes its successors in interest. The Owner may designate an entity in the applicable Work Order or Contract Documents as the "Development Manager" as its day-to-day representative, but the Development Manager is not authorized to bind Owner or act as Owner's agent. The Owner may change the Development Manager at any time upon notice to Contractor.

**§ 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.

**§ 2.1.1.1** The Owner's designation of the Development Manager is not intended to create any contractual relationship between the Contractor and the Development Manager, nor confer any third-party beneficiary rights upon the Contractor with relation to the Development Manager. Neither the presence of, nor the monitoring or observations of the Development Manager or the Owner's Representative shall limit or reduce the Contractor's liability for defects in the Work, and it is understood that the Contractor will be solely and completely responsible for the Work, compliance with the Contract Documents, and the working conditions on the Project site, including safety, during the performance of the Work.

**§ 2.1.1.2** The day-to-day communications between the Owner and Contractor, including all written authorizations and written communications shall be directed to the Owner and, if one is designated in the applicable Work Order, the Development Manager.

**§ 2.2** Evidence of the Owner's Financial Arrangements (Intentionally omitted).

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

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

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

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

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. If the Contractor becomes aware of any such approvals or permits that are the Owner's responsibility, the Contractor shall promptly notify the Owner and Architect of the requirement.

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

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

§ 2.3.4 The Owner shall furnish. Unless otherwise set forth in an applicable Work Order, the Owner shall furnish, upon the Contractor's reasonable written request and to the extent reasonably accessible and in the Owner's possession, surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, Project site, and a legal description of the Project site. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but Owner, but only to the extent such reliance is reasonable and not contrary to other information known by the Contractor, and shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall carefully review all information furnished by the Owner for apparent discrepancies. The Contractor will not rely on information in the survey if it is reasonably uncertain of the accuracy of the information in that survey. The Contractor shall immediately notify the Owner of any possible errors, inconsistencies, omissions, or inaccuracies in the survey.

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one-one (1) copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3.7 The Owner's participation in the Project shall in no way relieve the Contractor of its duties and responsibilities under the Legal Requirements or the Contract Documents.

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If, after notice from the Owner and seven (7) days to cure (or shorter period in cases of emergency where immediate response is required to protect against actual or potential damage or injury to people or property), 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, or disregards the instructions of the Owner or the Architect based on the requirements of the Contract Documents, then 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; provided however, that 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 its right for the benefit of the Contractor or any other person or entity, entity except to the extent required by Section 6.1.3. Any such order issued by the Owner which is determined to have been inappropriate shall not be deemed a breach of the Contract by the Owner but shall be deemed to be a suspension for the convenience of the Owner.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to

prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. § 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents (including maintaining the construction schedule) and fails within a seven- (7-) day period (or shorter period in cases of emergency where immediate response is required to protect against potential damage or injury to people or property) after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven- (7-) day period (or shorter period in cases of emergency), without prejudice to other remedies the Owner may have, correct such default or neglect and/or undertake completion of all or a portion of the Work. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from the GMP and payments then or thereafter due the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for any additional services made necessary by such default, neglect, or failure. The right of the Owner to correct the Work pursuant to this Section shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of others. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within fifteen (15) days after request therefor. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.2 The Owner may require the Contractor to furnish from time to time written evidence that the Contractor can fulfill the requirements of the Contract Documents (including maintaining the construction schedule). Failure of the Contractor to provide such adequate assurances within a reasonable time, but in no case longer than fourteen (14) days after Owner's request, shall entitle the Owner to suspend the Work, carry out the Work, and/or terminate the Contract.

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§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. The term "Contractor Parties" means the Contractor and the Subcontractors, Sub-subcontractors, and Suppliers, and anyone directly or indirectly employed by any of them or anyone for whose acts they may otherwise be liable.

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

§ 3.1.4 The Contractor shall be and operate as an independent contractor in the performance of the Work and shall not have the authority to enter into agreements or undertakings on behalf of the Owner. The Agreement will not be construed to create a partnership, joint venture, agency, employment, fiduciary, or any other relationship between the Owner and the Contractor. The Contractor will not represent itself to be an employee, representative, or agent of the Owner.

§ 3.1.5 The Contractor shall forward communications to the Owner, the Architect, the Development Manager, and the Owner's Representative as called for herein.

§ 3.1.6 Until the earlier of (i) the Owner commencing operations within the Work site, which shall mean shipping product from the site to customers or to other facilities of the Owner and shall not mean construction or installation of the Owner's property, receiving products, or normal test shipping of product, or (ii) Final Completion, in no event shall the Owner have control over, charge of, or any responsibility for the construction means, methods, techniques, sequences or procedure, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

§ 3.1.7 To the extent mutually agreed between the Owner and the Contractor, some elements of the Work may be designed by the Contractor or its Subcontractors or Suppliers in accordance with Section 10.4.1 of the Agreement. Such design-build services shall utilize licensed design professionals as required by law and good practice. If a Design Responsibility Matrix is included in a Work Order, the Owner and Architect shall work with the Contractor to keep current a Design Responsibility Matrix that describes the separate design responsibilities of the Architect, Prime Consultants and the Contractor. The Design Responsibility Matrix, if any, shall be made a part of the Contract by Work Order.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with the site, and by executing the applicable Work Order, the Contractor warrants that it has closely inspected the Project site as well as the conditions of adjacent properties and has recorded to its satisfaction the observable physical conditions of existing properties, familiarized itself with the local conditions under which the Work is to be performed, and correlated personal observations with the requirements of the Contract Documents. Claims for additions to the Contract Time or the GMP because of the failure of the Contractor to adequately familiarize itself with conditions at the Project site will not be permitted.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work and continuously during the execution of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, Sections 2.3.4 and 2.3.5, 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. Project site affecting it and shall carefully compare and verify such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect notify the Owner and the Architect of any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. the Owner and the Architect may require, but in any event in sufficient time so as not to delay the Work. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect the Legal Requirements, but the Contractor shall promptly notify the Owner and the Architect of any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. the Owner and the Architect may require. Such relief of responsibility for knowledge of the Legal Requirements does not extend to the Contractor or its Subcontractors or Suppliers when providing design-build services or the design-build systems furnished by the Contractor directly or any temporary works or facilities required for the performance of the Work. The Contractor shall not be liable to the Owner for damage resulting from errors, inconsistencies, or omissions in the Contract Documents, unless the Contractor recognized such error, inconsistency, or omission and fails to notify the Owner and the Architect. If the Contractor performs any construction activity knowing it involves an error, inconsistency or omission in the Contract Documents, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims may make a Claim as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or Documents or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. the Legal Requirements

unless the Contractor recognized such error, inconsistency, omission, or difference and failed to notify the Owner and Architect.

§ 3.2.5 The Contractor hereby specifically acknowledges and declares that upon agreement as to the GMP for the Work, such agreement constitutes a representation by the Contractor that to the best of its knowledge that the Drawings, Specifications and addenda do not vary with the Legal Requirements. The Contractor further acknowledges that, having carefully examined all Drawings, Specifications, and other documents, to the best of its knowledge there are no material discrepancies among the Contract Documents.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention in accordance with the Contract Documents, all Legal Requirements, and the construction standards and practices for the industry. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If Contract, unless the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures, otherwise concerning these matters. The Contractor agrees to cooperate and coordinate with any Separate Contractor, including reasonable cooperation in scheduling the use of shared items such as freight elevators, cranes and loading areas.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors Contractor Parties 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. The Contractor has the responsibility to ensure that all Suppliers, Subcontractors, and Sub-subcontractors, and their agents and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate the Work with that of all others on the Project including deliveries, off-loading, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with the Owner and the Architect and all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.3.4 The Contractor shall have the responsibility to coordinate the Work with the utility service providers, municipal and/or off-site contractors related to the Project and, in the absence of other special provisions of Contract Documents to the contrary, shall be required to coordinate with said entities the physical street/right-of-way work and connection to the structures and/or extensions from the structures to the off-site and/or on-site utilities so that the Work is properly sequenced and functional for the intended use and purpose thereof. Such coordination and supervision costs incidental thereto, are incidental to the Work and part of the GMP.

§ 3.3.5 The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all Work without delay or revision. The Contractor shall establish and maintain existing lot lines, restrictions and benchmarks. The Contractor shall establish and maintain all other lines, levels, and benchmarks necessary for execution of the Work and take necessary steps to prevent dislocation or destruction.

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

§ 3.4.2.1 The Contractor must submit to the Owner and the Architect all information required by the Specifications relating to substitutions. In addition to information required by the Specifications, the Contractor shall submit to the Owner and the Architect information as to (i) the adjustment in accordance with the Contract Documents in the GMP, in the event the substitution is acceptable and (ii) the adjustment, if any, in the Contract Time, and any Milestone Dates if included in the construction schedule in the event the substitution is acceptable.

§ 3.4.2.2 Substitutions and alternates may be rejected without liability to the Owner or the Architect.

§ 3.4.2.3 The Owner shall be entitled to any cost savings through a deductive adjustment of the GMP in the amount of the cost savings as a result of approvals of any substitution of products or major components or systems.

§ 3.4.2.4 If the Contractor makes requests for substitutions, the Contractor thereby: (i) represents that the Contractor has personally investigated the proposed substitute product and determined that it is either equal or superior in all respects to that specified in the Contract Documents, and that it is compatible with all substrates and related work (as used in this sentence, "superior" could mean advantageous to the Owner in other ways, such as lower cost, provided such advantages have been accepted by the Owner and are without reasonable objection from the Architect); (ii) represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified in the Contract Documents; (iii) certifies that the cost data presented is complete and includes all related costs under the Contract except the Architect's design costs and waives all claims for additional costs related to the substitution which subsequently becomes apparent; and (iv) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 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. The Owner may require in writing that the Contractor remove from the Work any employee or other person that the Owner considers objectionable. However, neither this authority of the Owner nor a decision made in good faith to exercise or not to exercise such authority shall create a duty or responsibility of the Owner to the Architect, the Contractor, Subcontractors, or Sub-subcontractors, or their agents, employees, or other persons performing portions of the Work, or to any other person. To the extent permitted by the Legal Requirements and at the Owner's expense and not as a Cost of the Work, the Contractor's personnel and the Subcontractors' and Sub-subcontractors' personnel shall be subject to background checks, drug tests, and other procedures and requirements requested by the Owner.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and other individuals associated with the Project or the Work.

§ 3.4.5 The Contractor shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony.

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§ 3.5.1 The Contractor warrants to the Owner and Architect In addition to any other warranty provisions contained in the Contract Documents, the Contractor warrants to the Owner 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 performed in a skillful and workmanlike manner, free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. All Work, materials, or equipment not conforming to these requirements may requirements, including substitutions not properly approved or authorized, will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by Owner abuse, alterations to the Work not executed by the Contractor, improper or insufficient Owner maintenance, improper Owner 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. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents.

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

§ 3.5.3 Materials shall conform to manufacturer's standards in effect at the date of execution of the applicable Work Order and shall be installed in strict accordance with manufacturer's directions. For all Work items, including those covered by an express warranty in the Specifications, the Contractor shall require the applicable Subcontractor or Sub-subcontractors performing the Work or installing the required product to provide the warranties required by the Specifications.

§ 3.5.4 The Contractor shall cause warranties from Suppliers, equipment sellers, or manufacturers, and from Subcontractors or Sub-subcontractors furnishing materials, equipment, or labor for the Work to be made jointly to the Owner and the Contractor. The Contractor will execute any documents or take such action as may be necessary to ensure that the Owner receives the benefits of the warranties from Subcontractors, Sub-subcontractors, and Suppliers. If no express warranty is provided in the Specifications, the Contractor shall obtain and furnish to the Owner fully executed warranties from all Subcontractors, Sub-subcontractors, and Suppliers. The Contractor shall be responsible for enforcing any and all warranties given by Subcontractors, Sub-subcontractors, and Suppliers to the extent enforceable by the Contractor for the Owner's benefit. The Contractor agrees to assign to the Owner at Substantial Completion any and all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties. If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one- (1-) year period following Substantial Completion, referred to in Section 12.2. The applicable Work Order may include a list of any extended warranties required by the Owner, or a reference to where in the Contract Documents a list of such extended warranties can be found.

§ 3.5.5 Notwithstanding the foregoing assignment, prior to final acceptance of the Project by the Owner, the Contractor shall deliver to the Owner via the Architect three (3) bound volumes of all guarantees and warranties on material furnished by all manufacturers and Suppliers to the Contractor and all of its Subcontractors and Sub-subcontractors. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed. The documentation must also clearly describe proper operational and maintenance activities required to sustain said warranties. The guarantees and warranties herein shall not be construed to modify or limit in any way any rights or actions which the Owner may otherwise have against the Contractor or anyone else by law or statute or in equity.

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The Contractor shall pay may charge and the Owner will pay applicable federal, state, county, city, municipal, or local sales, consumer, use and similar taxes the Contractor is legally obligated to charge 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-effect ("Taxes") provided that such Taxes are stated on the original invoice that the Contractor provides to the Owner and the Contractor's invoices state such Taxes separately and meet the appropriate tax requirements for a valid tax invoice. The Owner may provide the Contractor an exemption certificate acceptable to the relevant taxing authority, in which case the Contractor shall not collect the Taxes covered by such certificate, and if the GMP assumed that such Taxes would be collected, the GMP shall be reduced by the amount of such Taxes. The Contractor will be solely responsible for all other taxes or fees (including interest and penalties) arising from the Contract and Work. The Owner shall maintain the right to deduct or withhold any taxes that the Owner determines it is obligated to withhold from any amounts payable to the Contractor under the Contract, and payment to the Contractor as reduced by such deductions or withholdings will constitute full payment and settlement to the Contractor of such amounts. Throughout the term of the Contract, the Contractor will provide the Owner with any forms, documents, or certifications as may be required for the Owner to satisfy any information reporting or withholding tax obligations with respect to any payments under the Contract.

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

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**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Except as provided in Section 3.2.3 for design-build services and systems, it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with the Legal requirements. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Owner and the Architect, and necessary changes shall be accomplished by appropriate Modification. Such relief of responsibility for ascertaining compliance with the Legal Requirements does not extend to the Contractor or its Subcontractors, Sub-subcontractors, or Suppliers when providing design-build systems or the design-build systems furnished by the Contractor directly.

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

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

**§ 3.7.4** If the Contractor performs Work (including, without limitation, the installation of any materials or equipment) knowing it to be contrary to the Legal Requirements, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction that would otherwise be incurred (including fines and penalties).

#### **§ 3.7.5 Concealed or Unknown Conditions**

Subject to the limitations and conditions established herein, if the Contractor encounters conditions at the Project 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 five (5) days after first observance of the conditions. Failure to provide such notice shall conclusively bar any Claim related to such alleged condition. The Architect, with assistance of other Prime Consultants and in consultation with the Owner, will promptly investigate such conditions and, if the Owner and the Architect determine 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, the Contractor may request an equitable adjustment in the GMP or Contract Time, or both in accordance with Articles 7 and 8 and/or other provisions of the Agreement. In response to such request the Owner may, in its sole discretion, terminate the Contract for convenience in accordance with Section 14.4. If the Owner and the Architect determines that the conditions at the Project 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 and the Architect shall promptly notify the Contractor, stating the reasons. If the Contractor disputes such determination or recommendation, the Contractor may proceed as provided in Article 15. Claims shall not be allowed

in connection with a concealed or subsurface condition that does not differ materially from those conditions disclosed or discovered by (a) prior inspections and reviews by the Contractor for the Contract; (b) inspections and reviews that the Contractor had the opportunity to make in accordance with industry standards in connection with the Project; or (c) the Contract Documents.

§ 3.7.6 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 immediately notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly commence an investigation of the alleged human remains or existence of burial markers, archaeological sites or wetlands. Upon confirmation of such conditions not indicated in the Contract Documents, the Owner shall promptly take such action as the Owner deems reasonably 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 GMP and Contract Time arising from the existence of such remains or features may be made as provided in Article 15. In response to such request the Owner may, in its sole discretion, terminate the Contract for convenience in accordance with Section 14.4.

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances-GMP all Allowance amounts stated in the Contract Documents. Items covered by allowances-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.

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- .1 allowances-An Allowance is a stated amount included in the GMP for a specific scope of the Work that at the time the Allowance amount is established, is not sufficiently designed or specified to allow an accurate cost estimate. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;Project site and all required Taxes paid on such items at the time of purchase, less applicable trade discounts, and the cost of labor for installation;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance-Allowance amounts shall be included in the Contract Sum-GMP but not in the allowances; and Allowances;
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2;Upon final determination of the actual cost of an Allowance amount, the Owner and the Contractor shall promptly enter into a Change Order to appropriately adjust the GMP to reflect the amount, if any, by which such actual cost exceeds or is less than the stated Allowance amount. In no event shall any unused Allowance amount be allocated to another category of the Work;
- .4 If Work covered by an Allowance is on-going over the course of the Project, the Contractor shall provide the Owner a monthly update of all Allowance expenditures and forecast of projected savings or over-run in the Allowance sum; and
- .5 If Contractor estimates, expects, or projects an over-run on any Allowance item, the Contractor shall immediately provide written notice of such estimated, expected, or projected over-run to the Owner, Owner's Representative, and the Development Manager, if any, which notice shall include backup documentation for the overage (e.g., subcontractor or supplier bids, or related labor and equipment reports), and any other documentation reasonably requested by the Owner.

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

§ 3.8.4 Where Unit Prices are established, the price includes furnishing, fabrication, installation, and product waste of such items by the Contractor in the required quantity.

**§ 3.9 Project Manager and Superintendent**

§ 3.9.1 The Contractor shall employ a competent superintendent Unless otherwise stated in an applicable Work Order, the Contractor shall employ a competent Project Manager and Superintendent satisfactory to the Owner and necessary

assistants who shall be in attendance at the Project site during performance of the Work. ~~The superintendent~~ The Superintendent shall be in charge of all construction operations. The Project Manager and Superintendent shall represent the Contractor, and communications given to the superintendent Project Manager or Superintendent shall be as binding as if given to the Contractor. The Superintendent shall devote full time attention to the requirements of the Project until Substantial Completion is achieved.

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

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

**§ 3.9.4** The Superintendent shall keep a daily journal describing in detail all construction activity, weather conditions, persons entering the Project site, Subcontractors and Sub-subcontractors working on the Project site, number of workers, equipment on site, deliveries, Work accomplished, problems encountered, and all other information important to the construction process and as the Owner may reasonably require. The daily journal shall be available at all times to the Owner and Architect, and upon request, copied in its entirety and delivered to each. All photos/videos and all other records documenting progress or quality of Work shall be available for copy by the Owner and Architect upon request.

**§ 3.9.5** The Project Manager identified in the applicable Work Order shall be the principal contact person for the Contractor and shall have primary responsibility for coordinating and supervising all services and work performed by the Contractor under the Contract. The Project Manager shall participate in all Project meetings and sign all Change Orders, Applications for Payment, and Certificates of Substantial Completion and Final Completion to indicate its review and approval thereof.

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**§ 3.10.1** ~~The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, Milestone Dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity, activity and the activities of the Contractor, Subcontractors, and Suppliers at all levels; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~

**§ 3.10.1.1** The construction schedule shall utilize scheduling software acceptable to the Owner and shall clearly show all activities, durations, predecessors and successors with related sequencing logic, critical path activities, Float, areas of responsibility, and any other pertinent information deemed necessary by the Owner. The construction schedule shall not exceed the required date of Substantial Completion and the required date of Final Completion as established in the applicable Work Order. The construction schedule shall provide for expeditious and practicable execution of the Work. The construction schedule shall not be modified or extended without the prior approval of the Owner in each instance. If the construction schedule is not available to be included as an exhibit to the applicable Work Order, the Contractor shall work diligently to provide the construction schedule to the Owner for review and approval, subject to Section 3.10.1.4, as soon as reasonably practicable.

**§ 3.10.1.2** The construction schedule shall be of a critical path method type, acceptable to the Owner and Architect, that shall also (i) provide a graphic representation of all activities and events that will occur during the performance of the Work; (ii) identify each phase of construction and occupancy; (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents; and (iv) include time loss for Normal Expected Weather whether shown in the Contractor's logic and durations or not. The

schedule shall be regularly updated by the Contractor to reflect Project progress and conditions and any such updates shall be promptly provided to the Owner in electronic and hard copy.

§ 3.10.1.3 The construction schedule shall be reviewed on a weekly basis and updated monthly for submittal with the Application for Payment. Each updated construction schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original construction schedule. If any construction schedule submitted sets forth a date for achieving Substantial Completion or Milestone Dates beyond the dates required by the Contract Documents and as may be extended pursuant to the Contract Documents, then the Contractor shall submit to the Owner for its review and approval a narrative description of the means and methods which the Contractor proposes to employ to expedite the progress of the Work to achieve Substantial Completion by the required date of Substantial Completion or the Milestone Dates.

§ 3.10.1.4 The Owner's review, comment and/or approval of any schedule submittal shall not transfer any of the Contractor's responsibilities to the Owner or relieve the Contractor of any of its obligations. The Contractor alone shall remain responsible for the work flow and schedule logic, how early to start activities, adjusting forces, equipment, and work schedules to ensure completion of the Work within the time(s) specified in the Contract Documents. Upon review and approval by the Owner of the Milestone Dates, if any, the construction schedule shall be deemed part of the Contract Documents. If not approved for reasonable cause, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted 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 anticipated probable delays. The accepted construction schedule shall be updated by Contractor as necessary to reflect actual conditions as set forth in Section 3.10.1 or updated upon request by the Owner. In the event that any such updated schedule indicates any delays due to no fault of the Owner, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any such updated schedule constitute an adjustment in the Contract Time or the GMP unless any such adjustment is approved in writing by the Owner and authorized pursuant to Change Order or Construction Change Directive.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner's approval. The submittal schedule shall (i) be coordinated with the construction schedule, and (ii) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum-GMP or extension of Contract Time based on the time required for review of submittals. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies or review of any required deferred submittals.

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§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect, which shall not exceed the Contract Time as may be amended only by Change Order. The Contractor shall promptly notify the Owner and Architect of any proposed changes in the construction schedule or of any event which could delay performance or supplying of any item of the Work and shall indicate the expected duration of the delay, the anticipated effect of the delay on the construction schedule and the action being taken to correct the delay situation.

§ 3.10.3.1 The Contractor shall meet the Contract Time, modified only by executed Change Orders. The Contractor shall provide sufficient material, equipment, and labor to meet the completion times in the schedule. All work not in the critical path at the commencement of the Project shall be scheduled and completed so as not to effect or delay the specific work or the Project. Non-critical path work not completed as scheduled or completed out of sequence shall not be the basis of a claim for delay or damages.

§ 3.10.3.2 If the Contractor falls behind the schedule, or if the Work is delayed due to Normal Expected Weather or any other cause other than those described in Section 8.3.1, the Contractor shall take such steps as may be necessary to improve progress and otherwise eliminate or minimize such delays and to comply with the construction schedule. Such steps may include an increase in: (i) the number of construction workers, equipment, materials; (ii) in the number of shifts; (iii) use of overtime operations; (iv) supplement any lagging crew or sub-trade; and

(v) re-sequencing Work. The Contractor shall submit to the Owner and Architect such recovery schedule or schedules to demonstrate the manner in which the agreed rate of progress will be regained. If the Contractor desires or is required to carry on Work at night or outside the normal working hours, the Contractor must obtain approval from the appropriate jurisdiction. The cost required to bring the Project back on schedule when the Project is delayed or behind schedule shall not increase the GMP and Contractor shall not in such event be entitled to claims for loss of efficiency, acceleration, trade stacking or other impact damages, except only as may be allowed pursuant to Section 8.3.

**§ 3.10.4** The Contractor's overall schedule shall include and accommodate for time lost due to seasonal weather conditions that typically occur in the area in which the Project is located over the duration of the Project, as determined using historical weather data available from the National Oceanic Atmospheric Administration, including rain, snow, ice, hail, wind, or other extreme conditions that might impact critical-path activities and prevent Work from being performed ("Normal Expected Weather"). The Contractor shall notify the Owner of any days (together with dates, description of work activities impacted, etc.) which it claims are outside or beyond the Normal Expected Weather and impacted the critical path at the next construction meeting, shall review and justify the assertion to the Owner, and may (if appropriate) submit a Claim in accordance with Articles 8 and 15. Conditions outside or beyond Normal Expected Weather will constitute an Excusable Delay only if critical-path activities are negatively impacted.

**§ 3.10.5** In the event the Work has not progressed or reached the level of completion required by the Contract Documents, unless excused pursuant to Section 8.3, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction.

- .1** The Contractor shall not be entitled to an adjustment in the GMP in connection with corrective measures required by the Owner under or pursuant to this Section 3.10.5.
- .2** The Owner may exercise its rights under 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 Project completion date or dates set forth in the applicable Work Order.

**§ 3.10.6** During the progress and performance of the Work, the Contractor shall attend and participate in weekly status meetings at the Project site (unless another location is specified by the Owner) scheduled by the Owner or the Architect to review progress of the Work, to discuss the Contractor's progress reports, to obtain the necessary Owner's or Architect's approval and generally keep the Owner and Architect informed and involved in the decision-making process. At each Project status meeting, the Contractor must present an updated four- (4-) week progress schedule which clearly updates and identifies the progress of the Project. The Contractor shall furnish to the Owner and the Architect written minutes of each meeting within five (5) days thereafter.

### **§ 3.11 Documents and Samples at the Project Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.11.1** The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The location of all new and existing piping, valves, conduit, cabling, and utilities as located during the course of construction shall be appropriately marked until the actual field location dimensions and coordinates are incorporated on the as-built drawings, and mechanical and electrical deviations and changes shall be included. The Contractor shall note on the as-built drawings any changes made to the building enclosure design documents during construction. The documents shall include all architectural, mechanical, electrical, structural, and civil as-built drawings, whether changes occur or not. These documents, as well as the approved permit set of plans, shall be available to the Owner and the Architect at the Project site and reviewed with them on a monthly basis. Upon Final Completion of the Work, the Contractor shall transfer all as-built information in a clear and legible manner as described in the Contract Documents and in compliance with all requirements of local governmental entities, shall certify that these documents reflect complete and accurate "as-built" conditions and shall deliver (i) a paper copy of the documents as well as the approved permit set of plans in good condition, (ii) the approved permit set of plans, and (iii) the as-built documents, Shop Drawings, Specifications, Addenda, maintenance manuals and warranties to the

Owner in accordance with the provisions of the Contract Documents. Satisfactory maintenance of up-to-date as-built drawings on a monthly basis will be a requirement for approval of progress payments.

§ 3.11.2 Copies of the approved plans and permits shall be forwarded to the Contractor upon receipt. The Contractor shall maintain and keep such documents in original condition at the Project site at all times. Upon Final Completion, the Contractor shall deliver all original approved plans and permits to the Owner, including copies of the signed-off permits which the Contractor and/or its Subcontractors have obtained.

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§ 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,~~ Supplier, or distributor to illustrate some portion of the Work.

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§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the ~~Architect,~~ Architect (and if requested, with copies to the Owner), Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Owner and the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and frequency and in such sequence and flow rate consistent with the submittal schedule as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor shall mark all submittals as reviewed for compliance with the Contract Documents and approved by the Contractor prior to submitting them to the Architect indicating that the Contractor has satisfied its responsibilities under the Contract Documents for review of the submittal. Submittals not bearing such mark and Contractor's indication of approval may be returned without action, which will not constitute an Owner-caused delay to the Contractor. At the time of submission, the Contractor shall notify the Owner and the Architect of any deviation in the Shop Drawings, Product Data, or Samples from the requirements of the Contract Documents. So far as practicable, each Shop Drawing or Product Data submittal shall bear a cross reference note referring to Drawing or detail numbers on the Drawings showing the same Work in order to facilitate checking of Shop Drawing or Product Data and their prompt return to the Contractor. Shop Drawings for interrelated Work shall be submitted at approximately the same time. The Contractor shall keep accurate records of the receipt, review and delivery of all submittals and shall submit to the Owner twice monthly reports on the status of their review, identifying the location and the causes of any failure to promptly receive such submissions and suggesting responsibility. The Contractor shall make all corrections requested by the Architect and, when requested by the Architect, provide a corrected submittal without change in the GMP or extension of Contract Time.

§ 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, the Work of applicable Subcontractors, and of the Contract Documents. The Contractor's review and approval of such Shop Drawings, Product Data, Samples, and similar submittals prior to submittal to the Owner and/or the Architect, constitutes a representation that the Contractor has coordinated the Work addressed in the submittal with the work of others and that no conflicts result other than those that may be specifically noted for the Architect's attention in the submittal. Where penetrations in the Work occur from mechanical, electrical, or for other equipment, the Contractor shall review Shop Drawings and verify size, location, and sealant means of said penetrations.

§ 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 or accepted by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect ~~has~~ has, with the Owner's written approval, 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 or acceptance thereof.

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**§ 3.12.10** ~~The Except to the extent of any design/build obligations imposed 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.~~

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

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### **§ 3.13 Use of Site**

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~

**§ 3.12.11** ~~To the extent requested by the Owner, the Owner shall be copied on submittals and formal requests for information from the Contractor which the Owner may review with the Architect or other design consultants. The Owner is not expected to undertake the reviews or provide responses normally performed by the Architect, the Prime Consultants, or the other design consultants. The Owner's distribution or comments to such submittals shall not be construed to be conducted for the purpose of determining conformance with the Contract Documents, or codes, or accuracy and completeness of other details such as dimensions and quantities, or for substantiating instruction for installation or performance of equipment or systems. The Owner's distribution or comments to the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12, nor shall they constitute approval of any construction means, methods, techniques, sequences, or procedures.~~

**§ 3.12.12** ~~The Contractor shall maintain, in good order and on a current basis, a record copy of all subcontracts, purchase orders, Drawings marked to record all as-built changes made during construction, Specifications, addenda, Change Orders, and other modifications; Shop Drawings; Product Data; Samples; submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of subcontracts or Work. These records shall be available to the Owner and the Architect, and, at Final Completion of the Project, delivered to the Owner.~~

### **§ 3.13 Use of Project Site**

**§ 3.13.1** ~~The Contractor shall confine operations at the Project site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.~~

**§ 3.13.2** ~~The Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation at or near the Project site which are intended to remain undamaged; and on adjacent property, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair at the Contractor's expense any damage, including that to the adjacent property, resulting from failure to comply with the requirements of~~

the Contract Documents or failure to exercise reasonable care in performing the Work. If the Contractor fails or refuses to repair the damage within a reasonable period of time, not to exceed thirty (30) days, the Owner may have the necessary work performed and charge the cost to the Contractor.

§ 3.13.3 Without limitation of any other provision of the Contract Documents, the Contractor shall comply with all rules and regulations promulgated by the Owner, Landlord, or the underlying owner of the Project site and shall comply with the Owner's (or Owner's affiliate's) obligations as tenant (or subtenant) under the lease of the Project site (together, the "Lease Requirements"), as may be amended from time to time, in case the Owner is making improvements to the Project site for purposes of occupancy as a tenant in connection with the use and occupancy of the Project site. The Contractor shall immediately notify the Owner if, during the performance of the Work, the Contractor finds compliance with any of the portion of the Lease Requirements to be impractical, or the extent to which the Contractor believes it is entitled to request reimbursement for compliance, setting forth the problems and estimated costs associated with such compliance and suggesting alternatives through which the same results intended by such portions of the Lease Requirements can be achieved. After execution of the applicable Work Order, the Owner may, in the Owner's sole discretion, adopt rules and regulations. Such rules and regulations shall not unreasonably hinder the Contractor's performance of the Work. The Contractor's reasonable costs associated with adherence to rules and regulations not typically required for projects similar to the Project are reimbursable with the Owner's written approval, in the Owner's reasonable discretion.

§ 3.13.4 The Contractor shall assure free, convenient, unencumbered, and direct access to and through the buildings and surrounding common areas on or in the vicinity of the Project site. The Contractor shall keep the Project site in a clean and neat condition. To the extent practicable, the Contractor shall keep the Project site and surrounding areas free of dust and debris. The Contractor shall also ensure that its employees, and the Subcontractors and Suppliers and their employees, are familiar with and strictly comply with the plans prepared for site management and traffic flow ("Site Management Plan"), including, without limitation, the parking restrictions set forth therein.

§ 3.13.5 The Contractor shall assign space to its Subcontractors and Suppliers for storage of their materials, and storage of all materials shall be confined to those spaces. Such designated spaces shall be consistent with the Site Management Plan prepared by the Contractor and approved by the Owner prior to commencement of the Work. Should the Owner direct the Contractor at any time to move such materials in a manner inconsistent with the Site Management Plan, the cost of such move by the Contractor may constitute a Change in the Work.

§ 3.13.6 No signs shall be erected or maintained on the Project site displaying the name of the Contractor or its Subcontractors or Suppliers without the prior written approval of the Owner.

§ 3.13.7 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, or damage is solely the responsibility of the Contractor.

§ 3.13.8 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the Project site and (ii) the building in the event of partial occupancy as more specifically described in Section 9.9.

§ 3.13.9 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. The Contractor shall, wherever possible, keep the main entry roadway open and accessible for public use. The Contractor shall accelerate its operations in such a manner that minimizes interruption of driveways. The Contractor shall protect the adjacent property and the public at all times from hazards from their work in a manner conforming to all agencies of jurisdiction. Use or changes in use of the offsite area(s) shall not be the basis for increasing the GMP.

§ 3.13.10 The Contractor's use of any rights-of-way, offsite areas, or adjacent lot shall be acceptable to the Owner, the jurisdictional authorities at the Project location, and adjacent property owners, and in compliance with any agreements between the Owner and its neighbors. To the extent the Work damages any rights-of-way, offsite areas, or adjacent lot, the Contractor shall completely restore such areas to their condition existing prior to such damage. The Contractor

shall confine operations in such a manner that minimizes area and duration of off-site encumbrances, including sidewalks, alleyways, roadways, and adjacent property.

§ 3.13.11 Without prior approval of the Owner, the Contractor shall not permit any workers to use any newly constructed or existing facilities at the Project site, including without limitation, lavatories, toilets, lobby entrances and parking areas other than those designated by the Owner.

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

§ 3.14.3 Any existing structures and facilities, including but not limited to buildings, landscaping, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction work of the Contractor, shall be patched, repaired or replaced by the Contractor to the satisfaction of the Owner and the Architect, the owner of such structures and facilities, and governmental authorities having jurisdiction. In the event a governmental authority requires that the repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such requirement and it shall pay for such Work as a Cost of the Work within the GMP.

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§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At the Owner's request and, in any event, at the 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.

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The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.  
§ 3.16.1 Neither the Contractor nor the Architect nor any of their respective Consultants, Subcontractors, Sub-subcontractors, Suppliers, agents, employees, nor other persons or entities performing portions of the Work for, or on behalf of, the Contractor or the Architect shall provide access to the Project site to any person or party without the express written consent of the Owner. The Owner hereby consents to the Contractor and the Architect providing access to any Prime Consultant or Separate Contractor for the purpose of completing such entities services or work on the Project.

§ 3.16.2 The Owner shall have the right to access any part or parts of the Project in order to do whatever work is necessary to complete work not included in the Contract Documents. In accordance with any partial or phased completion and occupancy allowed by the Contract Documents, the Contractor shall ensure that the Work is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Owner, Owner's property manager and employees, lenders, service providers, representatives, invitees, consultants, and other authorized users prior to Substantial Completion in accordance with the accepted schedule. The Contractor shall coordinate its efforts with Owner's occupancy of the premises under this paragraph in such a way as to minimize impact to all parties.

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

Architect harmless from loss on account thereof, but shall not be responsible for 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 patent, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect and the Owner.

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**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against indemnify, defend, and hold harmless the Owner, Prime Consultants, Architect, Architect's consultants, Landlord, Amazon.com, Inc. and any Additional Indemnified Parties set forth in the applicable Work Order, and their respective officers, directors, agents, shareholders, partners, managers, members, affiliates, owners, successors, and employees (individually, each an "Indemnified Party" and collectively the "Indemnified Parties"), from, for, and against third-party claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Work including, without limitation, losses from fraud, breach of contract, violations of law, gross negligence and willful misconduct (hereinafter "Indemnity Claims").

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on FOR THE SOLE PURPOSE OF EFFECTING THE INDEMNIFICATION OBLIGATIONS UNDER THE CONTRACT AND NOT FOR THE BENEFIT OF ANY THIRD PARTIES UNRELATED TO THE INDEMNIFIED PARTIES, THE CONTRACTOR SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY THAT MAY BE GRANTED IT UNDER ANY APPLICABLE WORKERS COMPENSATION OR INDUSTRIAL IMMUNITY LAWS. THIS PROVISION HAS BEEN EXPRESSLY AND MUTUALLY NEGOTIATED. Further the indemnification obligations under the Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

**§ 3.18.3** If Indemnity Claims are caused or alleged to be caused in part by any joint or concurrent negligent act (either active or passive), willful misconduct, omission, or breach of contract by the Indemnified Parties, the Contractor shall indemnify, defend, and hold harmless the Indemnified Parties from such Indemnity Claims only to the extent such Indemnity Claims do not arise out of or result from the negligence, willful misconduct, or breach of contract of the Indemnified Parties. In no event shall the Contractor be obligated to indemnify an Indemnified Party for Indemnity Claims which arise out of or result from the sole negligence, willful misconduct, or breach of contract of such Indemnified Party or its agents, servants, or independent contractors who are directly responsible to such Indemnified Party, excluding Contractor herein.

**§ 3.18.4** The Owner shall notify the Contractor of any action, administrative, or legal proceeding or investigation as to which this indemnification may apply, and the Contractor, at Contractor's expense shall assume on behalf of the Owner or Indemnified Parties, and conduct with due diligence and in good faith, the defense thereof with counsel reasonably satisfactory to the Owner or Indemnified Parties, provided that (i) the Owner or Indemnified Parties shall have the right to be represented therein by advisory counsel of its own selection and at its own expense, and (ii) if the defendants in any such action include the Contractor and the Owner or the Indemnified Parties, and if the Owner or Indemnified Parties reasonably concludes the Contractor has a conflict of interest and cannot adequately represent the Owner or Indemnified Parties, then the Owner or the Indemnified Parties shall have the right to select separate counsel to participate in the defense of such action on their own behalf and the cost shall be at the Contractor's expense. In the event of failure by the Contractor to fully perform in accordance with this Section 3.18.4, the Owner or the

Indemnified Parties may, at the option of any of them, and without relieving the Contractor of its obligations hereunder, so perform, but all costs and expenses (including, but not limited, to attorneys' fees and expert fees) so incurred by the Owner or the Indemnified Parties in that event shall be reimbursed by the Contractor to the Owner or the Indemnified Parties, together with interest on the same from the date that any such expense was paid by the Owner or Indemnified Parties until reimbursed in full by the Contractor, at the rate of interest provided in the Agreement.

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

§ 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. The Owner at its option may, upon notice to the Contractor, delegate all or part of any of the Architect's responsibilities under this Article 4 to the Owner, Development Manager, or any other person or entity identified by Owner in such notice. Effective as of the date of such notice, the term "Architect" as used in Article 4 shall mean the delegate named by the Owner for such delegated responsibility. If the Owner delegates some or all of Architect's responsibilities under this Article 4, the delegate identified by the Owner will not be required to be licensed to practice architecture unless otherwise required by law.

§ 4.1.3 The Architect may from time to time issue additional Drawings and Specifications to provide coordination and conforming details and otherwise issue additional Drawings and Specifications necessary to complete the Project (all such additional Drawing and Specifications are referred to as "Additional Drawings and Specifications"). To the extent that the Additional Drawings and Specifications are (i) more specific and detailed than the Drawings and Specifications and (ii) (a) reasonably necessary to coordinate or provide conforming details for the architectural, structural, mechanical, electrical, plumbing, and other plans, specifications, and addenda included with the Drawings and Specifications or (b) necessary to accurately reflect the scope, quality, quantity, function, or intent reflected in the Drawings and Specifications (all such matters described in (a) and (b) preceding are herein called "Completion Details"), and to the extent that Completion Details are not changes to the Work, the Contractor shall not be entitled to an increase in the GMP or extension of Contract Time related thereto. The Contractor acknowledges that the Contractor has extensively reviewed and analyzed the Drawings and Specifications. In determining the GMP, the Contractor has taken into account the fact that necessary Completion Details may be included in the Additional Drawings and Specifications.

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§ 4.2.1 ~~The If authorized by the Owner to do so, the Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. for Payment, and with the Owner's concurrence, from time to time during the one- (1-) year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Prime Consultants may provide limited contract administration as described herein.~~

§ 4.2.2 The Architect will visit the Project site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner may also regularly visit the Project site to make such decisions and to issue such directives or information as necessary to the administration of the Work in accordance with the Contract Documents. However, the Owner and the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner and 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. The presence of the Owner, the Architect, or the Development Manager on the Project site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirements of the Contract Documents of any kind, including notice, have been met or waived.

§ 4.2.3 On the basis of the Project site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the

Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. ~~The Architect will not.~~ Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~The Architect will not.~~ Neither the Architect nor the Owner will 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.

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

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

§ 4.2.6 The ~~Owner and the Architect each~~ has authority to reject Work that does not conform to the Contract Documents. Whenever ~~the Owner or the Architect~~ considers it necessary or advisable, ~~the Architect such party~~ will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the ~~Owner or 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 Owner or the Architect~~ to the Contractor, Subcontractors, ~~suppliers.~~ Sub-subcontractors, Suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review 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.~~ 3.12, or other provisions of the Contract. The Architect's review shall not constitute approval of safety precautions ~~or or, unless otherwise specifically stated by the Architect,~~ of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of ~~final completion.~~ 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 with the Owner's review and concurrence 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 project~~ representatives to assist in carrying out the Architect's responsibilities at the ~~site.~~ Project site. ~~The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.~~

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

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~~§ 4.2.13 The Architect's decisions~~ Owner's decisions, in consultation with the Architect, 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~~ RFIs 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.

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~~§ 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 Project 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 not engaged by the Contractor or the subcontractors of a Separate Contractor.~~

~~§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor contract with a Subcontractor to perform a portion of the Work at the Project site or a person or entity with a lower-tier subcontract to perform a portion of the Work at the Project 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.~~

~~§ 5.1.3 A Supplier is a person or entity who has a contract with Contractor or a Subcontractor to provide any equipment, supplies, materials, or other goods in connection with the Work and who is not a Subcontractor or a Sub-subcontractor. The term "Supplier" is referred to throughout the Contract Documents as if singular in number and means a Supplier or an authorized representative of the Supplier.~~

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

~~§ 5.2.1.1 It is the Contractor's sole responsibility to pre-qualify and determine the capability of all Subcontractors, Sub-subcontractors and Suppliers to perform the Work, their financial capacity, and whether bids are complete and in compliance with the Contract Documents, and thus all persons or entities proposed by the Contractor to be Subcontractors, Sub-subcontractors, or Suppliers shall be responsible persons or entities of suitable experience, ability and licensed to perform the Work proposed to be subcontracted to it.~~

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~~§ 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/or Supplier was reasonably capable of performing the Work and met the approval of the Contractor, and provided (i) the GMP was~~

based on the proposed but rejected Subcontractor's or Supplier's price and (ii) reasonable backup evidencing so is provided the Owner, the GMP and the 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 or Supplier's Work. However, no increase in the ~~Contract Sum~~-GMP or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution identified and not objected to by the Owner pursuant to Section 5.2.1 without the prior written consent of the Owner, which consent the Owner shall not unreasonably withhold.

**§ 5.2.5** At the Owner's request, the Contractor shall provide the Owner within ten (10) days of such request with a true and complete copy of any executed subcontract(s) or supply contract(s) requested by the Owner, including all modifications thereto.

**§ 5.2.6** The Contractor shall first pay out of payments received under the Contract (and secure the discharge of any liens asserted by) all persons furnishing labor, equipment, materials, or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors, Sub-subcontractors, or Suppliers). The Contractor agrees that provided the Owner has paid the Contractor for all undisputed sums in accordance with the Contract, the Owner has the right to a lien free Project. The Owner may, at its discretion, after providing the Contractor with notice and a two- (2-) day period for the Contractor to cure, make joint payments to the Contractor and its creditors. The Owner reserves the right, in the event a claim is made against the Owner arising out of any obligation incurred by the Contractor under the Contract or in connection with performance of the Work, to withhold payments due to or become due to the Contractor in such amounts as are necessary to cover the claim and any costs or expenses arising in connection with the legal settlement thereof. The Contractor further agrees that if any lien or claim is filed or made against the Project site, Project, or the Owner as a result of Contractor's failure to meet its obligations, and if the Owner has made payment to the Contractor of all undisputed sums due under the Contract, the Owner upon fourteen (14) days prior notice shall have the right to settle said lien or claim directly and deduct the cost of the settlement from payments due the Contractor, provided that the Contractor within such fourteen- (14-) day period has not settled such lien or claim or bonded around such lien claim in a manner satisfactory to the Owner.

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

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

Section 5.3.1, any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor or any Supplier shall be pursuant to a written subcontract or purchase agreement between Contractor and such Subcontractor or Supplier (or Subcontractor and its Sub-subcontractor or Supplier), which shall be prepared on a form satisfactory to Owner in all respects. Each such subcontract or agreement shall contain provisions that:

- .1 require that such Work be performed in accordance with the requirements of the Contract Documents;
- .2 require the Subcontractor, Sub-subcontractor, or Supplier to carry and maintain insurance coverage in amounts which are customary to the industry and sufficient to protect the Owner, and to file certificates of such coverage with the Contractor;
- .3 require the Subcontractor, Sub-subcontractor, or Supplier to submit certificates and waivers of liens for Work completed by it and by Sub-subcontractors or for materials provided by a Supplier as a condition to the disbursement of the progress payment next due and owing;
- .4 require submissions to the Contractor or Subcontractor, as the case may be, of applications for payment in a form approved by the Owner, together with clearly defined invoices and billings supporting all such applications under each subcontract to which the Contractor is a party;
- .5 require each Subcontractor, Sub-subcontractor, or Supplier to furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of the reports required herein; and
- .6 require that each Subcontractor, Sub-subcontractor, or Supplier continue to perform under its subcontract or agreement in the event the Contract is terminated and the Owner elects to take an assignment of its subcontract or agreement and requests such Subcontractor, Sub-subcontractor, or Supplier to continue such performance.

§ 5.3.2 The Contractor shall be fully and solely responsible to the Owner for all acts and omissions of the Subcontractors, Sub-subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work, just as the Contractor is responsible for the Contractor's own acts and omissions.

§ 5.3.3 All responsibilities and obligations of the Contractor under the Contract Documents shall also apply to all Subcontractors and Sub-subcontractors to the extent that they relate to the portion of the Work performed by such Subcontractors or Sub-subcontractors. Any specific requirement in the Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor or Sub-subcontractor is added for emphasis only and is hereby deemed to include a Subcontractor and Sub-subcontractor. The omission of a reference to a Subcontractor or Sub-subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor or Sub-subcontractor under the Contract Documents or the applicable subcontract.

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- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 or for convenience pursuant to Section 14.4, and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

...

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract with respect to that Work that has yet to be performed.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension, assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

...

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

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

§ 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~~ them and the Contractor shall conduct the Work so that operations of both sustain the least interference and delay. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual ~~agreement~~ agreement with the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2.0 The Owner shall have the right to invite the Landlord (if any) to attend and participate in all meetings with the Contractor, Subcontractors, the Architect, and project managers that concern the Project or any aspect of the Project, including, without limitation, the Project budget.

§ 6.2.1 The Contractor shall afford the Owner and the Owner's or Landlord's 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. If the Contractor receives items from a Separate Contractor or from the Owner for storage, erection, or installation by the Contractor and the Contractor does not object to the receipt of such items, the Contractor shall thereafter be held responsible for the care, storage, and any necessary replacement of such items received. The Contractor shall be responsible for damage, loss, or theft of items stored at the Project site by separate contractors or the Owner in the event such damage, loss, or theft results from the acts or omissions of the Contractor, Subcontractors, Suppliers, or their agents or employees, or any other persons or entities performing portions of the Work for the Contractor, and as set forth in the applicable Work Order.

§ 6.2.2 If part of the Contractor's Work depends for ~~proper execution or results~~ upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the ~~Architect-Owner~~ Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the ~~Architect-Owner~~ Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent~~ then apparently discoverable.

§ 6.2.2.1 The Contractor shall be responsible for communicating to the Owner problems and anticipated problems with any Separate Contractor which may impede the progress of the Project. The Contractor may receive a copy of specifications, drawings, and the schedules for work performed under separate contracts and the Contractor shall review these documents for coordination purposes.

**§ 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~~ Subject to the limitations of Articles 4 and 8, the Contractor shall not be responsible for a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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**§ 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.~~Section 3.14 with respect to such party's work.

**§ 6.2.6** The Contractor shall notify the Owner immediately of any damage, defects, or deficiencies of Owner-furnished, Contractor-installed equipment upon receipt of such equipment by the Contractor.

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

...

**§ 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. ~~The Contractor shall not be entitled to any adjustments to the GMP or the Contract Time or any other additional compensation or extensions of time for work performed, which is additional to or different from the Work specified in the Contract Documents, unless such additional or different work is authorized by a Change Order or a Construction Change Directive or other written authorization signed by the Owner prior to the additional or different work being commenced. Any change request first submitted after the work is performed will not be accepted or paid. In the event that the Owner and Contractor agree that work must be commenced prior to agreement on any additional cost, the Contractor shall obtain the Owner's written authorization to proceed before commencing any additional work. The procedures and methods set forth in this Article 7 and in Article 8 for determining and establishing adjustments to the GMP and the Contract Time shall also govern any Contractor Claims for additional compensation and/or extensions of time for performance.~~

**§ 7.1.1.1** Upon Owner's request, the Contractor shall provide pricing for any proposed change within seven (7) days of the Owner's request, or within such longer time as mutually agreed between the parties.

**§ 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~~ a written agreement between the Owner and Contractor; a Construction Change Directive shall be in writing 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 Architect ~~alone.~~with written approval of the Owner.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with authorized changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, ~~or order for a minor change in the Work or Work Order. No course of conduct or dealing between the parties, and no express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alternation of or addition to the Work, shall constitute a change in the Contract Documents or a change in the GMP or Contract Time provided for in the Contract Documents unless it has been included in a Change Order, Construction Change Directive, or Work Order. Nothing in this provision shall preclude the Contractor from seeking a change in the GMP or Contract Time in accordance with the provisions of Articles 7 and 15.~~

**§ 7.1.4** Overtime, when specifically requested and authorized by the Owner and not as a corrective measure, shall be paid for by the Owner on the basis of the premium portion of payment only, plus the cost of insurance and taxes based on the premium payment. Contractor's Fee will not be applied to overtime unless the Owner has (a) caused an

acceleration or delay of the Project requiring overtime to maintain the construction schedule or (b) issued a Construction Change Directive that requires overtime or impacts the Project such that overtime is required to maintain the construction schedule.

...

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

...

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

§ 7.2.2 Methods used in determining adjustments to the GMP may include those listed in Section 7.3.3.

§ 7.2.3 Neither the GMP nor Contract Time shall be affected by a Change Order except as specifically set forth in the Change Order. The GMP adjustment, if any, for any change agreed to in writing by the Owner and Contractor on a particular Change Order shall constitute full and total payment for such change and for the effect of the change on the remainder of the Project, and no other claim or cost shall be made on account of the Cost of the Work, the Contractor's Fee, or the GMP as a result of such Change Order except as set forth therein.

§ 7.2.4 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change, including but not limited to delay or acceleration damages and overhead expenses related to Contractor's principal office or offices other than the Project site office, profit, and any and all adjustments to the GMP and the Contract Time.

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§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner or the Architect and signed by the Owner and Architect, Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, GMP 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, GMP and Contract Time being adjusted accordingly. All Construction Change Directives shall be resolved in a subsequent Change Order.

...

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

...

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect within seven (7) days regarding the method for adjustment in the GMP, the Owner, in consultation with the Architect, shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount, GMP, Contractor's Fee as set forth in the applicable Work Order. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and/or the Architect may prescribe, an itemized accounting of expenditures and savings attributable to the change together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, industry standard, workers' compensation insurance, and other employee costs approved by the Architect;

...

- 4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar ~~taxes, taxes~~ (this does not include Taxes due on progress, final, or retainage payments), directly related to the change; and
- 5 Costs of supervision and field office personnel directly attributable to the ~~change, change~~, which shall only be applicable to Change Orders that change the Contract Time of the Project.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and 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-GMP~~ or Contract Time.

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the ~~Contract Sum-GMP~~ shall be actual net cost ~~as confirmed by the Architect.~~ cost. 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~~ Contractor's Fee shall be applied to the net increase, if any, with respect to that change. As used in this Section 7.3.8, "net increase" shall mean the cost to the Contractor plus any actual restocking, return, or other charges assessed by vendors to the Contractor, less any discounts available to the Contractor.

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

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

§ 7.3.11 The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order.

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The Architect ~~may~~ may, with the written approval of the Owner, order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the ~~Contract Sum-GMP~~ or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the ~~Contract Sum-GMP~~ or Contract Time, the Contractor shall notify the Owner and the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Owner or the Architect that such change will affect the ~~Contract Sum-GMP~~ or Contract Time, the Contractor waives any adjustment to the ~~Contract Sum-GMP~~ or extension of the Contract Time.

...

§ 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~~ achieving Substantial Completion.

§ 8.1.2 The date of commencement of Commencement Date of the Work is the date established in the Agreement applicable Work Order or Notice to Proceed.

...

§ 8.1.5 Final Completion shall occur upon completion of the Work, including all Punch List items, and the Owner's acceptance of the Work in accordance with Section 9.10.

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner-Owner by Article 11. 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 in accordance with the construction schedule and shall achieve Substantial Completion within the Contract Time. The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations, and weekend and holiday work as may be necessary to ensure the production of the Work in accordance with the required date of Substantial Completion and the approved construction schedule. If the Contractor substantially fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) fails to meet the construction schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations, or days of work, as a Cost of the Work within the GMP.

§ 8.2.4 After Substantial Completion, the Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Final Completion, satisfying all requirements necessary for the Owner's acceptance of the Project, on or before the required date of Final Completion set forth in the applicable Work Order. If a required date of Final Completion is not set forth in the applicable Work Order, the Contractor shall achieve Final Completion within thirty (30) calendar days after Substantial Completion unless otherwise agreed to in writing by the Owner. The timing of all Work to be performed by the Contractor after Substantial Completion, including but not limited to Punch List items, shall be coordinated with the Owner.

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§ 8.3.1 Unless otherwise provided in any applicable Work Order, if the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions or by changes ordered in the Work by the Owner (collectively "Compensable Delays"); or (2) by labor disputes beyond the Contractor's control, fire, unavoidable delay in deliveries (if the Contractor acted with reasonable diligence to assure timely delivery by having placed orders and by follow-up and expediting procedures that would assure timely delivery), unavoidable casualties, conditions outside or beyond Normal Expected Weather documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. control (collectively "Excusable Delays") then in either case, the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time, taking into consideration, without limitation, any Float in the critical-path construction schedule. The Contractor acknowledges and agrees that equitable adjustments in the Contract Time and equitable adjustments to the GMP pursuant to Section 8.3.3 will be permitted for a delay only to the extent such delay (a) is not caused by the Contractor or its Subcontractors or its Suppliers, (b) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, or (c) could not be avoided or mitigated by reasonable work-around or precautionary measures. If there is a concurrent delay to the critical path attributable to the Contractor and Owner, it will be proportionately allocated between the Owner and the Contractor based on the percent of impact caused by each party. The Contractor further agrees that its right to receive an extension of time for Excusable Delays pursuant to the provisions of this Section 8.3 shall be the Contractor's sole and exclusive remedy with regard to any delays or interferences with the Contractor's schedule for completion of the Work, and Contractor hereby waives any and all claims for monetary damages arising out of or

related to any such delay or interference, including, without limitation, claims for delay damages, and any other form of time-related damages, or any other claimed direct or consequential damages of any type or nature whatsoever. The part of a concurrent delay allocated to the Owner is an Excusable Delay. Any adjustment in the Contract Time shall be limited to the impact of a delay on the critical path of the construction schedule.

If at any time the Contractor becomes aware that the Work is being delayed in a material way (regardless of the cause or potential responsibility), the Contractor shall give the Owner notice of the delay ("Notice of Delay"). The Notice of Delay shall be given as soon as reasonably possible, but no later than seven (7) days after the Contractor becomes aware of the delay. Notices of Delay shall be numbered to facilitate tracking them to resolution. The parties agree to place a high priority and emphasis on resolving issues that may be causing delay to minimize any impact to the construction schedule and costs.

Any Notice of Delay shall provide the following information to the extent it is then known by the Contractor:

- a. Identify the activity that is being delayed and when the delay started.
- b. State the working days of Float the delayed activity has in the most current schedule.
- c. Provide facts, circumstances, and analysis to support the conclusion delay is occurring.
- d. Identify the issue that is causing the delay, supported by relevant facts and analysis.
- e. State what action, if any, the Owner can take to stop or prevent the delay.
- f. Describe the action being taken to resolve, cure, or reduce the impact of the issue causing delay.
- g. Describe the options that exist for minimizing cost and schedule impacts as a result of the delay.
- h. Describe the options that exist for avoiding delay to achieving Substantial Completion by the required date of Substantial Completion.
- i. Describe the records that are being kept about the delay and its impacts.

The Contractor shall update any open and unresolved Notice of Delay regularly whenever new information is available. The update shall be in the form of a numbered revision to the original Notice of Delay and address each of the listed topics.

In the event of multiple delays occurring at one time, if only one delay issue is causing delay to the critical path activity at the time and the other delay issues are only using available Float for different activities, those other issues are not considered to be delaying the Project, and there is no concurrent delay.

In the event the Owner has an obligation to complete an activity or take some action by a certain date, failure to do so does not constitute a delay to the Contractor's Work unless it delays a critical path activity.

**§ 8.3.1.1** "Float" is defined as the number of days by which a Work activity identified in the construction schedule could be delayed from its "early start date" until the date upon which the Work activity would become a critical path activity. Any Float, slack time, or contingency within the construction schedule is not for the exclusive use of either the Owner or the Contractor, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet the required date of Substantial Completion. Use of such jointly owned Float shall be on a first come, first served basis and may be applied to delays caused (without limitation) by third parties.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15. That the Owner or the Architect may be aware of the occurrence of the delay through means other than the Contractor's Notice of Delay shall not constitute a waiver of a timely Notice or Claim.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. The Contractor shall be entitled to an equitable adjustment in the GMP for Compensable Delays. If delay has been caused by events other than Compensable Delays, no adjustment shall be made to the GMP. No adjustment to the GMP shall be allowed for delay which is concurrent with delay caused by the Contractor or its Subcontractors or Suppliers.

To be entitled to an equitable adjustment in the GMP for Compensable Delays, the Contractor must have (i) been in a state of readiness to proceed with or continue the Work at the time of the delay to that activity and (ii) made all reasonable efforts to reduce the amount of delay by re-sequencing the Work or other means. In the event certain reasonable efforts to reduce delay would cause a material increase in the Contractor's costs for the Work, the

Contractor shall discuss the available options with the Owner and jointly decide the best course of action, which might reasonably require an increase in the GMP related to the selected option.

No equitable adjustment in the GMP or Contract Time is due for an Owner delay or failure of performance that only reduces available schedule Float for an activity.

§ 8.3.4 No Claim for adjustment of the GMP or additional compensation for extra, affected, impacted, or inefficient work or lack of productivity will be allowed where the Contractor does not keep and maintain contemporaneous, complete, and accurate time records for labor and equipment and contemporaneous, complete, and accurate records for materials or where such records do not contemporaneously segregate and allocate by time, location, and work activity the time and cost for each element of such Work, labor, or equipment. The Contractor's failure to keep and maintain such records constitutes a waiver of any Claim or request by the Contractor for adjustment of the GMP for any alleged loss of efficiency, morale, fatigue, labor rhythm, learning curve, constructive acceleration, trade stacking, concurrent operations, dilution of supervision, ripple effect, cumulative impact, or similar damages.

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### **§ 9.1 Contract Sum/ Guaranteed Maximum Price**

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

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

§ 9.1.3 The Owner at its option may, upon notice to the Contractor, delegate all or part of any of the Architect's responsibilities under this Article 9 to the Owner, Development Manager, or any other person or entity identified by the Owner in such notice. Effective as of the date of such notice, the term "Architect" as used in Article 9 shall mean the delegate named by the Owner for such delegated responsibility. If the Owner delegates some or all of the Architect's responsibilities under this Article 9, the delegate identified by the Owner will not be required to be licensed to practice architecture unless otherwise required by law.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Before the first Application for Payment may be submitted, the Contractor shall submit to the Owner and the Architect a schedule of values allocated to various portions of the Work which in the aggregate equals to the total GMP, divided so as to facilitate payments to Subcontractors and Suppliers (at a minimum by CSI division), supported by such evidence of correctness as the Architect may direct or as required by the Owner. The schedule of values, when approved by the Owner and the Architect, shall be used to monitor the progress of the Work and as a basis for Applications for Payment as adjusted by the latest approved Change Orders. Change Order values shall be broken down into the individual line items in the schedule of values. Any changes to the schedule of values shall be submitted to the Owner or the Architect and supported by such data to substantiate its accuracy as the Owner or the Architect may require, and unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### **§ 9.3 Draft Payment Applications and Applications for Payment**

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared/ draft payment application by the times set forth in the Contract for operations completed in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, values. The draft payment application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such require (such as copies of requisitions, and releases and waivers of liens from Subcontractors

~~and suppliers, Subcontractors, Sub-subcontractors and Suppliers)~~ and shall reflect retainage if provided for in the Contract Documents. After receiving a draft payment application that complies with the Contract, the Owner shall have three (3) days after receipt to object to or reject such draft payment application. After such three- (3-) day period has passed without objection or rejection from the Owner, such draft payment application will become an Application for Payment. If a draft payment application is submitted on a Saturday, Sunday, or holiday, the three- (3-) day period above shall not commence until the next business day occurring after the draft payment application was submitted. The draft payment application and subsequent Application for Payment shall be in a format acceptable to the Owner and the Architect. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed and value yet to be completed. Values for materials and equipment stored off the Project site shall be shown in a separate column. All blanks and columns must be filled in, including every percentage completed figure.

**§ 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. Until they are included in Change Orders, those requests shall be documented separately in the schedule of values in a way that allows the GMP to be verified while still tracking the cost to the appropriate line items in the schedule of values.

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

**§ 9.3.1.3** No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor or Supplier for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor or Supplier is subject to withholding from the Subcontractor or Supplier under the subcontract for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor or Supplier, the Owner, and the Architect notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor or Supplier payment, and pay the Subcontractor or Supplier promptly after the Subcontractor or Supplier satisfactorily completes the remedial action identified in the notice.

**§ 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 Project 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 Project site at a location ~~agreed upon~~ approved in writing. Payment for materials and equipment stored on or off the Project 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 Project site, for such materials and equipment stored off the Project site.

**§ 9.3.3** The Contractor warrants that title to all Work will pass to the Owner upon the receipt of payment therefor by the Contractor, free and clear of any and all liens, claims, security interests, or encumbrances whatsoever, and that the vesting of such title shall not impose any obligations on the Owner or relieve the Contractor of any of its obligations under the Contract Documents, and that the Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by the Owner in the manner set forth in the Contract Documents, and that no Work covered by an Application for Payment will pass to the Owner no later than the time of payment. ~~have been acquired by the Contractor, or by any other person performing Work at the Project site or furnishing materials and equipment for the Project, that is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.~~ The Contractor further warrants that upon submittal of ~~an a~~ a draft payment application or subsequent 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 any and all liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, Suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

**§ 9.3.4** Attached to each draft payment application and subsequent Application for Payment shall be the following:

- .1 executed Conditional Release of Lien and Waiver of Lien Rights from Contractor and all Subcontractors, Sub-Subcontractors, and Suppliers who performed Work or delivered materials or equipment with a value of \$5,000 or more during the period covered by such application;
- .2 executed Unconditional Releases of Lien and Waivers of Lien Rights from Contractor and all Subcontractors, Sub-subcontractors, and Suppliers who performed and were paid for Work or provided and were paid for any materials or equipment with a value of \$5,000 or more for the Work through the date of the previous month's application; and
- .3 other documents or information required by the Owner;

such that at the time of a draft payment application and subsequent Application for Payment the Unconditional and Conditional Releases of Lien and Waivers of Lien Rights for the Project shall be current for all materials provided to and Work performed on the Project through the current month's application. The Owner's obligation to pay the Contractor the amount requested in the correct Application for Payment shall be subject to the Owner's receipt of both such Releases of Lien and Waiver of Lien Rights, which must be reasonably satisfactory to the Owner. All Releases of Lien and Waiver of Lien Rights and all stop payment documents shall comply with all applicable laws of the place where the Project is located, including required statutory forms.

The Contractor shall at all times comply with the requirements of all lien laws and statutes of the place where the Project is located, so that the Contractor receives all notices of the right to claim a lien thereunder. For purposes of such statutory requirements, the Owner's name, address, and phone number shall be as set forth in the applicable Work Order. The Contractor shall maintain a log of all such notices of the right to claim a lien received with respect to the Project, including the party sending such notice and the date received. The log shall also include complete listings of all Subcontractors, Suppliers, and material vendors contracted directly with the Contractor for the Project that could have lien rights without notice to the Contractor.

**§ 9.3.5** The Contractor shall attach to the final draft payment application and subsequent Application for Payment an executed and acknowledged Conditional Release of Lien and Waiver of Lien Rights in a form reasonably acceptable to the Owner covering the entire Work performed for the Project and shall also attach executed and acknowledged (i) Conditional Release of Lien and Waiver of Lien Rights from all Subcontractors, Sub-subcontractors, and Suppliers who performed and were paid for any Work or provided and were paid for any materials for the Work through the date of the final draft payment application and subsequent Application for Payment and (ii) Unconditional Release of Lien and Waiver of Lien Rights from all Subcontractors, Sub-subcontractors, and Suppliers who performed and were paid for Work or provided and were paid for any materials for the Work through the date of the prior final application in a form reasonably acceptable to the Owner from those Subcontractors, Sub-subcontractors and Suppliers who provided work, materials, or equipment valued in excess of \$5,000 to the Project, which shall cover the entire Work performed for the Project. Concurrently with receipt of final payment from the Owner, the Contractor shall execute, acknowledge and deliver to the Owner an Unconditional Release of Lien and Waiver of Lien Rights in a form approved by the Owner, which shall cover the entire Work performed for the Project.

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**§ 9.4.1** The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, Payment (after the draft payment application process set forth in Section 9.3), either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. All payments are subject to review, inspections, and reasonable requirements of the Owner's lender, which requirements shall be submitted to the Contractor promptly following mutual execution of the Contract or upon execution of the applicable loan documents, for the Contractor's review. If after Substantial Completion there are minor items of Work either not complete or not in conformity with the Contract Documents (i.e., "Punch List" items), then the Owner may withhold from final payment an amount equal to one hundred fifty percent (150%) of the reasonable cost to correct or complete such items of Work.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the

Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and ~~suppliers~~ 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~~ of the GMP. The representations in this Section 9.4.2 are solely to and for the benefit of the Owner and its lender, if any, and may only be relied upon by the Owner and its lender, and shall not relieve the Contractor of any liability or responsibility under the Contract for incomplete or defective Work or Work that is otherwise not in accordance with the Contract Documents.

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

...

- .3 failure of the Contractor to make payments properly to Subcontractors ~~or suppliers~~ and/or Suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of ~~the Contract Sum~~ the GMP;

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- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
- .7 ~~repeated unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents.~~ Documents;
- .8 any claims that the Owner has against Contractor under or in connection with the Contract Documents or the Work;
- .9 failure of the Contractor to provide updated status reports and progress schedules;
- .10 imposition of liquidated damages (if any); or
- .11 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment.

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

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**§ 9.5.4** If the Owner or the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or ~~supplier~~ Supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes

payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

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§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment with Owner's concurrence has issued a Certificate for Payment and if the Contractor has submitted all documentation required by the Contract Documents, including lien releases, the Owner shall make payment of all amounts certified and approved by the Owner which payment shall be in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall be entitled to withhold payment to the extent provided by the Contract Documents, notwithstanding the issuance of a Certificate for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven Subcontractor and Supplier as may be required by the law of the place where the Project is located (including any prompt payment requirements), but in no event later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor or Supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work, the Work or materials supplied by the Supplier. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.2.1 The Contractor shall obtain properly executed releases from all Subcontractors, Suppliers, or Sub-subcontractors who may have valid lien rights in accordance with, and to the fullest extent possible under, applicable law.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers-Suppliers amounts paid by the Owner to the Contractor for subcontracted Work, Work or materials supplied. If the Contractor fails to furnish such evidence within seven-seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers-Suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, Supplier, except as may otherwise be required by law.

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

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

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

§ 9.6.8.1 If at any time, a lien is filed on the Project arising out of the Work, and provided the Contractor has been paid for undisputed amounts due under the Contract Documents, the Contractor, within ten (10) days after the date of the filing of such lien, and to the Owner's satisfaction and in accordance with the mechanic's lien laws of the place where

the Project is located, shall discharge and remove the lien or post a bond satisfactory to the Owner for such lien or claim of lien and shall indemnify, defend, and hold harmless the Owner from all loss, liability, damage, costs, or expense, including, but not limited to, reasonable attorney's fees, expert fees, and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier, together with interest on the same from the date the Owner paid Contractor until reimbursed by the Contractor at the rate of interest provided in the Agreement. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

**§ 9.6.8.2** The Contractor shall promptly notify the Owner of any action, administrative or legal proceeding, or investigation as to which Section 9.6.8.1 may apply, and provided the Owner is not in default of its payment obligations to the Contractor, the Contractor, at Contractor's expense, shall assume on behalf of the Owner, and conduct with due diligence and in good faith, the defense thereof with counsel reasonably satisfactory to the Owner. In the event of failure by the Contractor to fully perform in accordance with this Section 9.6.8.2, the Owner, has the option of, and without relieving the Contractor of its obligations hereunder, to so perform, but all costs and expenses, including but not limited to attorneys' fees and expert fees, so incurred by the Owner in that event shall be reimbursed by the Contractor to the Owner, together with interest on the same from the date any such expense was paid by the Owner until reimbursed by the Contractor at the rate of interest provided in the Agreement.

**§ 9.6.8.3** The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor removes the lien or obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in a form and substance satisfactory to the Owner, and (iii) in an amount not less than one hundred fifty percent (150%) of such lien claim, or such amount as may be allowed by the law of the place where the Project is located. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.6.8, including without limitation the duty to defend and indemnify the Owner. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and are not a Cost of the Work and shall not be part of, or cause any adjustment to, the GMP.

**§ 9.6.8.4** Notwithstanding anything to the contrary contained herein, and to the extent permitted by the law of the place where the Project is located, if the Contractor does not promptly post the bond, the Owner may withhold one hundred and fifty percent (150%) of the amount of such lien until such lien is discharged or the Owner is protected by bond satisfactory to the Owner in the amount of at least one hundred and fifty percent (150%) of the amount of the lien or other means satisfactory to the Owner. If no monies are available to be withheld, the Contractor shall within three (3) consecutive calendar days refund to the Owner one hundred and fifty percent (150%) of the amount of such lien(s), or such amount as may be allowed by the law of the place where the Project is located.

**§ 9.6.8.5** To the extent not prohibited by law, the Contractor shall and hereby does subordinate all of its lien rights and shall ensure that all of its Subcontractors, Sub-subcontractors, and Suppliers shall subordinate all of their lien rights, to the mortgage(s) or liens or deeds of trust securing payment of sums now or hereafter borrowed by the Owner for the Work and the land. Any Subcontractor, Sub-subcontractor, or Supplier that refuses to so subordinate its lien rights must be specifically approved in advance and in writing by Owner. At the request of the Owner, and to the extent not prohibited by law, the Contractor shall execute such additional documents as may be reasonably requested from time to time by the Project's lender to give effect to the provisions hereof and shall use its best efforts to cause the Subcontractors, Sub-subcontractors, Suppliers, and other parties furnishing labor or materials for the Work to subordinate their liens to such aforesaid sums.

**§ 9.6.8.6** Notwithstanding anything in Sections 9.6.8.1 to 9.6.8.5 to the contrary, and in the event the Contractor fails to make payments to its Subcontractors or Suppliers in accordance with the Contract and does not provide justifiable reasons to the Owner upon Owner's request, the Owner may, at the Owner's sole discretion, elect to make any payment requested by the Contractor on behalf of a Subcontractor or a Supplier, jointly payable to the Contractor and each Subcontractor and/or Supplier. The Contractor and such Subcontractor or Supplier 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 (a) contract between the Owner and a Subcontractor or Supplier, (b) obligations from the Owner to such Subcontractor or Supplier, or (c) rights in such Subcontractor or Supplier against the Owner. The Contractor agrees to sign such additional documents and take such action as the Owner shall deem necessary to carry out the intent of this Section 9.6.8.

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. ~~§ 9.7.1~~ If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, does not pay the Contractor within twenty-one (21) days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the GMP shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

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**§ 9.8.1** Unless otherwise defined in an applicable Work Order, 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, subject only to minor Punch List items that do not adversely affect such use, provided, in addition, that as a condition precedent to Substantial Completion, the Contractor shall provide the Owner with a schedule of all permits required for the Work and occupancy of the Project and, attached to such schedule, a copy of each such permit. The term "Substantial Completion" or "Substantially Complete" is further defined as the date certified respectively, by the Owner when (i) the Owner and/or the Architect working with the Contractor have prepared a Punch List of Work remaining to be performed and has established sufficient reserves for purposes of completing such Punch List items, (ii) all required governmental or regulatory inspections applicable to the Work have been conducted and all approvals required for occupancy have been obtained from all authorities having jurisdiction over the Project, including any permits specified in the applicable Work Order, issued by the appropriate authorities; and (iii) all other conditions precedent to achieving Substantial Completion required under the Contract Documents have been met. Any such occupancy or use described above shall not negate or change the responsibility of the Contractor to the Owner for satisfactory completion of the Work nor shall such occupancy or use negate any insurance provisions required hereunder.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of Owner and/or the Architect, working with the Contractor shall prepare a comprehensive list of Punch List items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct the Punch List items. 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 The Owner and/or the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's and/or the Architect's inspection discloses any item, whether or not included on the Contractor's list, list of Punch List items, 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 Owner and/or the Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and/or the Architect to determine Substantial Completion.

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

shall complete all items within the earlier of the required date of Final Completion set forth in the applicable Work Order or thirty (30) days after issuance of the Certificate of Substantial Completion; provided, however, if certain items cannot be completed due to the unavailability of necessary labor or materials, the Contractor shall have such additional time as is reasonably required to complete such items. All Work to be performed by the Contractor after Substantial Completion, including but not limited to Punch List items, shall be coordinated with the Owner and shall be performed after-hours unless otherwise approved in writing by the Owner. If the Contractor fails to complete any items within such thirty- (30-) day period, the Owner reserves the right to promptly after such thirty- (30-) day period have the items completed by other contractors at the Contractor's cost and recover those costs from the Contractor.

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

§ 9.8.6 The Work shall not be considered Substantially Complete if incomplete and nonconforming items are so numerous and so located as to make occupancy highly inconvenient. If the Owner must occupy the premises despite such inconvenience and disruption, the Owner may cause the issuance of the Certificate of Substantial Completion but may withhold certification of the current Application for Payment until such nonconforming and incomplete items have been reduced to a reasonable number.

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~~§ 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, notwithstanding that the time for completion of such portions may not have expired, provided such occupancy or use is consented to by the insurer 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. complete. When the Contractor considers a portion substantially complete, the Owner working with 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.~~

...

~~§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not be construed as Substantial Completion and shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.~~

...

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and the Architect will promptly make such inspection. When the Architect finds the Work acceptable Owner and the Architect find the Work acceptable and all Punch List items complete under the Contract Documents and the Contract fully performed, and if the Contractor has submitted all documentation required by the Contract Documents, including the required lien releases, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work including Punch List items has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner with a copy to the Architect all closeout documents and all other deliverables required by the Contract Documents, and such documents have been received and accepted by the Owner, including (1) an affidavit that

payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, ~~effect and will not be canceled or allowed to expire until at least thirty (30) days' prior notice has been given to the Owner,~~ (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, any guarantees, training, manuals, operation instructions, certificates, spare parts, maintenance manuals and stock, specified excess material, as-built drawings, and other documents, training, or items required by the Contract Documents or local governmental entities, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Not later than five (5) days after final payment, the Contractor shall file with the county recorder where the Project is located an Unconditional Lien Release and Waiver of Lien Rights on behalf of the Contractor and all Subcontractors.

**§ 9.10.3** ~~If, after Substantial Completion of the Work, final completion~~ Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting ~~final completion, Final Completion,~~ and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect with a copy to the Owner 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;~~  
~~.3 — terms of special warranties required by the Contract Documents; or~~  
~~.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~ (Intentionally omitted).

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a ~~supplier, Supplier,~~ shall constitute a waiver of claims by that payee except those previously ~~made in writing submitted in full compliance with all~~ requirements of the Contract Documents and identified by that payee as unsettled at the time of final Application for Payment.

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~~The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.~~ initiate, maintain, and supervise the safety precautions and programs ("Safety Programs") to ensure the safe completion of the Work and the construction and installation of any Owner's property and compliance with all applicable Legal Requirements (including all reporting requirements), and to perform such tasks as may be prudent under the circumstances (including adequate supervision and training of all persons on the Project). Such Safety Programs shall include identification of the Competent Person responsible for implementation of the Safety Programs, as well as safety-based pre-qualification criteria for Subcontractors. "Competent Person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them, as further described in 29 CFR 1926.32(f), and by way of training and/or experience, is knowledgeable of applicable standards, is capable of identifying workplace hazards relating to the specific operation, and has the authority to correct them. Notwithstanding the forgoing, if the Work is insured by an Owner-sponsored Owner Controlled Insurance Program ("OCIP"), the Safety Programs must include applicable OCIP requirements. If this Agreement, any Work Order, Proposal, or instructions from Owner's personnel give

specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate and be solely responsible for the safety thereof at the Project. If the Contractor determines that: (a) such means, methods, techniques, sequences, or procedures may not be safe, (b) the specified procedures deviate from what the Contractor considers to be good construction practice, (c) following the procedures will affect any warranties, (d) or the Contractor objects to the procedures, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect and the Owner shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Owner or the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. In the event a Separate Contractor violates the Safety Programs, the Contractor shall have the authority to immediately stop the Separate Contractor's work and, if necessary, remove the Separate Contractor from the Project. The Contractor shall provide e-mail notice to the Owner of any Separate Contractor's violations of the Safety Programs and the Owner shall, if necessary, assist the Contractor in removing the Separate Contractor from the Project, and shall require the Separate Contractor to remedy the violation prior to resuming work. If any Separate Contractors perform work after Contractor's normal working hours, the Contractor may initiate a Change Order for additional general conditions costs to provide afterhours supervision of Separate Contractors.

**§ 10.1.1** During the construction of the Work and through the guaranty or warranty period (referenced in Section 3.5), the Owner may, at its cost and expense, audit the Contractor's compliance with its Safety Program. In addition, the Owner may require, at the Owner's cost and expense to be set forth in a Change Order, the Contractor to engage an independent, full-time safety quality assurance manager (from a list of vendors to be provided to the Contractor) dedicated full-time to the Project for the duration of construction whose role will include (i) regular site visits to meet with the Competent Person identified in the Safety Program and any field safety managers to review the Safety Program and its implementation, (ii) conducting site walks and hazard analyses for critical activities, and (iii) providing weekly reports to the Contractor and the Owner. The Owner's notice to the Contractor shall be treated as a Construction Change Directive and shall identify a list of vendors from which the Contractor can select a safety quality assurance manager.

**§ 10.1.2 Safety Data.** The Contractor shall include in each Application for Payment information relating to (i) hours worked on the Project; (ii) lost time; (iii) any Safety Event that occurred; (iv) any regulatory visits and/or notifications of violations or citations; (v) any written safety warnings or citations issued on the Project (including any corrective actions); and (vi) any other data on safety reasonably requested by Owner (collectively, "Safety Data"). Safety Data shall also be provided in a format reasonably acceptable to Owner within five (5) business days of Owner's request.

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**§ 10.2.1** ~~The Contractor shall take reasonable precautions for~~ Subject to the provisions of Section 10.1, the Contractor shall take all reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees involved 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 Project site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the Project site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** ~~The Contractor shall comply with, and give give, and shall cause its Subcontractors and Suppliers to 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 Subject to the provisions of Section 10.1, the Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor.~~

**§ 10.2.4** When use or storage of explosives or other ~~hazardous materials~~ 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

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

**§ 10.2.8** Subject to the provisions of Article 14, 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 from or by any cause.

**§ 10.2.9 Safety Incident Notifications**

The Contractor shall provide e-mail notice, and verbal notice in the event of a fatality, to the Owner's Representative, and Development Manager as soon as reasonably possible after becoming aware of (i) an occurrence of those events described in OSHA 1904.7(a) General recording criteria (or any other event requiring notice to a regulatory agency), (ii) any event that triggers the need for emergency first responders to the Project, including ambulance, police, and/or fire brigade, (iii) a regulatory citation or notice of violation being issued with respect to the Work, or (iv) a Serious Safety Event (defined below) (each of (i)-(iv) being a "Safety Event"), but in any event the Contractor shall use commercially reasonable efforts to provide such notice not later than two (2) hours after a Safety Event. The Contractor shall use commercially reasonable efforts to provide, within twenty-four (24) hours after a Safety Event, a written outline of the incident details and immediate actions taken to prevent reoccurrence. The Contractor shall use commercially reasonable efforts to provide a written incident investigation report within seven (7) days of a Safety Event, which report shall include the incident description, root causes analysis, and corrective action plan to prevent reoccurrence (an "Investigation Report"), provided, in the event of a fatality, the Investigation Report shall be delivered within thirty (30) days of the event. "Serious Safety Event" means an unplanned or uncontrolled event where someone's health or safety is seriously endangered or threatened, including immediate or imminent exposure to incidents such as:

- .1 a substance escaping, spilling, or leaking;
- .2 an implosion, explosion, or fire;
- .3 gas or steam escaping, or a pressurized substance escaping;
- .4 electric shock (from anything that could cause a lethal shock, not including shocks due to static electricity, from extra low voltage equipment, or from defibrillators used for medical reasons);
- .5 the fall or release from height of any equipment, substance, or thing;
- .6 damage to or collapse, overturning, failing, or malfunctioning of any equipment that is required to be used pursuant to Legal Requirements;
- .7 the collapse or partial collapse of a structure; or
- .8 the collapse or failure of an excavation or any shoring supporting an excavation.

Note: People may be put at serious risk even if they were some distance from the incident (for example, from a gas leak).

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents-Hazardous Materials ("Known Environmental Conditions"). If the Contractor encounters Hazardous Materials other than the Known Environmental Conditions 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 Project site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Alternatively the Owner may, in its sole discretion, terminate the Contract for convenience in accordance with Section 14.4. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either it has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an the Contractor has a reasonable objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have has 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. resume. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum-GMP shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The phrase "rendered harmless" means that levels of asbestos or polychlorinated biphenyls or any other hazardous or regulated substance or material, are less than any applicable exposure standard set forth in the applicable OSHA, Environmental Protection Agency (EPA), state regulation, or other applicable environmental laws or regulations of the place where the Project is located. The Contractor agrees not to knowingly or negligently cause any fill or other materials to be incorporated into the Work that are hazardous, toxic, or regulated substances or made up of any items that are hazardous, toxic or regulated, in each case under any federal, state, local, municipal, or other applicable law (collectively, "Hazardous Materials"). The Contractor shall not use contaminated soil as backfill. The Contractor's obligations with respect to Known Environmental Conditions shall not be subject to the terms of this Section but shall be governed by the other requirements of the Contract Documents.

**§ 10.3.2.1** The Contractor shall not knowingly incorporate or cause to be incorporated into the Work any asbestos or lead containing materials, petroleum products that would constitute or create a Hazardous Materials exposure or release condition and/or any other Hazardous Materials or products of any kind. The Contractor will provide certification to the Owner at completion of the Project stating that no such products or materials of any kind were knowingly incorporated into the Work. Said certification shall be in the form of a letter and shall be provided by the Contractor and each of the Subcontractors prior to the release of their respective final retainage.

**§ 10.3.2.2** The Contractor shall protect, indemnify, defend, and hold harmless the Owner from, for, and against any and all claims, actions, liabilities, fines or penalties, losses, costs, and expenses, including attorneys' fees, even if such claims are groundless, fraudulent, or false, arising out of any actual or alleged (a) spilling, dumping, release, and/or improper or illegal disposal of Hazardous Materials, whether at or upon the Project site or at another undetermined site pursuant to the performance of the Contract or (b) pollution or contamination of the land or waters with Hazardous Materials as a result of performance of the Contract. It is expressly agreed and understood that such protection, defense, and indemnification shall apply and extend to claims made by any governmental entities or agencies (including federal, state, local, or municipal) with jurisdiction over the Work.

**§ 10.3.3** To the fullest extent permitted by law, Except to the extent of the Contractor, Contractor's employees and agents, Supplier's, or Subcontractor's negligence or willful action, or the Contractor's failure to immediately provide notice to Owner regarding the Hazardous Materials (other than Known Environmental Conditions) as set forth in Section 10.3.1, 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 reasonable attorneys' fees, arising out of or resulting from performance of the Work in the ~~affected area~~ area affected by Hazardous Materials (other than Known Environmental Conditions) if in fact the material or substance presents ~~the a significant~~ a significant risk of bodily injury or death as described in Section 10.3.1 and ~~has not been rendered harmless, that risk has not been abated within a reasonable period of time after its discovery,~~ provided that such claim, damage, loss, or expense is attributable to actual 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 caused by such Hazardous Materials,~~ except the Owner shall have no such obligations to the extent that any such claims, damages, losses, or expenses are due to the fault or negligence of the party seeking indemnity, indemnity or its Subcontractor, a Sub-subcontractor, a Supplier to any of them or anyone directly or indirectly employed by any of them.

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

**§ 10.3.5** The Contractor shall ~~reimburse indemnify~~ reimburse the Owner for the ~~cost and expense~~ costs, damages, and expenses the Owner incurs (1) for remediation of ~~hazardous materials or substances~~ the Contractor brings to the Project site and negligently ~~handles, handles or intentionally mishandles,~~ 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, or breach of the Contract on the part of the Contractor or its Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them,~~ the Contractor is held liable by a government agency for the cost of remediation of ~~a hazardous material or substance~~ Hazardous Materials solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all reasonable cost and expense thereby incurred.

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~~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.~~ **§ 10.4.1** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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## **§ 11.0 OWNERS RIGHT TO ELECT AN OWNER CONTROLLED INSURANCE PROGRAM**

**§ 11.0.1** The Owner has the sole discretion to have the Project insured under an Owner Controlled Insurance Program ("OCIP"). If the Owner elects to include the Project under an OCIP, the election will be made no later than the commencement of Work on the Project. If the Owner does not elect to include the Project under an OCIP, the provisions below in sections 11.1 Contractors Liability Insurance and 11.2 Owners Liability Insurance shall apply.

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

**§ 11.1.1** The Contractor shall purchase ~~and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents.~~ The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants from and maintain in a company or companies having a rating of no lower than "A-VII" in the then-current edition of the AM Best Rating Guide and lawfully authorized to do business in the jurisdiction where the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor. The Indemnified Parties shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. As used herein, the "Contractor" shall mean the Contractor or a

Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including the Contractor's construction equipment, and including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18;
- .9 Claims for damages insured by professional liability coverage; and
- .10 Claims for damages insured by contractor's pollution liability coverage.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in this Article 11 or such limits specified in the applicable Work Order, unless greater limits are required by law, then such limits required by law shall be provided. Coverages shall be written on an occurrence basis, except for coverages specified in Sections 11.1.1.9 and Section 11.1.1.10, and all coverages shall be maintained without interruption from the date of commencement of the Work until the dates specified in Section 11.1.6.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. Certificates of insurance acceptable to the Owner shall be filed with the Owner or Owner's agent as reasonably directed by Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (i) the Owner and the Indemnified Parties as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (ii) the Owner and the other Indemnified Parties as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### **§ 11.2 Owner's Insurance**

**§ 11.1.5** The Owner is not responsible for the tools and equipment of the Contractor, Subcontractors, and Sub-subcontractors. Each of these parties is responsible for insuring its own equipment and tools. Contractor shall maintain the insurance described in Section 11.1.1 and as follows:

- .1 Commercial General Liability Insurance (including premises/operations; independent contractor's protective; products and completed operations; and broad form property damage) with coverage in a combined single limit in the minimum amount of \$2 million per occurrence, \$4 million general aggregate per project, and \$4 million Products and Completed Operations or as established in the applicable Work Order;
- .2 Products and completed operations coverage, which shall include broad form property damage and XCU endorsements and shall be maintained as provided in Section 11.1.6;
- .3 Automobile Liability Insurance in the amount of \$1 million combined single limit for all owned, non-owned and hired autos;
- .4 Umbrella general liability coverage in the minimum amount of (a) \$10 million, provided that the GMP under the applicable Work Order does not exceed \$5 million, (b) \$20 million, provided that the GMP under the applicable Work Order does not exceed \$10 million, (c) \$25 million, provided that the GMP under the applicable Work Order does not exceed \$25 million, or (d) coverage equal to the cost of the Project when the GMP under the applicable Work Order exceeds \$25 million or as established in the applicable Work Order;
- .5 The policies furnished in compliance with Sections 11.1.5.1 through 11.1.5.4 shall be primary insurance to any other liability insurance of the Owner;
- .6 Worker's compensation coverage as required by law, and employer's liability coverage in the amount of \$1 million;
- .7 Contractor's Professional Liability Insurance coverage with minimum limits of (a) \$2 million per claim and aggregate, (b) \$5 million per claim and aggregate if the Contractor is responsible for any professional engineering or architectural design Work, including the subcontracting of such Work, or (c) as established in the applicable Work Order, with all coverage retroactive to the earlier of the date of the Agreement or commencement of the Work. Professional Liability Insurance for design/build work as provided in Section 11.5;
- .8 Contractor's Pollution Liability Insurance coverage with minimum limits of \$1 million per claim and in the aggregate, or as established in the applicable Work Order with all coverage retroactive to the earlier of the date of the Agreement or the commencement of Work. If the Work includes the penetration of a slab or foundation (excluding penetrations for securing of racks, mezzanine, or conveyors), or excavation of soil or removal of underground or above ground storage tanks, the Contractor will provide Pollution Liability Insurance coverage with minimum limits of \$5 million per claim and aggregate, or as established in the applicable Work Order, with all coverage retroactive to the earlier of the date of the Agreement or the commencement of Work; and
- .9 Owner and the other Indemnified Parties (as defined in Section 3.18.1) shall be included as additional insureds on the policies required pursuant to Sections 11.1.5.1 through 11.1.5.4, and 11.1.5.8. The obligation of the Contractor as set forth in Section 3.18.1 shall be specifically referenced in the insurance certificates as being incorporated in the insurance coverage provided to the Owner under this Article. The additional insured endorsement(s), by which the Owner and the other required parties are named as additional insureds for the commercial general liability/products and completed operations policies, (a) shall be issued on Form CG2010 (04/13) or equivalent, and (b) shall be supplemented by a CG 2037 (04/13) ADDITIONAL INSURED – OWNERS, LESSEE OR CONTRACTORS – COMPLETED OPERATIONS endorsement.

The Contractor shall deliver originals of such additional insured endorsements to the Owner concurrently with its delivery of certificates of insurance for those policies.

§ 11.1.6 All insurance provided by the Contractor hereunder shall be primary and not contributing with any coverage carried by the Owner. Each policy shall contain all applicable conditions, definitions, exclusions and endorsements related to this Project as are generally considered to be industry standard for projects of this scope and scale in the metropolitan area in which the Project is located. The policies provided by the Contractor shall provide that any obligation imposed upon the insured (including, without limitation, the liability to pay premiums, as well as the responsibility for all deductible amounts) shall be the sole obligation of the Contractor and not of any other insured. The Contractor shall require each insurer under each policy provided by the Contractor to waive all rights of subrogation against the Owner, any right of set-off or counterclaim, and any other right to deduction, whether by attachment or otherwise.

§ 11.1.7 All required coverages shall remain in force for the benefit of the Owner for claims arising out of the Work under the Contract for at least twenty-four (24) months after Final Completion, except for completed operations coverage which shall extend for a period of six (6) years from Substantial Completion.

§ 11.1.8 Unless modified by an applicable Work Order, Subcontractors and Sub-subcontractors, if any, shall comply with all requirements in this Section 11.1 except as set forth in the Subcontractor and Sub-subcontractor Minimum Insurance Limits attached hereto as Schedule 1. If the Work relates to a facility owned by the Owner or its affiliates, the greater of the limits in Section 11.1.5 or Schedule 1 shall apply only to Subcontractors and Sub-subcontractors, except that umbrella general liability coverage required by Section 11.1.5.4 shall be provided in the minimum amount of \$5 million or as established in the applicable Work Order.

## **§ 11.2 Owner's Liability Insurance**

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

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

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

## **§ 11.3 Waivers of Subrogation**

### **§ 11.3 Property Insurance**

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

in the applicable Work Order, the Owner shall be responsible for providing "all-risk" coverage in the amount of the initial GMP, plus the value of subsequent Contract Modifications and the cost of materials supplied or installed by others and owned or to be owned by the Owner, comprising total value for the entire Project at the Project site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3, whichever is later. This insurance shall include the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors as loss payees, as their interests may appear. Liability of the Owner (and Owner's insurance) shall not extend to cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as "construction equipment" that may be on the Project site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment.

~~§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

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

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

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

~~§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earth movement, flood (provided, however, the Owner may elect to not carry earth movement or flood coverage, in which case Owner shall release the Contractor from any damages resulting from earth movement or flood that would have otherwise been covered by such insurance coverage), windstorm, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable Legal Requirements, testing, commissioning and start-up and shall cover reasonable compensation for the Owner's, Architect's and Contractor's services and expenses required as a result of such insured loss. Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as "construction equipment" that may be on the Project site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment.~~

~~§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall notify the Contractor prior to commencement of the Work. The Contractor may then affect insurance that will protect the interests of the Contractor, Subcontractors, and Sub-subcontractors in the Work, and by appropriate Change Order the reasonable cost thereof shall be charged to the Owner.~~

~~§ 11.3.1.3 The property insurance provided by the Owner shall have a deductible as set by Owner from time to time, and only for losses under the care and control of the Contractor, the Contractor shall pay costs not covered because of such deductibles up to \$25,000 per occurrence except to the extent set forth in the applicable Work Order.~~

~~§ 11.3.1.4 This property insurance shall cover portions of the Work in transit and stored off site.~~

#### ~~§ 11.3.2 Loss of Use, Business Interruption, and Delay in Completion Insurance~~

~~§ 11.3.2.1 The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against the Owner's loss of use of the Owner's property, or the inability to conduct normal operations, due to fire, hazards or other causes of loss, however caused. Such insurance shall exclude the Contractor's loss of use and the Contractor shall have no right to claim loss of use under any such insurance maintained by the Owner. The Owner waives all~~

rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused, to the extent covered and paid for by any loss of use insurance carried by the Owner.

**§ 11.3.3** Before an exposure to loss may occur, the Owner shall provide the Contractor with a Certificate of Insurance that includes insurance coverages required by Section 11.3 if requested by the Contractor. Each policy required under Section 11.3 shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until notice (ten (10) days' prior notice for nonpayment of premium) has been given to the Owner. The Owner shall endeavor to provide the Contractor thirty (30) days' prior notice before any cancellation, material change or lapse of such coverage.

#### **§ 11.3.4 Waivers of Subrogation**

**§ 11.3.4.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss occurring prior to Final Completion, to the extent those losses are (a) covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance held by the Owner pursuant to Section 11.3.5, (b) covered by any property insurance carried by the Contractor (or any Subcontractor or Sub-subcontractor), or (c) with respect to construction equipment, such losses would be covered if the Contractor (or the applicable Subcontractor or Sub-subcontractor) carried property insurance for the full replacement value of such construction equipment. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.4.1 shall provide, and not prohibit, this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.4.2** (Intentionally Omitted).

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

**§ 11.3.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner to be disbursed as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.5.3. As used in Section 11.3.5, "fiduciary" shall mean the exercise of due care in the handling of all proceeds and all other obligations or duties contained in Section 11.3, and in accordance with the Contract Documents on behalf of the Contractor but shall not be construed to impose the duties of a trustee or to create a trust consisting of the proceeds. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.5.2** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, deposit proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.5.3** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

#### **§ 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. The Owner may elect to require the Contractor to bond certain

Subcontractors and/or Suppliers. If the Owner so elects, the Owner agrees to increase the GMP for bond costs to the extent not previously included in the GMP.

**§ 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 Professional Liability Insurance – Design Build Subcontractors**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner. Except as otherwise provided in a Work Order, for the portions of the Work which include design or use of design-build subcontractors, the Contractor shall require and ensure that the Subcontractor shall procure, maintain and pay for Professional Liability Insurance covering damages by reason of any negligent act, error or omission committed or alleged to have been committed by the Subcontractor or anyone for whom Subcontractor is legally liable, including coverage for liability assumed by contract. If the Work relates to a facility leased by the Owner or its affiliates, such Professional Liability Insurance shall include minimum limits as set forth in the Subcontractor and Sub-subcontractor Minimum Insurance Limits attached hereto as Schedule 1. If the Work relates to a facility owned by the Owner or its affiliates, such Professional Liability Insurance shall include minimum limits of \$5 million per claim and aggregate for mechanical (including fire protection), electrical and curtain wall enclosure, and \$2 million per claim and aggregate for all other design-build sub-trades. Coverage shall be retroactive to the earlier of the date of the Agreement or the commencement of such design-build work. Professional liability coverage shall be provided by annual policy or policies to be renewed for a continuous period of two (2) years following the Final Completion Date of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date. Should the Subcontractor change insurance carriers during such term, the design-build subcontractor shall provide continuous and uninterrupted coverage as herein provided and shall without demand provide Owner with proof of same.

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

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**§ 12.1.1** If a portion of the Work is covered contrary to the Owner's or the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or the Architect, be uncovered for the Owner's or 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 Owner or the Architect has not specifically requested to examine prior to its being covered, the Owner or 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, the Contractor shall be entitled to an equitable adjustment to the ~~Contract Sum~~ GMP and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

The Contractor shall promptly correct Work rejected by the Architect as defective or failing to conform to the Contract Documents by the Owner, the Architect, or governmental inspections having jurisdiction on Work, 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 labor, materials, additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's and the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

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§ 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 one (1) year after Substantial Completion of the Work, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. All machinery, equipment, and building systems used by the Contractor or any Subcontractors prior to Substantial Completion shall be restored to the same condition, if necessary at no cost to the Owner.

§ 12.2.2.2 The one-year-one- (1-) 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-one- (1-) year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2; Section 12.2; provided, however, the warranty provisions of the Contract Documents and the Contractor's obligations under this Section 12.2 shall be extended as to any corrective Work (but only for the specific items corrected) for the time specified in the Contract Documents from the date the corrective Work is completed. Without limitation, manufacturer's warranties on equipment shall supplement warranties specified in the Contract Documents.

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

...

§ 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-one- (1-) 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. The warranties given herein by the Contractor are in addition to any manufacturers' warranties that may be available to the Owner (which manufacturers' warranties the Contractor shall supply to the Owner on or before Substantial Completion).

§ 12.2.6 If, during the guarantee or warranty period, any material, equipment, or system requires corrective Work because of defects in materials or workmanship, and if the Contractor remains on the Project site or if the corrective Work constitutes an emergency (a threat to human health or safety, or property or the launch-date of business operations), the Contractor shall undertake all required corrective Work within forty-eight (48) hours after receiving the notice and work diligently until the corrective Work is completed. In all other situations, if during the guarantee or

warranty period, any material, equipment, or system requires corrective Work because of defects in materials or workmanship, the Contractor shall, within forty-eight (48) hours after receiving the notice, respond, to the Owner with a detailed plan for performing all required corrective Work. If the Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within five (5) days after receiving notice or if the Contractor commences such Work but does not pursue it in an expeditious manner, the Owner may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to the Owner or may perform such Work and/or obligations and charge the costs thereof to the Contractor. The Contractor shall correct any defects noted by the Owner and if it is later determined that such defects were the responsibility of others, the Owner will pay the Contractor an amount calculated in accordance with Section 7.3.4 of these General Conditions. The obligations of the Contractor or any Subcontractor under the terms and provisions of the Contract Documents shall not be limited to the payments made by the surety (if any) under the provisions of the Contract. Ten (10) months following Substantial Completion, the Contractor shall accompany the Owner on an inspection of the Project and the Contractor shall promptly correct any defective or non-conforming Work.

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

...

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

...

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

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes (a) a lender providing financing for the Project, (b) to any of its affiliates, (c) in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets, or any similar transaction, or (d) to any person or entity succeeding to the Owner's interest in or to the property on which the Project is located. In such event, the assignee shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

...

**§ 13.3.1** Duties Except as expressly limited in the Contract Documents, 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.

...

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to selected by the Owner, or with the appropriate public authority, and shall bear all related costs of authority. The Owner shall pay the costs of structural tests and inspections by the independent testing laboratory, geotechnical tests, system commissioning, membrane testing, air

infiltration testing, and curtain wall performance testing. Unless otherwise provided in the Contract Documents, including the applicable Work Order, the Contractor shall pay the costs of the main building permit and the building official inspections covered by that permit, and other tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall also bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such ~~failure, failure but not limited to,~~ including those of repeated procedures and compensation for the Owner's and the Architect's services and expenses, shall be at the Contractor's expense.

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

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

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Owner's and Architect's observation of tests or inspection of Work shall not relieve the Contractor of any of its obligations under the Contract Documents.

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~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ **§ 13.5.1** Payments due and unpaid under the Contract Documents shall bear interest from the date that is five (5) business days after receipt of notice that such amount is past due in accordance with the terms of the Contract if and only to the extent provided in the Contract.

#### **§ 13.6 Construction Lender Requirements**

**§ 13.6.1** The Contract may be amended in any respect, including, without limitation, procedures for payment, assignment, change orders, lien releases, and termination as may be reasonably required by any construction or permanent lender who may from time to time have a mortgage or deed of trust on the Project or have outstanding a loan commitment on the Project upon agreement by the Contractor, such agreement to not unreasonably be withheld, conditioned, or delayed. The Contractor also agrees to timely provide any such lender with any documents and information it reasonably requires within the limits afforded the Owner in the Agreement. The Contractor shall make every reasonable effort to conform its documentation in support of progress payments to the requirements of the lender under the construction loan agreement. If requested by the Owner, Contractor agrees to (i) execute a "Contractor's Letter of Consent of Assignment" or similar document and (ii) provide the construction lender such certificates or such other reasonable documents relating to the completion of the Work in compliance with applicable codes, ordinances, rules and regulations, in such form as may be required by the lender.

**§ 13.6.2** Any and all mortgages for the construction of the Project now or hereafter placed upon the property which the Contractor furnishes materials or labor shall be a lien prior to and superior to any lien the Contractor, Subcontractor or Supplier may now have or hereafter acquire by virtue of furnishing labor and materials, and any mechanics or materialmen's liens so acquired shall be subordinate to and is hereby subordinate to any and all such mortgages, to the extent permitted by the law of the place where the Project is located. The Contractor shall furnish, in a form acceptable to lender, verification of said subordination.

### **§ 13.7 Work Product; Work For Hire**

**§ 13.7.1** The Owner owns all rights, including without limitation, any intellectual property rights in and to everything the Contractor makes, conceives, develops, discovers, reduces to practice or fixes in a tangible medium of expression, alone or with others in the course of the Contractor's engagement by the Owner, including without limitation, all deliverables (but not including the Contractor's means, methods or Contractor's business administration) ("Engagement Work Product"). Any and all Shop Drawings, physical and electronic models, documents, renderings, drawings, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, Supplier or distributor (collectively, the "Tangible Work Product" and together with the Engagement Work Product, the "Work Product") is the sole and exclusive property of the Owner. The Owner owns all right, title, and interest (including, but not limited to, all copyrights and any other intellectual property rights) in the Work Product immediately upon creation of any Work Product or any part thereof. The Contractor shall deliver the Work Product or requested parts of the Work Product to the Owner upon Final Completion or earlier request of the Owner. To the maximum extent allowed by law, all Engagement Work Product will be considered "works made for hire" and accordingly, the Owner will be considered the author of Engagement Work Product under the federal copyright laws. The Work Product has been specially ordered and commissioned by the Owner as "work made for hire" for copyright purposes, or, to the extent any Work Product does not so qualify, the Contractor hereby grants, assigns and transfers to the Owner all of the Contractor's right, title, and interest of any kind in and to the Work Product and the copyright thereof, and all renewals and extensions of the copyright that may be secured now or in the future and the Contractor shall require a similar assignment to the Owner from all Subcontractors, Sub-subcontractors, manufacturers, Suppliers and distributors that produce any Work Product. The Contractor grants the Owner a perpetual, world-wide, royalty-free, non-exclusive license under its rights to make, have made, use, sell, offer to sell, distribute, modify, create derivative works of, and sublicense (through multiple tiers of sub licensees) any other intellectual property owned or licensable by the Contractor for the Owner's use and enjoyment of the Work Product, including the right to design and build structures without Contractor based on the Work Product.

### **§ 13.8 Damage To Existing Structures and Property**

**§ 13.8.1** The Contractor shall conduct the operations so as not to damage adjacent structures, existing structures, any work installed either by the Contractor or by other contractors, or any personal property of the Owner or others. If any such damage is related to its operations, the Contractor shall repair and make good as new the damaged portions at its own expense, and the Contractor shall be liable for the damage caused.

### **§ 13.9 Manufacturers' Requirements**

**§ 13.9.1** The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications, as applicable, and that the materials and equipment shall function as intended by the manufacturer. Prior to Final Completion, the Contractor shall obtain a statement from the manufacturer approving the Contractor's installation of all materials and equipment for which a warranty is required under the Contract Documents. If the Owner seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer fails to honor its warranty based, in whole or in part, on a claim of defective installation, the Owner shall be entitled to enforce any claim for defective installation against the Contractor.

### **§ 13.10 Waiver of Jury Trial.**

TO THE EXTENT PERMITTED BY LAW, AND EXCEPT FOR DISPUTES WHOSE VENUE IS IN SEATTLE, WA, THE CONTRACTOR AND THE OWNER WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN THE CONTRACTOR AND THE OWNER ARISING OUT OF THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

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**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, of the Work on behalf of the Contractor, for any of the following reasons: reasons only:

- .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~~—~~.2~~ 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; or
- ~~.4~~—The Owner has failed to furnish to the Contractor reasonable evidence as required by Section ~~2.2~~Section 9.4.1; or
- ~~.3~~ Because the Owner fails to pay the Contractor as provided in Section 9.7.1.

~~§ 14.1.2~~ The Contractor may terminate the Contract if, ~~Notwithstanding Section 14.1.1,~~ in the event the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, ~~repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~ Work on behalf of the Contractor due to issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped or failure to obtain governmental approval for the Project or Work, the Contractor may not terminate the Contract until first providing the Owner fourteen (14) days' notice along with a proposal for the Contractor's reasonable costs to remain on the Project until such order is lifted or such approval is obtained. If an agreement is not reached on the Contractor's proposal within the fourteen- (14-) day period, the Contractor may terminate the agreement and recover pursuant to Section 14.1.3.

~~§ 14.1.3~~ If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon ~~seven~~ fourteen (14) days' notice to the Owner and Architect, ~~and provided the cause for termination is not cured or corrected by the Owner or the Architect within such fourteen- (14-) day period,~~ terminate the Contract and recover from the Owner payment for Work executed, ~~as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination—including the pro-rata or proportionate part of the Contractor's Fee (as defined in the applicable Work Order) for Work performed.~~ If the Contractor terminates the Contract, it will use commercially reasonable efforts to mitigate its losses and costs.

~~§ 14.1.4~~ If the Work is stopped for a period of ~~60~~ sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work ~~on behalf of 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~~ fourteen (14) additional days' notice to the Owner and the Architect, ~~and provided the cause for termination is not cured or corrected by the Owner or the Architect within such fourteen- (14-) day period,~~ terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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- ~~.1~~ repeatedly-refuses or fails to supply enough properly skilled workers or proper materials;
- ~~.2~~ fails to make payment to Subcontractors or ~~suppliers~~Suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or ~~suppliers~~Suppliers;
- ~~.3~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~disregards or does not comply with the Legal Requirements;~~
- ~~.4~~ fails to provide to the Owner a construction schedule, construction schedule updates, weekly progress reports, certificates of insurance or any required payment and performance bond in the form and within the time required under the Contract Documents;
- ~~.5~~ fails to achieve Substantial Completion or Final Completion on or before the dates specified in the Contract Documents or otherwise fails to adhere to the construction schedule in performing the Work;
- ~~.6~~ has been paid for undisputed amounts and fails to remove Mechanic's Liens, pursuant to Section 9.6.8 or as so notified by the Owner or is otherwise in substantial breach of a provision of the Contract Documents that impacts the Cost of the Work or extension of Contract Time;
- ~~.7~~ breaches any of its confidentiality obligations, including, but not limited to those set forth in the NDA;
- or
- ~~.4~~ otherwise is guilty of ~~.8~~ otherwise is in substantial breach of a provision of the Contract Documents.

~~§ 14.2.2~~ When any of the reasons described in ~~Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action,~~ Section 14.2.1 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-seven (7) days'~~ notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the Project site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the ~~Contractor;~~ Contractor or leased by the Contractor for the Project;

...

~~§ 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 unless and until the Work is finished.

~~§ 14.2.4~~ If the unpaid balance of the ~~Contract Sum~~ GMP for Work performed prior to termination exceeds costs of finishing the Work, including but not limited to compensation for the Owner's and 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.~~ Contractor for, but only to the extent of, Work properly performed by the Contractor, if applicable, but in no event shall the Contractor be entitled to any payment in excess of the amount that would have been payable to the Contractor if the Owner had terminated the Contract pursuant to Section 14.4. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the ~~Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~ Owner, upon application.

~~§ 14.2.5~~ When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Owner shall be entitled to recover its damages resulting from such termination, including, but not limited to, all costs in excess of the GMP, including attorney's fees and consulting compensation for the Architect's and the Owner's Representative's services and expenses made necessary thereby and, if Substantial Completion is not achieved by the required date of Substantial Completion (as adjusted pursuant to the Contract Documents), liquidated damages for delay as set forth in the Agreement. All amounts paid pursuant to this Section 14.2.5 shall be certified by the Owner upon application.

~~§ 14.2.6~~ It is recognized that if the Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors on account of the Contractor's insolvency, such circumstance could impair or frustrate the Contractor's performance of the Contract. Accordingly, the parties to the Contract agree that at any time that Owner has reasonable concerns about the financial stability of the Contractor, the Owner shall be entitled to request of the Contractor or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents and the Contractor shall have seven (7) business days to provide such assurances. The Contractor's failure to comply with such request shall entitle the Owner to (a) withhold payment until the Contractor provides such reasonable assurances as the Owner shall require, and/or (b) to terminate the Contract immediately and to the accompanying rights thereunder. The Owner shall be entitled to recover its damages resulting from such termination including, but not limited to, all costs incurred by the Owner in excess of the GMP and, if Substantial Completion is not achieved by the required date of Substantial Completion, liquidated damages for delay as set forth in the Agreement.

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~~§ 14.3.2~~ The ~~Contract Sum~~ GMP and Contract Time shall be adjusted for increases and decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the ~~Contract Sum~~ shall include ~~profit.~~ GMP shall include applicable adjustments to the Contractor's Fee, as defined in the applicable Work Order. No adjustment shall be made to the extent

...

~~§ 14.4.1~~ The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. If the Owner terminates for cause and that termination is determined to be improper, then the termination will be deemed a termination for convenience.

...

- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;  
and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders;
- .4 not place any further orders or enter into any new subcontracts for materials, services or facilities; and
- .5 immediately turn over to the Owner the original (or a copy, equal in quality to the original) of all of the Contractor's records, files, documents, materials, drawings and any other items relating to the Project, whether located on the Project site, at the Contractor's office or elsewhere.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor Contractor shall be entitled to payment for Work properly executed; and costs reasonably incurred by reason of the such termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement along with reasonable overhead and profit in the form of the pro-rata or proportionate part of the Contractor's Fee on the Work performed.

**§ 14.5 Limitation on Termination Claims**

**§ 14.5.1** In connection with any termination of the Contract, whether by the Owner for convenience or cause or by the Contractor for cause, it is agreed and understood that: (i) no Fee shall be due or payable with respect to unperformed Work; (ii) in no event shall the Owner be liable for lost profits or overhead; and (iii) in no event shall the Contractor be entitled to a termination payment that would in the aggregate with all prior payments by the Owner to the Contractor exceed the GMP, including any written Change Orders and work authorized by the Owner in writing.

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

**§ 15.1.2 Time Limits on Claims**

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

**§ 15.1.2** (Intentionally omitted).

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. In the event that the Contractor believes it has a Claim against the Owner for additional compensation, additional time or some other remedy arising out of or in connection with the Contract Documents, the Work or the actions or omissions of the Owner (or the parties for whom the Owner is responsible), the Contractor shall give notice ("Notice of Claim") to the Owner of such Claim within fifteen (15) days of when the Contractor first knew, or reasonably should have known, of the event or condition giving rise to the apparent claim. In the event the Claim is the result of failure to mutually agree on the adjustment of the GMP or Contract Time for changes addressed in Articles 7 and 8, the time period for the Notice of Claim starts at the time the parties agree there is an impasse. No Claim for additional time shall be allowed unless the Notice of Delay procedures described in Section 8.3.1 have been followed. The Notice of Claim shall describe the nature and impact of the Claim in reasonable detail. For purposes of this provision, giving notice to the Owner shall be deemed to mean notice delivered by

(a) personal delivery, (b) certified U.S. mail, with postage prepaid and return receipt requested, or (c) overnight courier service, with proof of delivery, to the Owner, Development Manager, and the Architect at the addresses set forth in the Contract Documents or such other person or location as Owner may designate in writing from time to time.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. The Contractor shall use commercially reasonable efforts to include the following in a Notice of Claim: (i) the date and description of the event giving rise to the request for an adjustment or interpretation of Contract terms, a payment of money, an extension of time or other relief with respect to the terms of the Contract Documents; (ii) a statement of the nature of the impacts to the Contractor and its Subcontractors, if any; (iii) a detailed written breakdown and calculation of the adjustment in the GMP sought by the Contractor for itself and for others, if any, together with documents and substantiation for all adjustments, including but not limited to the AIA G701 (showing the original GMP, proposed change in the GMP, and the proposed new GMP), an updated schedule of values, an updated total Project estimate, any backup documentation for the overage (e.g., subcontractor or supplier bids, or related labor and equipment reports), and any other documentation reasonably requested by the Owner; (iv) a detailed written analysis and explanation of the amount of any adjustment to the Contract Time, then known and sought by the Contractor, together with an analysis of the construction schedule showing the claimed impact on the Contractor's ability to achieve Substantial Completion by the required date of Substantial Completion; (v) a detailed written analysis and explanation, together with documents and substantiation for any other request relief with respect to the terms of the Contract Documents; and (vi) a detailed statement of all provisions of the Contract Documents upon which the Notice of Claim is based. The Contractor shall update any Notice of Claim with each weekly report to the Owner until such time as the foregoing detail has been received by the Owner in the Owner's reasonable discretion.

**§ 15.1.3.3** No course of conduct or dealing 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 shall form the basis of any Claim for an increase in any amount due under the Contract Documents or a change in the Contract.

**§ 15.1.3.4** All Claims made by the Contractor or by any Subcontractor or Sub-subcontractor through the Contractor shall be accompanied by a certification by an officer of the Contractor having overall responsibility for the Contractor's affairs stating (i) the Claim is made in good faith; (ii) the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; and (iii) the amount requested accurately reflects the contract adjustment for which the Contractor believes the Owner is liable. For Claims by Subcontractors or Sub-contractors the Contractor may not rely on Subcontractor or Sub-subcontractor certifications but must conduct an independent evaluation sufficient to certify the claim as stated above. False or inaccurate certification of a Claim will entitle the Owner to recover its costs of defending such Claim including but not limited to attorney, accountant and expert fees.

**§ 15.1.3.5** THE CONTRACTOR'S FAILURE TO GIVE NOTICE OF CLAIM WITHIN THE FIFTEEN- (15-) DAY PERIOD AND IN STRICT COMPLIANCE WITH THE OTHER REQUIREMENTS SET FORTH IN THIS ARTICLE 15 SHALL CONSTITUTE AN ABSOLUTE AND COMPLETE WAIVER, RELEASE AND BAR OF SUCH CLAIM, EXCEPT WHERE SUCH WAIVER, RELEASE OR BAR IS PROHIBITED BY APPLICABLE LAWS.

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**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker. (Intentionally omitted).

...

If the Contractor wishes to make a Claim for an increase in the ~~Contract Sum, GMP,~~ notice as provided in ~~Section 15.1.3~~ Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under ~~Section 10.4~~ Section 10.4 or Claims where a Construction Change Directive has authorized the Work.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in ~~Section 15.1.3~~ Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. No Claim for additional time shall be allowed unless the Notice of Delay procedures described in Section 8.3.1 have been followed.

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

...

~~The~~ Except as otherwise set forth in these General Conditions, the Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. ~~This~~ Except as otherwise provided in the Work Order, this mutual waiver includes

...

- .2 damages incurred by the Contractor for ~~principal office expenses~~ expenses related to Contractor's principal office or offices other than the Project site office including the compensation of personnel stationed ~~there, at such offices,~~ there, at such offices, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with ~~Article 14. Nothing~~ Article 14. However, ~~nothing~~ nothing contained in this Section 15.1.7 shall be deemed to ~~preclude (a) preclude~~ preclude assessment of liquidated damages, when applicable, in accordance with the requirements of ~~the Contract Documents.~~ the Contract Documents, (b) if no amount for liquidated damages has been inserted into the relevant Work Order, preclude an award for other damages recoverable by the Owner pursuant to the terms of the Agreement in the event of the Contractor's failure to achieve Substantial Completion on time, (c) waive any damages incurred by the Owner due to a breach of the NDA or of any of the Contractor's confidentiality obligations in the Contract Documents, (d) limit in any way the parties' indemnification obligations set forth in the Contract Documents with respect to third-party claims, (e) limit in any way a party's rights and remedies related to the other party's gross negligence or willful misconduct, or (f) waive any damages to the extent covered by insurance or insurance required to be carried under the Contract.

**§ 15.2 Initial Decision** ~~(Intentionally omitted).~~

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

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

**§ 15.2.3** ~~In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision~~

Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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

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

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

§ 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 Resolution of Claims and Disputes

§ 15.3.1 ~~Claims, disputes, or other matters in controversy~~ The Owner and Contractor shall first endeavor to directly negotiate resolution of Claims and disputes arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. ~~Contract ("Dispute").~~ If the Owner and Contractor do not resolve the Dispute through direct negotiation, any and all Disputes shall be decided through arbitration, which unless the parties mutually agree otherwise or unless otherwise required by applicable law, shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules ("Rules") specified below and in effect on the date of this Agreement. A demand for arbitration shall be made to the other party in accordance with Section 15.3.17 and filed with the AAA. The party filing a notice of demand for arbitration must assert in the demand all Disputes then known to that party on which the arbitration is permitted to be demanded. The time, date, and place of the arbitration hearing shall be set in the sole discretion of the arbitrator(s), provided that there shall be at least ten (10) business days prior notice of the hearing.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Good faith participation in direct negotiation is a condition precedent to the filing of a demand for arbitration. Accordingly, a demand for arbitration shall be made no earlier than the date notification is received from one of the parties stating that efforts at direct negotiation have been unsuccessful, and in no event shall it be made after the date when the institution of legal or

equitable proceedings of the Dispute would be barred by the applicable statute of limitations. For statute of limitations purposes, the demand for arbitration to the other party shall constitute the commencement of legal or equitable proceedings of the Dispute.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision. The Owner may join the Contractor as a party to any litigation or arbitration with any other person/entity and to which Owner is a party that may involve adjudication of the alleged fault, responsibility, or breach of contract of the Contractor. The Contractor agrees to waive arbitration and proceed with and submit to litigation in a court of competent jurisdiction if litigation is required to join all parties necessary or beneficial to the full and final resolution of any claim, dispute or controversy, to avoid inefficiencies, or to avoid the risk of inconsistent outcomes.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. For all Disputes where the aggregate amount in controversy, including consolidated disputes, is less than \$10 million, the arbitration proceedings shall be conducted by a single arbitrator, provided that the arbitrator shall be an attorney validly licensed to practice law in a jurisdiction in the United States, with no less than ten (10) years of experience in construction and/or design-related matters, and listed on the AAA's National Construction Panel and/or an equivalent national panel of arbitrators designated for large and complex construction disputes.

§ 15.3.5 For all Disputes where the aggregate amount in controversy, including consolidated disputes, is \$10 million or more, the arbitration proceedings shall be conducted by a panel of three (3) arbitrators, provided that at least one (1) arbitrator shall be an attorney validly licensed to practice law in a jurisdiction in the United States, with no less than ten (10) years of experience in construction and/or design-related matters, and all three (3) arbitrators shall be listed on the AAA's National Construction Panel and/or an equivalent national panel of arbitrators designated for large and complex construction disputes.

§ 15.3.6 The AAA Rules for Fast Track Procedures shall apply where the aggregate amount in controversy, including consolidated disputes, is \$100,000 or less. The AAA Rules for Regular Track Procedures shall apply where the aggregate amount in controversy, including consolidated disputes is more than \$100,000 but less than \$10 million. The AAA Rules for Procedures for Large, Complex Construction Disputes shall apply where the aggregate amount in controversy, including consolidated disputes, is \$10 million or more.

§ 15.3.7 It is the intent of the parties that, barring extraordinary circumstances, any arbitration under the AAA Rules for Regular Track Procedures and Procedures for Large, Complex Construction Disputes shall be concluded within one (1) year of the date the arbitrator(s) are appointed. Unless the parties otherwise agree, the total time of the arbitration hearing (exclusive of any preliminary hearing time) under the AAA Rules for Procedures for Large, Complex Construction Disputes shall not exceed fifteen (15) hearing days, or one hundred (100) hours, whichever is less, with the time to be equitably divided between the parties by order of the arbitrator(s). Unless the parties otherwise agree, the total time of the arbitration hearing (exclusive of any preliminary hearing time) under the AAA Rules for Regular Track Procedures shall not exceed seven (7) hearing days, or fifty (50) hours, whichever is less, with the time to be equitably divided between the parties by order of the arbitrator. The parties may, upon mutual agreement, extend or modify these time limits, or in the absence of mutual agreement the arbitrator(s) may extend or modify these time limits upon a showing of good cause.

§ 15.3.8 The parties and the arbitrator(s) shall treat all aspects of the arbitration and other related proceedings, including, but not limited to, discovery, testimony, evidence, the record of the proceedings, briefs, and the decision or award, as strictly confidential and not subject to disclosure to any third party or entity, other than to the parties, the arbitrator(s) and the AAA. The sole exception is that a final monetary award, without any supporting decision or rationale, may be submitted to a court of competent jurisdiction in order to enter judgment on the award under Section 15.3.16. The hearings shall be conducted privately, and in a private setting, with no persons permitted to participate or be present except the parties, their designated counsel and representatives, the arbitrator(s), witnesses, a reporter of the proceedings (if requested and paid for by a party) and representatives of the AAA.

§ 15.3.9 The arbitrator(s) shall issue a written decision that includes a reasoned statement of decision or opinion stating or setting forth the essential facts and legal bases supporting the disposition within ten (10) business days after the close of the arbitration hearing.

§ 15.3.10 Within fifteen (15) days of receipt of the written decision, either party will have the right to file with the arbitrator(s) and simultaneously serve on the other party a written motion to reconsider. The arbitrator(s) may request the nonmoving or responding party to file a written response within ten (10) days after receipt of that request; no response should be submitted unless so requested by the arbitrator(s), but the arbitrator(s) shall have no authority to consider the motion without making a request for a response. The arbitrator(s) thereupon will reconsider the issues raised by the motion and response (if any) and either confirm or alter their decision, which will then be final, binding and conclusive upon the parties. The costs of such motion for reconsideration and written opinion of the arbitrator(s), including attorneys' fees, shall be awarded solely against the moving party if its motion does not result in a substantive alteration of the arbitrator(s)'s decision.

§ 15.3.11 The parties expressly intend, agree and acknowledge that the parties knowingly, unequivocally and absolutely waive, and the arbitrators are not empowered to grant, any and all right to bring any demand, claim or action against the other for exemplary, treble (or other multiple) or punitive damages in any form, under any theory of recovery.

§ 15.3.12 Either party may file, and the arbitrator(s) shall consider and act on, pre-hearing motions. The arbitrator(s) shall hear and determine any preliminary issue of law asserted by any party to be dispositive of any claim or defense, in whole or in part, in the manner that a court would hear and dispose of a motion to dismiss for failure to state a claim, or for summary judgment, pursuant to such terms and procedures as the arbitrator(s) deem appropriate.

§ 15.3.13 The arbitrator(s) may consolidate an arbitration conducted under this Section 15.3 with any other arbitration to which either party is a party provided that (i) the arbitration agreement governing the other arbitration permits consolidation, (ii) the arbitrations to be consolidated substantially involve common questions of law or fact, and (iii) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.3.14 The arbitrator(s) may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required or beneficial 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. Notwithstanding this Section or Section 15.3.13, in no event shall any arbitration under this Agreement be conducted on a class or representative basis.

§ 15.3.15 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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

§ 15.3.17 All notices under this Section 15.3 may be made by telephone or other electronic communication with later confirmation in writing.

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

§ 15.4 ArbitrationThe Contractor may not demand arbitration against the Owner on any Claim or Dispute under the Contract after the expiration of three hundred sixty-five (365) days from Substantial Completion. This contractual period of limitation takes precedence over any contrary or conflicting statutory provision or rule of law applicable to any Claims or Disputes which the Contractor may seek to bring.

§ 15.5 The Contractor acknowledges that disputes between the Owner and Landlord (if any) may become subject to arbitration under the provisions of lease between the Owner and Landlord, and if requested by the Owner to do so, the

Contractor shall participate in and become a party to any such arbitration proceeding and agrees to be bound by any final and binding arbitration decision rendered therein. This Section shall apply only to issues and claims directly relating to the Contractor and only so long as the Contractor has the opportunity and rights to fully participate in any arbitration, including, but not limited to, selection of arbitrators.

#### **ARTICLE 16 CODE OF CONDUCT**

**§ 16.1** The Contractor acknowledges that the Owner's Code of Business Conduct and Ethics posted at <http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-gov> Conduct and Code of Standards and Responsibilities posted at <http://www.amazon.com/gp/help/customer/display.html?ie=UTF8&nodeId=200885140> (as either may be modified from time to time, the "Code") prohibits the paying of bribes to anyone for any reason, whether in dealings with governments or the private sector. The Contractor will not violate or knowingly permit anyone to violate the Code's prohibition on bribery or any applicable anti-corruption laws in performing under the Contract Documents. The Owner may immediately terminate or suspend performance under the Contract Documents if the Contractor breaches this Article 16. The Contractor will maintain true, accurate, and complete books and records concerning any payments made to another party by the Contractor under the Contract Documents, including on behalf of the Owner. The Owner and its designated representative may inspect the Contractor's books and records to verify such payments and for compliance with this Section.

**§ 16.2** The Architect acknowledges that Owner's Code of Business Conduct and Ethics posted at <http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-gov> Conduct and Code of Standards and Responsibilities posted at <http://www.amazon.com/gp/help/customer/display.html?ie=UTF8&nodeId=200885140> (as either may be modified from time to time, the "Code") prohibits the paying of bribes to anyone for any reason, whether in dealings with governments or the private sector. The Architect will not violate or knowingly permit anyone to violate the Code's prohibition on bribery or any applicable anti-corruption laws in performing under the Contract Documents. The Owner may immediately terminate or suspend performance under the Contract Documents if the Architect breaches this Article 16. The Architect will maintain true, accurate, and complete books and records concerning any payments made to another party by the Architect under the Contract Documents, including on behalf of the Owner. The Owner and its designated representative may inspect the Architect's books and records to verify such payments and for compliance with this Section.

**§ 16.3** The Contractor represents and warrants that the Contractor and its financial institution(s) are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the US Government (e.g., the US Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list and the US Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.

**§ 16.4** The Architect represents and warrants that the Architect and its financial institution(s) are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the US Government (e.g., the US Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list and the US Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.

(v2021-04-20 (2022-01-21)) (SE 1.0 CE 1.0)

## SCHEDULE 1

### Subcontractor and Sub-subcontractor Minimum Insurance Limits

<u>Trade/Scope of Work</u>	<u>CGL</u>	<u>Auto</u>	<u>Employer's Liability</u>	<u>Workers' Comp</u>
<u>Shoring, Earthwork, Demolition and Utilities</u>	<u>\$5MM Occurrence \$5MM Aggregate</u>	<u>\$1MM</u>	<u>\$1MM</u>	<u>As Required by Applicable Law</u>
<u>Building/Load Bearing: Framing and Masonry</u>	<u>\$5MM Occurrence \$5MM Aggregate</u>	<u>\$1MM</u>	<u>\$1MM</u>	<u>As Required by Applicable Law</u>
<u>Crane (Excluding Loader Cranes)</u>	<u>\$5MM Occurrence \$5MM Aggregate</u>	<u>\$1MM</u>	<u>\$1MM</u>	<u>As Required by Applicable Law</u>
<u>HVAC, Electrical, Plumbing, Mechanical and Life Safety</u>	<u>\$2MM Occurrence \$4MM Aggregate</u>	<u>\$1MM</u>	<u>\$1MM</u>	<u>As Required by Applicable Law</u>
<u>Elevator and Escalator</u>	<u>\$2MM Occurrence \$2MM Aggregate</u>	<u>\$1MM</u>	<u>\$1MM</u>	<u>As Required by Applicable Law</u>
<u>Roofing, Siding, Flashing and Curtain Wall</u>	<u>\$2MM Occurrence \$2MM Aggregate</u>	<u>\$1MM</u>	<u>\$1MM</u>	<u>As Required by Applicable Law</u>
<u>Non-Specified</u>	<u>\$1MM Occurrence \$2MM Aggregate</u>	<u>\$1MM</u>	<u>\$1MM</u>	<u>As Required by Applicable Law</u>

Additional Requirements:

- **General Requirements:** The general insurance requirements for Subcontractors and Sub-subcontractors are contained in the Agreement to which these Subcontractor and Sub-subcontractor Minimum Insurance Limits are attached.
- **Limited Work:** No specified minimum insurance limits shall apply to a Subcontractor or Sub-subcontractor if the work to be performed by such Subcontractor or Sub-subcontractor is (i) less than \$25,000 and (ii) not a trade specifically listed in the chart above.
- **Professional Liability/E&O:** Design and design/build subcontractors, including Subcontractors or Sub-subcontractors providing professional design or engineering services, are also required to procure and maintain professional liability insurance coverage (including contractual liability insurance) with a minimum limit of \$1 million, provided, however all architects are required to carry a minimum limit of \$2 million.
- **Pollution Liability:** If (a) the work required of the Subcontractor or Sub-subcontractor involves, in whole or in part remediation, abatement, transportation or disposal of hazardous materials/substances or contaminants (as defined by applicable law, statutes, codes, regulations or ordinances), demolition or renovation that may involve materials containing hazardous materials/substances or contaminants, or (b) the Subcontractor's or Sub-subcontractor's primary business is providing demolition services, or (c) the Subcontractor or Sub-subcontractor is performing any grading, earthwork, subsurface or related work, then such Subcontractor or Sub-subcontractor shall maintain Contractor's Pollution Liability insurance of not less than \$1 million per occurrence and name all parties required to be named herein as additional insures. Such policy must include coverage for disposal at non-owned disposal sites.
- **Umbrella/Excess Limits:** If the Work relates to a facility leased by the Owner or its affiliates, Subcontractors or Sub-subcontractors may satisfy these Subcontractor and Sub-subcontractor Minimum Insurance Limits by any combination of primary liability and excess liability coverage that results in the same protection to Owner and its affiliates.

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

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

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

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

**~~§ 15.4.4 Consolidation or Joinder~~**

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

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

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