

**MASTER WORK AGREEMENT**

This Master Work Agreement (this “Master Agreement”) is entered into by and between Vanderbilt University (“Owner”), c/o Department of Facilities, 110 21st Avenue South, Suite 1110, Nashville, Tennessee 37203, and <<INSERT CONTRACTOR LEGAL NAME, STREET ADDRESS, CITY, STATE, ZIP>> (“Contractor”) as of this <<INSERT DATE>> (the “Effective Date”).

In consideration of the mutual covenants and promises set forth herein, Owner and Contractor agree as follows:

**Article 1: General**

* 1. This Master Agreement provides the standard terms and conditions for each work contract subsequently agreed to between Contractor and Owner during the term of this Master Agreement (each individually referred to herein as a “Work Contract”). Unless otherwise provided in the Work Contract, each provision herein, and each duty, responsibility, and obligation set forth herein, applies separately to each Work Contract.
	2. Each Work Contract consists of a Work Contract Form signed by Contractor and Owner and its attachments, this Master Agreement and its exhibits enumerated in Paragraph 12.1, applicable drawings, specifications, and documents approved in accordance with Paragraph 6.3, and applicable Change Orders issued in accordance with Article 7. The form of the Work Contract Form is attached hereto as Exhibit A. All modifications must be in writing and are limited to formal written amendments to this Master Agreement signed by Owner and Contractor and Change Orders issued in accordance with Article 7. Purchase orders issued by Owner for each Work Contract are for purposes of invoicing. Despite the terms on the face of such purchase orders, Owner’s standard Purchase Order Terms and Conditions are not applicable to this Master Agreement or any Work Contract.
	3. Each Work Contract constitutes a separate, entire, and integrated agreement between Contractor and Owner and supersedes prior negotiations, representations or agreements, both written and oral, with respect to the Work. Neither this Master Agreement nor any Work Contract shall be construed to create a contractual relationship with any third party or a cause of action in favor of any third party against either Contractor or Owner.
	4. Proposals and similar documents prepared by Contractor that are attached to a Work Contract Form are included solely for the purpose of describing the Work and, if applicable, rates, pricing, and fees. Contractual or legal provisions, terms, conditions, and forms referred to or contained in these documents are not included or incorporated into the Work Contract except as specifically and separately stated in the Clarifications section of the Work Contract Form. Further, in the event of an inconsistency within or ambiguity between terms of the Work Contract, the provisions in this Master Agreement and the Work Contract Form take precedence over all other documents.
	5. Except as specifically set forth therein, nothing in a Work Contract shall be deemed to transfer common law, statutory, and other reserved rights, including copyrights, in drawings, specifications, models, and other design documents. With respect to design documents provided by or on behalf of Owner, Contractor and anyone acting on its behalf will have a royalty-free license to use, reproduce, and distribute the documents, but solely for purposes of the Project. With respect to documents or media that Contractor is required to furnish Owner under the Work Contract, Owner is hereby granted an irrevocable, royalty-free license to use, reproduce, and distribute such documents and media for any purposes related to the Project. With respect to any building information modeling (BIM), video, photos, or other media captures prepared by or on behalf of Contractor as required under a Work Contract, the modeling and media shall be works for hire, as applicable, and become the sole property of Owner for its use as it deems appropriate.
	6. This Master Agreement does not grant any exclusive rights to Contractor. Nor does this Master Agreement entitle Contractor to a Work Contract. Owner retains the right to contract with other entities for the same services provided by Contractor. Likewise, Contractor retains the right to perform work and provide services for other owners, provided the work and services do not interfere with Contractor’s ability to fulfill its duties and obligations under any Work Contract.

**Article 2: Work**

* 1. Except to the extent specified to be the responsibility of others, Contractor will provide and pay for all services, labor, tools, materials, supplies, equipment, machinery, fabrication, storage, shipping, delivery, unloading, testing, and other items necessary to complete the improvements and services depicted or described in the applicable Work Contract (the "Work"), including permits and inspections required by Law, design services specified or required by Law or standard industry practice, items reasonably inferable, the correction of deficiencies and defects in the Work, and other obligations of Contractor under the Work Contract.
	2. The Work may constitute the whole or a portion of a larger project (a “Project”). Owner has the right to carry out other portions of the Project with its own forces or under contracts with separate Contractors. Contractor will cooperate with Owner’s forces and all separate contractors working on and around the Project as reasonably necessary to facilitate and expedite the Project. Subject to Owner’s approval, Contractor will be responsible for scheduling and coordinating the Work with the work of others working on or around the Project. Contractor will provide Owner full access to the Work and the site of the Project.
	3. The Work must comply with the laws, statutes, codes, ordinances, rules, regulations, and lawful orders, and any other requirements of, public authorities applicable to the Work or the Project, including those that relate to the Americans with Disabilities Act, accessibility for the physically challenged, hazardous materials, environmental protection, and restrictions on the development of wetlands (collectively the “Law” or “Laws”). Further, the Work must comply with all minimum industry standards, and Owner’s design and finish standards. If Contractor knowingly performs Work contrary to applicable standards or Laws, Contractor will be solely responsible for the correction thereof and costs resulting therefrom.
	4. Execution of a Work Contract Form by Contractor is a representation that Contractor has carefully reviewed all current requirements and become generally familiar with the Laws and conditions under which the Work is to be performed and that Contractor is unaware of any errors, omissions, ambiguities, or conflicts in the requirements for the Work that have not already been clarified in writing.
	5. Portions of the Work that are not performed by Contractor’s own employees must be performed under written agreements with Contractor that incorporate and specifically bind any subcontractors, consultants, and suppliers to the applicable terms and conditions of the Work Contract for the benefit of Owner, including the suspension and termination provisions. All subcontractors and consultants must be approved in writing in advance by Owner and, if requested, Contractor must furnish Owner copies of all subcontractor and consultant agreements. No subcontractor or consultant can be replaced without the prior written consent of Owner, which shall not be unreasonably withheld. No contract may be awarded to a subcontractor, supplier, or consultant on the basis of cost plus a fee without the prior written approval of Owner. As used herein, the term “Contractor Parties” means Contractor, its subcontractors, consultants, and suppliers, sub-subcontractors of any tier, anyone directly or indirectly employed, retained, or contracted by any of them, and other persons or entities performing portions of the Work for, or on behalf of, any of them. Contractor will be responsible to Owner for the entire Work, the services of the Contractor Parties, and for the conduct of the Contractor Parties in the performance of the Work.
	6. Contractor will not be required to provide professional services that constitute the practice of architecture or engineering unless the services are specifically included, required by law, or required by standard industry practice to carry out the Work. If the Work includes these services, the services must be provided by a properly licensed or registered design professional approved in accordance with Paragraph 2.5, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other documents prepared by the professional.

**Article 3: Contract Time**

* 1. The Contract Time commences on the specified Start Date and expires on the date or after the days specified for the Contract Time. Subject only to adjustment by Change Orders issued in accordance with Article 7, Contractor must perform the Work in accordance with the applicable schedules and achieve Substantial Completion of the Work within the Contract Time. If the Work is to be substantially completed and delivered in phases, the Contract Time set forth in the Work Contract Form will apply to the final phase unless otherwise provided in the Work Contract. Final completion of the Work must be achieved no later than fifteen (15) days following the date of Substantial Completion. Execution of a Work Contract Form is a representation by Contractor that the Contract Time is reasonable for the Work. Time is of the essence, and the term “day” means calendar day.
	2. Substantial Completion of the Work, or a designated portion thereof, is achieved when the Work, or a designated portion thereof, is sufficiently complete in accordance with the requirements of the Work Contract so Owner can occupy or utilize the Work, or the designated portion thereof, for its intended use and in compliance with applicable law, including all required approvals, certificates or permits of public authorities.

## Contractor will not commence operations at the Project site prior to a fully signed Work Contract Form or prior to obtaining, and furnishing to Owner, the required certifications of insurance and the necessary authorizations, licenses, and permits.

## No portion of the Work can be performed at the Project site outside the normal working hours specific to the Project except as provided in the Work Contract or as specifically approved by Owner in writing. Unless otherwise provided in writing, daily site activity can commence at 7:00 a.m., with loud, repetitive noise commencing no earlier than 9:00 a.m., and site activity is prohibited on the days of and before commencement. Notwithstanding the foregoing, Owner will have the right to require that certain activities or portions of Work be performed outside normal working hours or restricted to certain hours to accommodate certain ongoing operations of Owner. Neither approvals nor denials of requests to perform activities outside normal working hours will warrant or be construed as adjustments to the Contract Sum or Contract Time, and additional costs incurred by Contractor due to the performance of activities outside normal working hours will be the responsibility of Contractor, unless specifically stated and approved by Owner in writing. Contractor will be responsible for identifying all legal and facility specific limitations and incorporating these limitations into Contractor’s pricing and schedule, including limited pedestrian or vehicle access, noise restrictions, partial occupation, and ongoing operations.

* 1. In the event Contractor or Owner determines that the performance of the Work has not progressed or reached a level of completion required to achieve Substantial Completion within the Contract Time, Contractor must propose a plan of specific actions that will expedite the progress and correct the delay (a "Schedule Correction Plan"). Upon approval by Owner in writing, Contractor must implement the Schedule Correction Plan. Contractor will not be entitled to an adjustment in the Contract Sum for additional costs incurred due to the Schedule Correction Plan except as set forth in Paragraph 3.6. In the event Owner deems it necessary to supplement Contractor’s efforts to correct delays caused by Contractor, Contractor shall be responsible to Owner for the costs incurred in accordance with Paragraph 5.5.
	2. If Contractor is delayed in the commencement or progress of the Work by an act or neglect of Owner or others for which Owner is responsible; or by changes ordered in the Work in accordance with Article 7; or by concealed or unforeseen conditions; or by fire, unavoidable casualties, or other causes beyond the control of the Contractor Parties; or by delay authorized by Owner; and provided the delay is not caused by any of the Contractor Parties, Contractor will be entitled to a Change Order either (1) adjusting the Contract Sum to compensate Contractor for additional costs incurred due to the Schedule Correction Plan approved by Owner in accordance with Paragraph 3.5 or (2) extending the Contact Time by the actual number of days the performance of the Work is delayed. Whenever Contractor becomes aware of circumstances or conditions that might warrant a Schedule Correction Plan, an adjustment in the Contract Sum, or an extension of the Contract Time, Contractor must promptly notify Owner and proceed in accordance with Paragraphs 3.5 and 7.4. To the extent Contractor and Owner cannot agree with respect to an adjustment in the Contract Sum or an extension of the Contract Time, Claims must be made in accordance with applicable provisions of Articles 7 and 11.

## Neither adjustments in the Contract Sum nor extensions of the Contract Time will be granted for labor disputes or delays in deliveries. Adjustments to the Contract Sum or Contract Time to correct for delays caused by weather will be limited to the actual delays in the critical path of Contractor’s schedule and conditions that are more severe than should have been anticipated based on the records of the National Weather Service.

**Article 4: Contract Sum**

* 1. Subject only to adjustment by Change Orders issued in accordance with Article 7, the Contract Sum is the total amount payable from Owner to Contractor under the Work Contract for the complete and proper performance of the Work. Except as otherwise set forth herein or in the Work Contract Form, the Contract Sum will be paid in monthly progress payments based on the progression of the Work and the portion of the Work completed during the previous month.
	2. For each month within which the Contractor performs any portion of the Work, Contractor must submit an invoice or a request for payment (an “Application for Payment”) to Owner, in form and substance satisfactory to Owner, that clearly identifies the Contractor’s name and address, the date and number of the Application for Payment, the Project, the Work Contract, the applicable Owner Purchase Order number, and the Work completed by Contractor. If the Work Contract provides for any deposit(s), Contractor must timely invoice for the deposit(s) with an Application for Payment to maintain all applicable schedules. Each Application for Payment must include the documentation requested by Owner to support Contractor’s right to payment and satisfaction of payment obligations, such as time cards, invoices, receipts, releases and waivers of liens, etc. Contractor warrants that title to all portions of the Work covered by an Application for Payment will pass to Owner no later than the time of payment.
	3. If the Contract Sum is a Stipulated Sum and the Contract Time is more than sixty (60) days, Contractor must submit an itemization of the Work prior to commencing the Work that allocates the Stipulated Sum among the various portions of the Work (the “Schedule of Values”), in form and substance satisfactory to Owner and with separate line items, as applicable and requested by Owner, for each part, trade, allowance, deposit, fee, general condition, etc. If requested, Contractor shall also provide descriptions of the line items to provide more detail to Owner. Once approved by Owner, the Schedule of Values will provide the basis for approving progress payments and each Application for Payment must clearly indicate the percentage of completion of each line item in the schedule. As requested by Owner, Contractor will update the Schedule of Values to incorporate Change Orders, if any.
	4. If the Contract Sum is to be determined based on Time and Materials, the Contract Sum is equal to (a) payment for the documented billable time at the specified hourly billable rates, plus (b) payment for the equipment and materials with specified rates to the extent documented and incorporated into the Work, plus (c) reimbursement for the actual costs incurred by the Contractor for other equipment and materials incorporated into the Work, plus (d) reimbursement for the actual costs incurred by the Contractor for subcontractors and consultants in accordance with this Master Agreement, plus (e) markup on the reimbursements provided in items (c) and (d) above, plus (f) if applicable and specifically provided for in this Master Agreement or the Work Contract Form, the other specific reimbursements, markups, and fees.
	5. If the Contract Sum is to be determined based on Unit Pricing, the Contract Sum is equal to (a) payment for the units of work to the extent documented and incorporated into the Work at the specified unit pricing; plus, if applicable and specifically provided for in this Master Agreement or the Work Contract Form, (b) reimbursement for the portions of the Work not covered by the specified unit pricing to the extent documented and incorporated into the Work and at the actual costs necessarily incurred by the Contractor in accordance with this Master Agreement, plus (c) markup on the reimbursement provided in item (b) above, plus (d) the other specific reimbursements, markups, and fees.
	6. Documented billable time is the actual time spent on the Work, not on a portal-to-portal basis, as documented with time cards to the nearest one-quarter (1/4) hour. All hourly billable rates, equipment rates, and material rates set forth in this Master Agreement or the Work Contract Form are complete compensation for all costs, overhead, and profit associated with such labor, equipment, or material, including labor burdens, taxes, tools, transportation, shipping, storage, delivery, unloading, testing, markups, etc. Unless otherwise specifically described, all unit prices set forth in this Master Agreement or the Work Contract Form are complete compensation for all costs, overhead, and profit associated with the performance of the unit of work to which the pricing applies, including labor, labor burdens, taxes, tools, transportation, shipping, storage, delivery, unloading, installation, testing, markups, etc. The markup on reimbursements provided for in Paragraphs 4.4 and 4.5 is limited by the Markup Percentage set forth in this Master Agreement or the Work Contract Form, which is assumed to be zero percent unless specifically stated otherwise in this Master Agreement or the Work Contract Form. If the Contract Sum is a Stipulated Sum, all hourly billable rates, equipment rates, material rates, and unit pricing set forth in this Master Agreement or the Work Contract Form are included only for purposes of pricing allowance work or changes in the Work, unless the specific rate or pricing is described in the Work Contract Form as a variable component of the Contract Sum.
	7. If a Maximum Price is specified, the Contract Sum cannot exceed the Maximum Price absent adjustment of the Maximum Price by Change Order in accordance with Article 7. The Maximum Price includes all labor, materials, equipment, allowances, fees, markups, overhead, profit, taxes, items, and services necessary for the proper execution and completion of the Work, including any items reasonably inferable from the Work Contract. Costs incurred by Contractor in excess of the Maximum Price will be borne by Contractor without reimbursement from Owner.
	8. All allowances described in the Work Contract are included in the Stipulated Sum or, if applicable, the Maximum Price. Costs allocated to any allowance will be limited to the particular expenses, items, and purposes specified in the Work Contract for the allowance. Subject only to a Change Order in accordance with Article 7 increasing the amount of the allowance, expenses that exceed an allowance will be the responsibility of Contractor and not reimbursable from Owner. Prior to final payment, the Stipulated Sum or, if applicable, the Maximum Price will be reduced by Change Order to deduct the unallocated balance of any allowances.
	9. If the Contract Sum is a Stipulated Sum, the amount of each progress payment will be calculated as follows: (a) take the portion of the Stipulated Sum allocable to completed portion of the Work determined by multiplying the amount of each line item in the Schedule of Values by the line items’ percentage of completion as of the last day of the applicable payment period; (b) subtract the sum of all previous payments by Owner under the Work Contract; and (c) subtract all amounts, if any, withheld in accordance with Paragraphs 4.13 and 4.16.
	10. If the Contract Sum is to be determined based on Time and Materials or Unit Pricing, the amount of each progress payment will be calculated as follows: (a) take all amounts owed in accordance with Paragraphs 4.4 or 4.5 for time and materials or units delivered during the applicable payment period; (b) subtract all amounts, if any, to be withheld in accordance with Paragraphs 4.13 and 4.16; and (c) subtract the amount necessary, if any, to prevent the Contract Sum, before deductions allowed in accordance with Paragraphs 4.13 and 4.16, from exceeding the Maximum Price.
	11. Except as otherwise required by Law, Owner will pay Contractor within forty-five (45) days of receipt of an Application for Payment provided it complies with the requirements of the Contract and subject to any withholding in accordance with Paragraph 4.16. Neither the approval of an Application for Payment nor the payment thereof will constitute acceptance of any portion of the Work not in accordance with the requirements of the Work Contract. No late fees or interest will be due on late payments.
	12. Payments received by Contractor for Work provided by its subcontractors or suppliers will be held in trust for the applicable subcontractors and suppliers. Within seven (7) days of receiving any payment from Owner, Contractor must pay each subcontractor and supplier all amounts due and owing for all portions of the Work provided by the subcontractor or supplier for which the payment was requested by Contractor less retainage, as applicable. If requested by Owner, Contractor shall withhold retainage of five percent (5.0%) from all payments to subcontractors in accordance with the Tennessee Prompt Pay Act. Each subcontractor and supplier will have the same payment obligations to its subcontractors and suppliers. If reasonably necessary to protect the interests of Owner, Owner is entitled to make payments to Contractor in the form of joint checks payable to Contractor and one or more other parties. To the full extent permitted by Law, Contractor will indemnify, hold harmless and, if Owner elects, defend Owner from and against all claims, damages, losses, and expenses, including attorney, expert, and consultant fees and legal expenses, arising out of any liens or claims of nonpayment related to the Work, provided Owner has complied with its payment obligations under this Agreement with respect to the portion of the Work underlying the claims.
	13. If at any time a lien, notice of nonpayment, lis pendens, or other type of claim of nonpayment is asserted, filed, or recorded with respect to the Project by any of the Contractor Parties, Contractor will, at its own expense, promptly take and diligently prosecute appropriate action to have the claim immediately released, discharged, or bonded off, except to the extent the claim is the result of the Owner’s breach of its payment obligations hereunder. Otherwise, Owner, in addition to any other right or remedy that Owner may have, may take any action reasonably necessary to protect Owner’s interest, including payment or settlement of the claim, and Contractor will promptly reimburse Owner upon demand for any amounts paid or incurred by Owner, including any attorneys’ fees and expenses, in connection with such action. Owner, however, has no duty to take such action.
	14. Unless Owner agrees that the certificate is not necessary, Contractor will issue a certificate of substantial completion for the signature of Owner that establishes the date of Substantial Completion and includes a comprehensive list of all items, if any, that remain incomplete or are otherwise not in accordance with the requirements of the Work Contract (the “Punch List”) when the Work, or a designated portion thereof that Owner agrees to accept separately, reaches Substantial Completion in accordance with Paragraph 3.2. Neither a signed certificate of substantial completion nor occupancy or use of the Project by Owner will constitute acceptance of Work that is not in accordance with the requirements of the Work Contract. After Owner agrees that the Work has reached Substantial Completion, Contractor will submit an Application for Payment requesting payment of the remaining balance of the Contract Sum, or the portion thereof allocated to the portion of the Work substantially complete, less amounts reasonably necessary to protect Owner with respect to deficiencies on the Punch List, if any, and amounts as Owner may otherwise withhold pursuant to Paragraph 4.16, including three percent (3.0%) of the Contract Sum until receipt of the documents required by Paragraph 6.17.
	15. After the deficiencies on the Punch List are cured and Contractor has fully performed under the Contract, except for obligations that extend beyond final payment, Contractor will submit a final Application for Payment for approval of Owner. Contractor will not be entitled to final payment until it furnishes to Owner, in form and substance satisfactory to Owner, (a) certificates evidencing insurance required by the Contract to remain in force after final payment, (b) an assignment to Owner of, and all information on, all warranties and guarantees relating to the Work, (c) all required final approvals by public authorities, (d) all other items required by the Work Contract, such as record documents, warranties, certificates, system studies, equipment manuals, etc., and (e) other documentation Owner deems reasonably necessary to establish satisfaction of payment obligations to all subcontractors, sub-subcontractors, and suppliers, of any tier. Acceptance of final payment by Contractor and the other Contractor Parties will constitute a waiver of all Claims by payee, except for those claims previously made in writing and identified by payee as remaining unsettled at the time of the final Application for Payment.
	16. At any time during or after completion of the Work, Owner may withhold an amount from payments to Contractor, in whole or in part, to the extent reasonably necessary to protect Owner from damages or loss for which Contractor is responsible, including damages or loss arising out of defective work, claims of subcontractors, suppliers, or other third parties, property damage, untimely performance, or other default under the Work Contract. When the reasons for withholding an amount are cured or mitigated, payment of the amount withheld, or an appropriate portion thereof, will be owed in accordance with Paragraph 4.11. Owner and Contractor waive and agree not to assert claims against each other based on Sections 66-34-101, et al., of the Tennessee Code Annotated, except for the Sections identified in Section 66-34-701, which will remain applicable as required by Law.
	17. If at any time during or after completion of the Work, Owner prefers to accept Work that is not in accordance with the requirements of the Work Contract, 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, and, if final payment has been made, Contractor must refund the amount of the adjustment to Owner promptly upon request.

**Article 5: Owner**

# Each Work Contract Form will identify an Owner’s Representative who will be Contractor’s sole contact for purposes of communications between Contractor and Owner for the Work. In the event any other individual communicates with Contractor on behalf of Owner regarding the Work or any other services for Owner, Contractor must promptly notify Owner’s Representative of the communication. Owner’s Representative can include multiple persons if so designated by Owner in writing. However, only the person who signs this Master Agreement on behalf of Owner, and others so designated by Owner’s Chancellor, which include the Vice Chancellor for Administration and the Associate Vice Chancellor for facilities, have authority to approve or sign a Work Contract or Change Order or otherwise modify this Master Agreement or amend a Work Contract.

* 1. Owner will provide access to the documents, drawings, and other information it has relevant to the Work and the Project premises. Although Contractor can reasonably rely upon the information provided by Owner, Contractor is responsible for verifying the accuracy of all site, utility, and other information provided by Owner in accordance with Paragraph 6.1.
	2. Except for building permits, trade work permits, and other permits and fees that are typically the responsibility of Contractor, Owner will secure and pay for necessary approvals, certificates, easements, assessments, and charges required for the Project.
	3. If Contractor fails to correct defective Work or otherwise fails to perform the Work in accordance with the Work Contract, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for the order has been eliminated. Owner, however, has no duty to exercise this right for the benefit of Contractor or any other person or entity.
	4. In addition to Owner’s rights under Paragraph 5.4 and Article 7, if Contractor defaults hereunder or neglects to timely perform any portion of the Work in accordance with the requirements of the Work Contract, and fails within forty-eight (48) hours of written notice from Owner to commence and continue correction of the deficiency with diligence and promptness, Owner may at any time thereafter, without prejudice to other remedies Owner may have, correct the deficiencies. However, if the deficiency requires immediate correction, for example the repair of existing utilities damaged by the Contractor Parties, Owner can correct the deficiency immediately without prior notice. If Owner corrects deficiencies under this Paragraph, the Contract Sum will be reduced by the costs incurred by Owner to correct the deficiencies, including the costs of additional testing and inspections, demolition, uncovering, and replacement, and additional design and consultant services. If the costs are greater than the unpaid balance of the Contract Sum, Contractor will pay the difference to Owner promptly upon demand.

## Owner may visit the Project site at various times to observe the progress and quality of the Work. Owner, however, will not (i) be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (ii) have control over, charge of, or responsibility for, the means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work because these are Contractor’s rights, duties, and obligations; (iii) be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Work Contract; or (iv) be responsible for the defaults or negligent acts or omissions of any of the Contractor Parties.

## Owner will timely review and respond to each Application for Payment and will approve for payment those amounts to which Contractor is entitled to payment in accordance with the terms and conditions of the Work Contract.

## Owner has the authority to reject Work that does not conform to the Work Contract and to require uncovering and additional inspections or testing of Work, whether or not the Work is fabricated, installed, or completed. If Work was performed in proper sequence and in accordance with the requirements of the Work Contract, a Change Order will be issued for the additional costs incurred by Contractor for the uncovering, inspections, or testing. Contractor will not be relieved of its obligations to perform the Work in accordance with the Work Contract by omissions or duties of Owner, or by tests, inspections, or approvals required or performed by any third party persons or entities.

## Owner will review and approve, or take other appropriate action upon, Contractor’s submittals such as shop drawings, product data, and samples. Owner’s review of submittals is not conducted for the purpose of determining the accuracy and completeness of 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 Contractor. No submittal approval by Owner will relieve or release Contractor from its responsibilities, obligations, or duties under or arising out of this Master Agreement or any Work Contract.

## Subject to the other provisions of this Master Agreement, Owner will issue decisions regarding matters concerning performance under, and requirements of, the Work Contract; make decisions on all Potential Change Orders, claims, disputes, and other matters in question; and investigate and make determinations and recommendations regarding concealed and unknown conditions in accordance with Paragraph 7.4. If deemed necessary by Owner, Owner has the right to audit, at its own expense, the records of Contractor and subcontractors to verify the accuracy of amounts due and compliance with obligations under this Master Agreement or any Work Contract but not to reconsider the reasonableness of agreed stipulated sums, hourly rates or unit pricing.

## Subject to the other provisions of this Master Agreement, Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; sign certificates of Substantial Completion in accordance with Paragraph 4.14; receive and review affidavits, certificates, written statements, manuals, warranties, and guarantees, and other documents and submittals, required of Contractor by the Work Contract; and approve the final Application for Payment in accordance with Paragraph 4.15.

**Article 6: Contractor**

* 1. Before proceeding or ordering materials or equipment, Contractor will (1) carefully review the Work Contract and other information furnished by Owner or otherwise available to Contractor, (2) verify field measurements and conditions, (3) carefully compare such field measurements and conditions and other information known to Contractor with the Work Contract and (4) if a portion of the Work depends upon the work of others, inspect such work for apparent discrepancies or defects that would render it unsuitable for receiving the Work. Any deficiencies, errors, omissions, or inconsistencies discovered by Contractor, and any other conditions that may prevent successful completion of the Work, must be reported promptly in writing to Owner and portions of the Work that may be affected by the deficiency, error, omission, inconsistency, or condition will be suspended until directed otherwise by Owner. Prior to the commencement of any excavation work, Contractor must use a utility location service and accurately verify the location of all underground utilities within the construction premises. If Contractor fails to perform its obligation hereunder, Contractor will be solely responsible for costs that could have otherwise been prevented.
	2. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Work Contract or from those ordinarily found to exist and inherent in the character of the Work, Contractor will promptly notify Owner and, before such conditions are disturbed, submit a request for information and a Potential Change Order as applicable.
	3. To the extent designs, drawings, specifications, shop drawings, samples, or submittals created after the execution of the Work Contract Form will be relied upon for any portion of the Work, the designs, documents, and items must be approved by Owner in writing prior to proceeding with the applicable portions of the Work or ordering materials or equipment therefor. All proposed modifications to numbering systems used to identify rooms, keying schedules, plumbing, electrical, and mechanical systems and equipment, etc. must be coordinated with existing systems and approved in advance by Owner in writing.
	4. Unless otherwise provided in the Work Contract, Contractor will prepare and submit a schedule for the Work for Owner’s approval prior to commencement of the Work. The schedule must provide for the expeditious and practicable performance of the Work within the Contract Time, must provide reasonable deadlines for the required submittals and approvals, and will be revised with the consent of Owner if required by the conditions of the Work. Notwithstanding the foregoing, the Contract Time can only be adjusted by Change Orders issued in accordance with Article 7.
	5. Contractor will supervise and direct the Work, using Contractor’s best skill, knowledge, and attention. Contractor will be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Work Contract provides other specific instructions concerning these matters. If specific instructions are provided and the instructions deviate from good practice, might cause unsafe conditions, or might adversely affect or invalidate any warranty or guarantee, Contractor will promptly notify Owner in writing. Nothing in a Work Contract shall be construed to diminish Contractor’s responsibility for safety.
	6. Contractor will designate a Contractor’s Representative for each Work Contract, and Contractor will employ a competent superintendent, who must be in attendance at all Project meetings and at the Project site during performance of the Work. The superintendent must be competent and understand the requirements of the Work Contract and must be capable of effectively communicating in the necessary language(s) with all Contractor Parties. Communications given to the superintendent or Contractor’s Representative will be effective notice on Contractor and approvals and authorizations with respect to the Work Contract granted by the superintendent or Contractor’s Representative will be binding on Contractor. Contractor cannot replace any superintendent, project manager, designer, or other key employee working on the Project, without Owner’s prior written consent.
	7. Contractor will enforce strict discipline and good order among Contractor Parties. Contractor will not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor will be responsible to Owner for the defaults and negligent acts and omissions of the Contractor Parties. All Contractor Parties must have visible identification; and they are prohibited from smoking or the use of tobacco products on Owner property or the Work premises, from whistling at or using other loud noises to get the attention of persons on Owner property; from conversing with persons on Owner property other than Contractor Parties unless necessary to the performance of the Work, and from personal use of Owner facilities (e.g., toilets, telephones, interior premises, etc.) or grounds elements (e.g., benches, dumpsters, containers, etc.) without specific Owner approval. In the event that any employee, agent, or consultant of any of the Contractor Parties fails to properly perform their duties, violates any Owner policies or the prohibitions herein, or otherwise creates a nuisance or hinders the Project’s progress, Contractor will replace the person or entity as reasonably requested by Owner. For security purposes, Contractor must promptly notify Owner whenever any employee, agent, or consultant of any of the Contractor Parties who has security access to any of Owner’s facilities is terminated or removed from the Work.
	8. The Contractor Parties will, at their own expense, perform local, state, and federal background and reference checks, including criminal background checks, on all employees to be assigned to the Project, for every county of residence of prospective employees for the past ten (10) years. Unless Owner specifically approves, no employee with a conviction involving violent crime, theft, possession or receipt of stolen property, sexual offense, or illegal sale, use, or possession of drugs within the past ten (10) years can be assigned to the Work. Owner reserves the right to remove anyone from the Work if arrested, charged, or convicted of any of these crimes or if the individual conceals information regarding these crimes. Further, Contractor will validate social security identification numbers and not assign any undocumented persons to the Project.
	9. Contractor acknowledges the ongoing operations of Owner at or in close proximity to the Project and will coordinate the timing of the Work with Owner’s ongoing operations; perform the Work in a manner that minimizes or eliminates any adverse impact on Owner’s ongoing operations, including noise particularly near residence halls and classrooms; confine operations at the site to areas approved by Owner and permitted by Law, permits, and the requirements of the Work Contract; comply with Owner’s security, health, and safety policies and procedures; not unreasonably encumber the site with any materials or equipment; and not place signs or advertising on or about the site without prior approval of Owner. Contractor is responsible for obtaining access to secured areas necessary for the Work through coordination with the Owner’s Representative and Owner’s Key Shop and Card Office. Prior to commencement of the Work, Contractor must submit a list of personnel who require card access to the Project site. Upon exit and at the end of each work day, secured areas must be left secure as Owner deems appropriate, and all existing locksets and cores that are removed must be returned to Owner’s Key Shop. Contractor is responsible for purchasing the parking permits necessary for the Work and Contractor Parties. Contractor cannot temporarily park any vehicle or equipment on any grassed area, sidewalk, or other non-designated parking area unless absolutely necessary and approved in advance by Owner.
	10. Contractor will be responsible for initiating, maintaining, and supervising appropriate safety programs; will take all reasonable safety precautions to prevent personal injuries and conditions that might be hazardous to the health of persons at or in close proximity to the Work; and will take adequate protective measures to prevent damage to the Work and existing property, improvements, and conditions at or in close proximity to the Work, including dust containment measures to prevent dust from entering adjacent spaces or any air handling systems. Contractor will erect and maintain, as required by existing conditions and performance under the Work Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, providing safe and accessible alternate pedestrian routes, security fencing and screening around the site and equipment, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. Contractor must submit a written request to Owner at least five (5) days prior to any sidewalk closure, erection of fencing, or implementation of an alternative pedestrian route. Contractor must promptly notify Owner of any actual or alleged damage, injury, or loss to persons or property related to its operations under a Work Contract. Contractor will be responsible for and will promptly remedy or replace any damage or loss to property to the extent caused by any of the Contractor Parties without any cost to Owner. Otherwise, Owner may remedy or replace the damage or loss at Contractor’s expense in accordance with Paragraph 5.5.
	11. While its operations are ongoing, Contractor will clean up daily and keep the premises and surrounding area clean and free from waste materials or rubbish from the Work and comply with a maintenance program to minimize the spread and accumulation of dirt and dust caused by the Work. Dust containment curtains and tacky mats must be installed and maintained as needed to prevent dust migration to non-construction areas, air scrubbers must be running during dust generating activities, an HVAC return grilles and open ducts must be covered with properly maintained filter media. Upon completion of the Work, Contractor will remove all surplus and waste materials, rubbish, tools, and equipment from the premises and leave the Work and premises in a broom-clean condition, including wiping all glass surfaces, interior floors, and walls and replacing all HVAC filters. If Contractor fails to clean up daily or after completion of the Work as required herein, Owner may do so at Contractor’s expense in accordance with Paragraph 5.5. All construction and demolition dumpsters and debris removal must be procured subject to Owner’s consolidated waste management contract.
	12. Unless otherwise specified in the Work Contract, Contractor will be responsible for all cutting, fitting, and patching required to complete the Work, or to make portions of the Work and existing conditions fit together properly, and these areas must be restored to the conditions existing prior to the cutting, fitting, and patching. Contractor must submit a written form request to Owner at least ten (10) days prior to any utility outage or shutdown, which must be scheduled during non-business hours if feasible and must be approved by Owner. All hot or cold plumbing work requires at least twenty-four (24) hours’ notice to Owner, and all work that involves an open flame, smoke, or dust requires a special permit from Owner, which must be applied for by the Owner’s Representative at least two (2) days before the work.
	13. Prior to the commencement of the Work and the ordering of fabricated, special, or particular materials or equipment, Contractor shall submit a list of the materials and equipment for Owner’s determination of the required submittals. If submittals are required by the Owner or otherwise by the Work Contract, Contractor must review, approve, and submit the submittals as required with reasonable promptness and in such sequence as to cause no delay in the Work. The Work must be in accordance with approved submittals. However, approvals of submittals shall not relieve Contractor of responsibility for errors or omissions in submittals or for deviations from the requirements of the Work Contract unless the deviations are explicitly identified. If professional design services or certifications by a design professional are required of Contractor by the Work Contract or Law, the services or certifications must be provided by properly licensed or registered design professionals, whose signatures and seals must appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals prepared by the professionals. Owner is entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals.
	14. Contractor cannot substitute any materials or equipment for those specified in the Work Contract unless approved in writing by Owner and incorporated into the Work Contract by a Change Order issued in accordance with Article 7. Contractor must submit proposed substitutions to Owner before ordering and in a timely manner to prevent any delay in the Work.
	15. Contractor must promptly correct any portion of the Work that is defective or not in accordance with the Work Contract or rejected by Owner. Contractor is responsible for, and must pay for all costs arising out of, any additional testing and inspections, demolition, uncovering, and replacement and additional design and consulting services required to properly correct any portion of the Work. If a defect or deficiency in the Work is discovered within the year following the date of Substantial Completion or within such longer period as may be prescribed by Law or by any specific warranty or guarantee, and Owner elects to have Contractor correct such defect or deficiency, Owner will notify Contractor of such defect or deficiency in writing. This period of correction relates only to the specific obligation to correct defects and deficiencies and in no way otherwise limits Contractor’s responsibility for Work that is not in accordance with the requirements of the Work Contract. If Contractor fails to timely correct defects or deficiencies in the Work, Owner may correct them in accordance with Paragraph 5.5.
	16. Contractor must comply with the requirements of the Work Contract and Laws, standards, and handling criteria regarding hazardous substances, wastes, and materials, including asbestos-containing materials, lead-based paints, petroleum (or any constituent thereof), mold, radon, and polychlorinated biphenyl (PCB), (“Hazardous Materials”) in performing the Work. Unless required by the Work Contract and specifically approved by Owner in writing, no Hazardous Materials can be incorporated into the Work by any of Contractor Parties. In the event Hazardous Materials are encountered that are not expected or addressed in the Work Contract, Contractor must immediately (i) stop Work in the affected area, (ii) take any reasonably expected precautions to protect persons and property, and (iii) report the condition to Owner in writing. Contractor will resume suspended Work upon receipt of a written opinion that the Work can safely and legally resume from a qualified consultant engaged by Owner. Provided Contractor fulfills its obligations herein, the Contract Time shall be extended appropriately by Change Order and Owner will indemnify and hold harmless Contractor Parties from and against all claims, damages, losses, and expenses, including attorney, expert and consultant fees and legal expenses, arising out of or resulting from the discovery of Hazardous Materials at the Project site that are not addressed in the Work Contract or brought to the Project site by any of the Contractor Parties.
	17. If applicable to the Work, Contractor will maintain for Owner at the site of the Work one copy of each of the documents included in the Work Contract in good order and marked currently to indicate as-built conditions, changes, and selections made during construction, and one copy of approved shop drawings, product data, samples, and similar required submittals (the “Record Documents”). As applicable, some of the information indicated should include: dimensional changes; revisions to drawings and details; actual footing sizes and depths; locations, routing, and depths of existing and new utilities, including underground, under-slab, in-wall, and other concealed utilities, irrigation, piping, duct, conduit, and control and shut-off valves; revisions to electrical circuitry; and actual equipment locations. If the Work includes professional design services, Contractor will revise its design documents, in printed and electronic form, incorporating all changes made during the Work (“As-built Documents”) based upon the Record Documents. As applicable, Contractor must submit operating and maintenance manuals, Record Documents, and As-built Documents to Owner within sixty (60) days of Substantial Completion. If applicable, the operating and maintenance manuals must be digital, organized, and comprehensive and include an index that outlines all warranties by item, expiration, and responsible party. Further, the manuals must include, as applicable, operating and maintenance instructions, emergency instructions, inspection procedures, spare parts listings, shop drawings, product data, warranties, bonds, certificates, and other similar information.
	18. Unless otherwise provided in the Work Contract, Contractor will pay all sales, consumer, use, and other similar taxes that are legally enacted as of the date of the Work Contract Form, will secure and pay for the building permit as well as for all other permits, fees, licenses, testing, inspections, and approvals by government agencies necessary for the proper performance and completion of the Work, and will comply with and give notices required by Laws. Owner is a nonprofit entity entitled to special tax benefits, including exemption from sales and use taxes in Tennessee and various other states (TN Certificate # 431938560). Contractor will cooperate with Owner maximize its tax benefits on the Project, including compliance with Owner’s tax management procedures if requested by Owner. The initial Contract Sum includes all applicable taxes, including those that might ultimately be avoided through tax savings procedures.
	19. Contractor will be responsible for, and pay all royalties and license fees for, any intellectual property rights specified in the Work Contract or otherwise required for the use of any particular design, process, or product incorporated into the Work. Notwithstanding anything herein to the contrary, Contractor’s indemnification obligations set forth in Paragraph 6.20 do not extend to infringement or misappropriation claims based on designs, processes, or products required by Owner unless Contractor knowingly infringes or misappropriates the intellectual property rights.
	20. To the full extent permitted by Law, Contractor will indemnify, hold harmless and, if Owner elects, defend Owner and its officers, directors and employees (collectively, the “Indemnified Parties”) from and against any and all claims, damages, losses, liabilities, and expenses, including fees and expenses of attorneys, consultants and experts, (collectively, “Damages”) arising out of, in connection with, or resulting from the performance, or failure in the performance, of the Work or any other obligation in or related to the Work Contract, provided that the claim, damage, loss, liability, or expense is caused, in whole or in part, by the acts or omissions of any of the Contractor Parties. However, if the Damages are caused in part by the negligence or misconduct of the Indemnified Parties, the Indemnified Parties will be responsible for the Damages in proportion to their fault, including defense costs and fees and expenses of attorneys, consultants and experts. If any defense or indemnity obligation of the Contractor herein, or any other defense or indemnity obligation in favor of any of the Indemnified Parties required by or contained elsewhere in the Work Contract, is held to be unenforceable, Contractor agrees to defend, indemnify, and hold harmless the Indemnified Parties to the full extent permitted by Law. Further, all of Contractor’s defense and indemnity obligations under the Work Contract will survive completion, expiration, or termination of the Work Contract, are not limited or diminished in any way by insurance coverage or any workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, and shall not be construed to negate, abridge, or diminish other rights or obligations of indemnity that would otherwise exist in favor of the Indemnified Parties.
	21. Contractor warrants that any materials and equipment provided under a Work Contract will be of good quality and new unless the Work Contract requires or permits otherwise. Contractor further warrants that the Work will conform to the requirements of the Work Contract and will be free from defects, except for those inherent in the quality of the Work. Work, materials, and equipment not conforming to these requirements, including substitutions not properly approved by Change Order, will be considered defective. This warranty excludes remedy for damage caused by abuse, alterations not performed by Contractor Parties, improper or insufficient maintenance, improper operation, or normal wear, tear, and usage, and this warranty is not applicable to professional design services if any are part of the Work. This warranty is in addition to any other warranties provided elsewhere in the Work Contract, it is not limited by any time period other than applicable law, and it is not waived or limited by any provision in other documents included in the Work Contract unless specifically stated in the Work Contract Form.
	22. Notwithstanding the previous Paragraph, the warranties applicable to the performance and quality of materials, equipment, and other products installed in the performance of the Work are limited as specified in the applicable warranties provided by the product manufacturer, provided such warranties comply with the requirements, if any, specified in the Work Contract. Specific warranties or guarantees required or otherwise provided for particular materials, equipment, products, or installations will commence upon Substantial Completion. Contractor shall assist in assuring that Owner has the full benefit of, all warranties and guarantees of manufacturers, subcontractors, sub-subcontractors and suppliers. Contractor must perform the Work in a manner that does not adversely affect or invalidate any warranties or guarantees, and Contractor will remain responsible for fulfilling the requirements of warranties and guarantees specified by the Work Contract even if Contractor fails to obtain the required warranties and guarantees.

**Article 7: Changes in the Work**

* 1. Without invalidating the Work Contract, Owner can order modifications, additions, deletions, or other changes in the Work after the date of the Work Contract Form with adjustments to the Contract Sum and Contract Time if appropriate under this Article 7. No change in the Work, however, will be incorporated into the Work until approved by Owner in writing in accordance with the procedures set forth in this Article. Contractor will not be entitled to an increase in the Contract Sum or extension of the Contract Time for furnishing labor, materials, equipment, services, or other items that are not required by the Work Contract, as amended in accordance with this Article. The Contract Sum and Contract Time can only be adjusted by written Change Order.
	2. A “Change Order” is a written instrument, the form of which is attached hereto as Exhibit B, signed by Contractor and Owner that incorporates into the Work Contract one or more Potential Change Orders approved in accordance with this Article. Except as specified otherwise in the Change Order, a Change Order signed by Owner and Contractor constitutes a final settlement of all matters relating to the changes in the Work that are the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and Contract Time.
	3. A Potential Change Order is a written instrument prepared by Contractor for the approval of Owner. Each Potential Change Order must be a complete statement of the proposed (i) change in the Work, (ii) amount of adjustment, if any, to Contract Sum, and (iii) extent of the adjustment, if any, in the Contract Time.
	4. Whenever Contractor becomes aware of changes, concealed or unforeseen conditions, or other circumstances that will change or may lead to a change in the Work or for any reason warrant adjustments to the Contract Sum or Contract Time, Contractor must promptly notify Owner in writing of the circumstances and submit a Potential Change Order within ten (10) days. The Potential Change Order must specify in detail the basis for the request and include itemized estimates of costs and delay, documentation related to the reasons for the request, and documentation supporting any requested adjustments to the Contract Sum or Contract Time. Upon Owner’s approval of a Potential Change Order, a Change Order must be signed to incorporate the change into the Work Contract. If, prior to a fully signed Change Order, Owner specifically orders Contractor in writing to promptly proceed with a proposed change in the Work to prevent delay in the Work, Contractor will confirm the order and directives in writing and proceed with the change.
	5. In an emergency affecting safety of persons or property, Contractor will promptly act in a reasonable manner to prevent threatened damage, injury, or loss and timely thereafter submit a Potential Change Order for the costs incurred by Contractor due to the action in accordance with this Article.
	6. Unless otherwise agreed, all adjustments to the Contract Sum will be determined based on net reasonable costs saved and incurred due to the change in the Work, plus or minus amounts for overhead and profit. Contractor and each entity performing a portion of the Work affected by the change must furnish an itemized estimate and retain, in such form and detail as Owner prescribes, an itemized accounting of actual costs incurred and saved together with appropriate supporting data. The estimates and accountings must separately itemize overhead and profit, general conditions, allowances, each trade and service, labor, materials, equipment, and all agreements to furnish any significant portion of the change in the Work and provide detail with respect to quantities, labor hours and rates, taxes, insurance, etc. The amounts allowed for overhead and profit combined shall not exceed (i) ten percent (10%) with respect to work performed by any entity’s own forces or (ii) five percent (5%) with respect to work performed by subcontractors, sub-subcontractors, and consultants.
	7. To the extent Owner and Contractor cannot reach agreement with respect to changes in the Work or a pending Potential Change Order or any other request for an adjustment in the Contract Sum or Contract Time, a Claim must be made in accordance with the applicable provisions of Article 11. Pending resolution or agreement, Contractor will proceed diligently with performance of the Work Contract and Owner will continue to make payments in accordance with the Work Contract, including payments of amounts not in dispute for changes in the Work.

**Article 8: Term and Termination**

* 1. This Master Agreement will remain in effect for three (3) years following the Effective Date and will automatically renew for one (1) additional year twice. Either party may terminate this Master Agreement at any time by providing the other party written notice. The expiration or termination of this Master Agreement, however, will not terminate or otherwise affect the validity or terms of any Work Contract and any Work Contract will be subject to the terms of this Master Agreement absent a written agreement otherwise. Likewise, the termination of any Work Contract will not terminate or otherwise affect the validity or terms of this Master Agreement or any other Work Contract. Further, default under one Work Contract will not constitute default or breach of any other Work Contract. Absent a specific written agreement otherwise, all hourly billable rates, equipment rates, material rates, unit prices, markups, etc. set forth in this Master Agreement will remain in effect for the full term of this Master Agreement and any Work Contract subject to the terms of this Master Agreement.
	2. If Owner fails to make payment as required under a Work Contract for a period of forty-five (45) days through no fault of any of Contractor Parties, Contractor may, upon seven (7) additional days’ written notice to Owner, terminate the Work Contract and recover from Owner payment for Work performed and damages, including costs incurred by reason of the termination, but not including overhead or profit on Work not performed.
	3. If Contractor defaults under a Work Contract or otherwise neglects to timely perform the Work in accordance with the Work Contract and fails to commence correction of the deficiency within seven (7) days of written notice from Owner or diligently complete the correction of the deficiency, Owner may, without prejudice to other remedies Owner may have, terminate for cause Contractor’s right to complete the Work and take possession of the site and of all materials, equipment, tools, and equipment and machinery thereon owned by any of Contractor Parties and may finish the Work by whatever reasonable method Owner may deem expedient. A termination under this Paragraph will not limit Owner’s rights and remedies under the Work Contract or at law or equity, and will not terminate Contractor’s liability or obligations under the Work Contract with respect to any portions of the Work already completed by Contractor or actions or omissions of any of Contractor Parties.
	4. Upon termination under Paragraph 8.3, Contractor will not be entitled to further payment, if any, until the Work is finished. Upon completion of the Work, if the unpaid balance of the Contract Sum or Maximum Price, as applicable, is greater than the costs of finishing the Work, including compensation for consultants, attorneys’ fees, expenses due to the termination, and other damages incurred by Owner, Owner will pay the difference to Contractor. But, if the costs and damages exceed the unpaid balance, Contractor will pay the difference to Owner upon demand.
	5. Owner may, at any time, terminate Contractor’s right to complete the Work for Owner’s convenience and without cause. Upon termination for convenience, Contractor will be entitled to receive payment for the Work performed and costs incurred by reason of the termination, including unrecoverable costs for equipment and materials not yet delivered, but not for overhead or profit on the Work not performed. If it is determined that a termination of Contractor’s right to complete the Work pursuant to Paragraph 8.3 was wrongful or otherwise improper, the termination will be deemed a termination for convenience pursuant to this Paragraph.

**Article 9: Insurance**

* 1. At a minimum, Contractor will purchase and maintain without interruption the insurance coverages described in this Article 9 in forms and substance reasonably satisfactory to Owner and with insurance companies lawfully authorized to do business in the jurisdictions in the State of Tennessee. The coverages described below must have monetary limits of liability applicable to all the Work that are no less than the limits of Contractor’s existing insurance coverage and no less than as follows:
		1. Commercial general liability insurance on an ISO form with all standard divisions of coverage, including products and completed operations, broad form property with coverage for work performed by subcontractors and blanket contractual liability, with monetary limits of $2,000,000 per project and aggregate for general and products and completed operations, $1,000,000 per occurrence for personal and advertising injury, $1,000,000 per occurrence for bodily injury and property damage, $50,000 per occurrence for damages to premises and $5,000 per person for medical expenses, maintained for a minimum of five (5) years after final completion of the most recent Work under any Work Contract;
		2. Automobile liability insurance covering owned, non-owned, and hired motor vehicles with a combined single limit of $1,000,000 per accident;
		3. Worker’s compensation insurance compliant with state and federal requirements and limits and employer’s liability insurance without restriction to worker’s compensation coverage with monetary limits of $500,000 for accident (per occurrence), $500,000 for disease (policy limit) and $500,000 for disease (per employee);
		4. Pollution liability insurance with monetary limits of $1,000,000;
		5. Umbrella liability insurance following form of the underlying commercial general liability, automobile liability, worker’s compensation and employer’s liability, and pollution liability policies with monetary limits of $5,000,000 per occurrence and in the aggregate, maintained for a minimum of five (5) years after final completion of the most recent Work under any Work Contract; and
		6. If the Work includes the services of a licensed or registered professional, including architectural, engineering, surveying, or other professional services, professional liability (errors and omissions) insurance applicable to that portion of the Work with monetary limits of at least $1,000,000 per claim and $2,000,000 in the aggregate maintained for a minimum of five (5) years after final completion of the most recent Work under any Work Contract.
	2. With respect to the commercial general, automotive, pollution, and umbrella liability coverage, Owner must be included as an additional insured, providing coverage to the extent the injury or damage is caused by acts or omissions of Contractor Parties in the performance of the Work, with the same categories of coverage (including products and completed operations) and monetary limits as applicable to the named insured. Further, this coverage must apply as primary and non-contributory insurance before any other insurance or self-insurance, including any deductible maintained by or applicable to the additional insureds. Each policy applicable to the Work, including workers’ compensation and employer’s liability policies, must include a waiver of subrogation in favor of Owner. Each subcontractor and consultant of Contractor must also obtain similar endorsements on its policies in favor of Owner.
	3. With each Work Contract Form and upon each renewal thereafter for the applicable duration of the insurance, Contractor must submit certificates of insurance to Owner that are satisfactory evidence of all the required coverages. Owner must be identified as the certificate holder and, as applicable, as an additional insured. Owner must be notified in writing at least thirty (30) days prior to any cancellation or expiration of such insurance. Contractor’s failure to obtain or furnish proof of insurance will not constitute a waiver of the insurance requirements herein.
	4. Each subcontractor and consultant of Contractor must also obtain and maintain the insurance coverages described in Paragraphs 9.1 and 9.2 except with monetary limits of liability proportional to and coverages applicable to its portion of the Work. Each subcontractor and consultant must furnish its certificates of insurance prior to entering any Project site.
	5. Unless otherwise set forth in the Work Contract Form, Contractor shall purchase and maintain, from an insurance company lawfully authorized to issue insurance in Tennessee, property insurance for the Work written on a builder's risk “all-risks” or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent modifications and the costs of materials supplied or installed by others, comprising the total value for the entire Work on a replacement cost basis. This insurance shall be maintained until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this paragraph to be covered, whichever is earlier; shall allow for partial occupancy by the Owner; shall include the interests of the Owner, Contractor, and subcontractors as insureds; and shall be primary to any other insurance that may be applicable to a covered loss or damage. At a minimum, this insurance shall provide coverage for: physical loss or damage, including risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, and windstorm; ensuing loss or resulting damage from error, omission, or deficiency in methods, design, specifications, workmanship, or materials; loss or damage to falsework and other temporary structures and to building systems from testing and startup; debris removal, including and demolition occasioned by enforcement of any applicable legal requirements; and reasonable compensation for the Architect’s and Contractor’s services and expenses required as a result of an insured loss. Contractor shall be responsible for all deductibles, retentions, or co-insurance penalties. Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, for damages caused by fire, or other causes of loss, to the extent and in the amount those losses are covered by property insurance required by this paragraph, except such rights as they have to proceeds of such insurance.

**Article 10: Miscellaneous**

* 1. This Master Agreement and each Work Contract shall be governed by the laws of the State of Tennessee.
	2. Contractor and Owner respectively bind themselves, their partners, successors, assigns, and legal representatives to the covenants, agreements, and obligations contained in this Master Agreement and each Work Contract. Neither party to this Master Agreement can assign this Master Agreement or any Work Contract as a whole without written consent of the other, except Owner may assign any Work Contract to a lender or an affiliated entity of Owner. If either party attempts to make such an assignment without the consent, that party will nevertheless remain legally responsible for all obligations under the Work Contract.
	3. Written notice will be deemed to have been duly served if sent by registered or certified mail or by overnight courier service providing proof of delivery to the business addresses identified in this Master Agreement or if sent by electronic mail to the e-mail addresses specified on the Work Contract Form.
	4. No act or failure to act by an Owner or Contractor will constitute a waiver of any right or duty or subsequent obligation or constitute an approval of or acquiescence in a breach hereunder, except as specifically agreed in writing.
	5. If any provision in this Master Agreement or a Work Contract is found to be invalid or unenforceable in whole or in part, this finding shall not affect the validity or enforceability of any other provisions of this Master Agreement or the Work Contract or the remainder of the provision in question. In lieu of each provision, or part thereof, that is found to be invalid or unenforceable, there shall be added as part of this Master Agreement or Work Contract a provision as similar in terms to the invalid or unenforceable provision as is possible, valid, and enforceable. Any uncertainty or ambiguity found in this Master Agreement shall not be interpreted or construed against either of the parties because of other’s involvement in the drafting and preparation hereof.
	6. This Master Agreement, and any Work Contract Form, can be signed in counterparts, each of which will be deemed an original, and all of which, taken together, will constitute a complete document. Signatures transmitted by facsimile, electronic mail in “portable document format” (.pdf), or any other digital or electronic means intended to preserve the original graphic and pictorial appearance of a document will have the same effect as original signatures.
	7. In connection with performance under a Work Contract, the Contractor Parties may become aware of information that is considered confidential by Owner and that is not known by or available to the general public, including all information regarding the Project, the Owner’s operations and finances, students, faculty, and staff, and any other records or business knowledge of Owner (the “Confidential Information”). This Confidential Information is owned exclusively by Owner, is used in the operation of its business and is secret, confidential, and proprietary to Owner. Each of the Contractor Parties must (a) maintain the confidentiality of all Confidential Information, including all Project-related information, except as required by law, (b) use the Confidential Information only as necessary to fulfill its obligations under the Work Contract or applicable law and, thus, restrict disclosure only to those persons who need to know for those purposes, (c) use a reasonable standard of care in maintaining the Confidential Information in strict confidence and (d) return or destroy all documents, copies, notes, or other materials containing any Confidential Information upon Owner’s request. Accordingly, none of the Contractor Parties will divulge information concerning the Project to anyone (including information in applications for permits, variances, and similar items) without Owner’s prior written consent. Owner reserves the right to release all Project information and to time its release, form, and content. The obligations of this Paragraph shall survive any termination and final completion of any Work Contract.
	8. Unless otherwise specifically approved in writing by the Owner’s Office of Trademark Licensing, none of the Contractor Parties will use the Owner’s name, logos, or trademarks, or photographic or artistic representations of the Project in any professional, marketing, advertising, or promotional materials or media. The obligations of this Paragraph shall survive any termination and final completion of any Work Contract.
	9. Contractor represents and warrants that it is in full compliance with the Immigration Reform and Control Act of 1986, as amended, and will only assign personnel to the Project whose employment eligibility has been verified. Further, Contractor warrants that it is in compliance with all applicable Federal, state, and local laws, as amended, including 41 CFR 60-1.4, CFR 60-250.4, and 41 CFR 60-741.4, with respect to nondiscrimination in employment on the basis of race, religion, color, national origin, or sex, equal opportunity, affirmative action, employment of disabled veterans, and veterans of the Vietnam era, and employment of the handicapped. None of the Contractor Parties will discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, or national origin.
	10. Owner values and expects equity, diversity, and inclusion in all aspects of campus programs and activities. To the extent documented and maintained in the ordinary course of business, Contractor shall report to Owner statistics on a quarterly basis regarding the participation of firms owned and controlled by minorities, women, and other socially and economically disadvantaged persons as subcontractors, sub-subcontractors, suppliers, consultants, and vendors for the Project, which include Disabled Veteran Business Enterprises (DVE), “Historically Underutilized Business Zones” (HUBZone), LGBT Business Enterprises (LGBTBE), local small business enterprises (LSBE), minority-owned business enterprises (MBE), small business enterprises (SBE), “Veteran-Owned Small Business” (VOSB) and woman-owned business enterprises (WBE) on the Project. This section does not in any way relieve Contractor or any of the Contractor Parties from their obligations to evaluate the qualifications and suitability of all prospective subcontractors, sub-subcontractors, suppliers, consultants, and vendors for the Project.
	11. If any Work Contract constitutes a subcontract under a Federal prime contract, Contractor must comply with Federal Acquisition Regulation 52.203-7, Anti-Kickback Procedures, with the exception of subparagraph (c)(1) thereof. Further, if any Work Contract is entered into under a Federal award, the Work Contract must include the additional applicable provisions required by Appendix II to 2 C.F.R. Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which can be found at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>.
	12. Contractor represents and warrants that none of its principals, nor any employee, subcontractor, or consultant performing Work, is a faculty member, employee, postdoctoral scholar, student, or agent of Owner and that neither Contractor nor any of its principals, or any employees, subcontractors, or consultants performing Work, has a personal or other business relationship with any department of Owner authorizing payment under any Work Contract. Contractor represents and warrants that none of its principals, nor any employee, subcontractor, or consultant performing Work, has in the past or will offer, give, solicit or receive, either directly or indirectly, any commission, contributions or valuable gifts, in order to secure or influence the award of this Agreement or any Work Contract. Contractor shall not engage in any activity, or accept any employment, interest or contribution, that would reasonably appear to compromise the quality of the Work under any Work Contract or to compromise or influence Contractor’s judgment with respect to the Work under any Work Contract.

**Article 11: Dispute Resolution**

* 1. A “Claim” is any dispute or matter in question between Owner and Contractor arising out of or relating to this Master Agreement, a Work Contract, or Work, including any party seeking, as a matter of right, the payment of money or any other relief under the terms of a Work Contract or otherwise related to Work. Claims must be initiated by written notice to the other party. Notice of a Claim by any party for an adjustment in a Contract Time or for an increase in a Contract Sum must be delivered in writing within twenty-one (21) days after occurrence of the event giving rise to the Claim, within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim or, if a Potential Change Order was timely submitted with respect to the Claim, within twenty-one (21) days after Owner rejects the Potential Change Order in writing, whichever is later; otherwise, the Claim is waived. Pending final resolution of any Claim, Contractor will proceed diligently with performance under each Work Contract and Owner will continue to make payments in accordance with each Work Contract.
	2. All Claims will be subject to mediation as a condition precedent to litigation or arbitration. A request for mediation must be made in writing. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in this event, mediation will proceed in advance of binding dispute resolution proceedings. The parties will share the mediator’s fees and expenses equally. The mediation will be held in Nashville, Tennessee. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof; and this obligation to mediate will be specifically enforceable against Owner and all Contractor Parties in accordance with applicable law in any court having jurisdiction thereof.
	3. Neither Owner nor Contractor will be liable to the other for consequential damages except to the extent (a) the damages arise out of gross negligence, willful misconduct, fraud, or a violation of Law, (b) the damages are recoverable from insurance required by this Master Agreement or a Work Contract or insurance otherwise applicable to the Work or Project, or (c) the liability for the damages arises out of obligations to indemnify the other party against the claims of third parties. However, reasonable costs and expenses incurred by Owner to mitigate or lessen damages or harm caused by any failure of the Work to comply with the requirements of the Work Contract, including additional costs for furniture, fixtures, and equipment supplied by Owner and expenses for temporary replacement facilities incurred by the Owner due to delays in performance of the Work, are recoverable as direct damages.
	4. In any legal proceeding or dispute arising out of this Master Agreement or a Work Contract, or otherwise related to the Work, the prevailing party will be entitled to recover from the non-prevailing party all costs the prevailing party incurred pursuing and defending the underlying Claims, including reasonable fees and expenses of attorneys, consultants, and experts and fees and costs associated with any related litigation, bankruptcy proceedings, or appeals. The prevailing party is the party that prevails, either affirmatively or via a successful defense, with respect to the Claims of greatest value or importance.

**Article 12: Exhibits and Clarifications**

## The exhibits incorporated into this Master Agreement are as follows: (*Attach hereto and insert below the titles and dates of all documents intended to be part of this Master Agreement and each Work Contract, for example, hourly billable rates, equipment rates, material rates, unit pricing, markup percentages, fee schedules, etc.*)

Exhibit A: Master Work Agreement, Work Contract Form;

Exhibit B: Master Work Agreement, Work Contract – Change Order Form;

Exhibit C: <<TITLE OF DOCUMENT *(e.g., Rate Schedule)*>> dated <<DATE>>;

Exhibit D: <<TITLE OF DOCUMENT>> dated <<DATE>>;

<<ETC>>

Unless specifically enumerated herein, this Master Agreement does not include any other documents, such as bidding documents, proposals, or requests for proposals. If a proposal letter or similar document is included as an exhibit, the document is solely for purposes of defining services, rates, pricing, and fees. The provisions herein control with respect to any inconsistency with provisions in any exhibits. Accordingly, any contractual or legal provisions, terms, conditions, and forms referred to or contained in the exhibits are not included or incorporated into this Master Agreement or any Work Contract except as specifically and separately stated below in Paragraph 12.2.

* 1. The only clarifications, assumptions, exclusions, exceptions, or qualifications to the provisions above in this Master Agreement, if any, are as follows: (*List and describe in detail any and all deviations from or clarifications to rights, duties, and obligations set forth herein.*) Unless stated otherwise, the provisions below will be incorporated into each Work Contract issued under this Master Agreement.

<<DESCRIPTION OF ASSUMPTION, EXCLUSION OR QUALIFICATION>>

<<DESCRIPTION OF ASSUMPTION, EXCLUSION OR QUALIFICATION>>

<<DESCRIPTION OF ASSUMPTION, EXCLUSION OR QUALIFICATION>>

<<DESCRIPTION OF ASSUMPTION, EXCLUSION OR QUALIFICATION>>

This Agreement is signed as of the dates below but effective as of the Effective Date.

|  |  |
| --- | --- |
| **OWNER:**VANDERBILT UNIVERSITY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: <<NAME OF SIGNEE>> Title: <<POSITION OF SIGNEE>> Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **CONTRACTOR:**<<CONTRACTOR LEGAL NAME>>\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: <<NAME OF SIGNEE>>Title: <<POSITION OF SIGNEE>>Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |



**MASTER WORK AGREEMENT**

**WORK CONTRACT FORM**

|  |  |
| --- | --- |
| Work Contract Date: | <<INSERT DATE>> |
| Contractor: | <<CONTRACTOR NAME>> |

In accordance with and subject to the Master Work Agreement dated <<INSERT MWA DATE>> between Contractor and Vanderbilt University (“Owner”), Owner and Contractor enter into this Work Contract for the Project. In accordance with the Master Work Agreement, Contractor will perform the Work within the Contract Time and Owner will pay the Contract Sum.

|  |  |
| --- | --- |
| **Project:** | <<PROJECT NAME>><<STREET ADDRESS OR BUILDING>> |
| **Project Number:** | <<PROJECT NUMBER>> |
| **Start Date:***(check one)* | [ ] <<INSERT DATE>>, or [ ] To be established by Owner in a Notice to Proceed |
| **Contract Time:***(check one)* | [ ] <<NUMBER OF DAYS>> Days; or[ ] <<INSERT DATE>> |
| **Contract Sum:***(check one)* | [ ]  **Stipulated Sum** of <<DOLLAR AMOUNT>> Dollars ($<<###.##>>);[ ] To be Determined Based on **Time and Materials** with, if applicable, a **Markup** **Percentage** of <<##>> Percent (%); and a **Maximum Price** of <<DOLLAR AMOUNT>> Dollars ($<<###.##>>).**or**[ ] To be Determined Based on **Unit Pricing** with , if applicable, a **Markup** **Percentage** of <<##>> Percent (%); and a **Maximum Price** of <<DOLLAR AMOUNT>> Dollars ($<<###.##>>). |
| **Owner’s Representative:** | <<REPRESENTATIVE’S NAME>>Telephone: <<PHONE NUMBER>>E-mail: <<E-MAIL ADDRESS>> |
| **Contractor’s Representative:** | <<REPRESENTATIVE’S NAME>>Telephone: <<PHONE NUMBER>>E-mail: <<E-MAIL ADDRESS>> |
| **Work:** | <<DESCRIPTION OF THE WORK>> |
| **Clarifications:** | <<LIST ALL ASSUMPTIONS, EXCLUSIONS, EXCEPTIONS, QUALIFICATIONS, ETC. WITH RESPECT TO THE WORK, TERMS, OR PAYMENT>> |

**Work Details:**

|  |  |
| --- | --- |
| **Campus Parking Spaces:** | [ ] Not Applicable to the Project; **or** [ ] Contractor requests <<NUMBER OF SPACES>> parking spaces for <<NUMBER OF DAYS>> days which will cost <<DOLLAR AMOUNT>> Dollars ($<<###.##>>) per space per day. |
| **VU Photo IDs:** | [ ] Not Applicable to the Project; **or** [ ] Contractor requests <<NUMBER OF IDs>> new VU Photo ID’s (which will cost $25 each). |
| **Lead Time:** | [ ] Not Applicable to the Project; **or** [ ]  <<NUMBER OF DAYS>> calendar days are required between Owner’s PO for this Work Contract and commencement of the Work for the ordering of materials and equipment. |
| **Utility Outages:** | [ ] Not Applicable to the Project; **or** [ ] The Work will require <<NUMBER>> utility outages, which will each last at least <<NUMBER>> hours. <<ADDITIONAL INFORMATION>> |
| **Builder’s Risk****Insurance:***(check one)* | [ ] Contractor Provided;[ ] Owner Provided;**or**[ ] Not Required for Project |
| **Owner Purchased Materials or Equipment:** | [ ] Not Applicable to the Project; **or** [ ] The Work and Contract Sum include the following materials and equipment to be purchased directly by Owner from supplier: <<ITEM DESCRIPTION, SUPPLIER, COST>><<ITEM DESCRIPTION, SUPPLIER, COST>><<ITEM DESCRIPTION, SUPPLIER, COST>> |

**Attachments:**

|  |  |
| --- | --- |
| [ ]  | Contractor’s proposal dated <<INSERT DATE>> , which is attached hereto solely for the purpose of describing the Work and as otherwise provided in the Clarifications above. |
| [ ]  | Certificate(s) of insurance evidencing the required insurance, and identifying Owner as the certificate holder and as an additional insured, as required |
| [ ]  | <<OTHER ATTACHMENTS>> |

**CONTRACTOR: OWNER:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Contractor Signature Owner Signature**



**MASTER WORK AGREEMENT**

**WORK CONTRACT – CHANGE ORDER FORM**

|  |  |
| --- | --- |
| Work Contract Date: | <<INSERT DATE>> |
| Contractor: | <<CONTRACTOR NAME>> |
| Project Name: | <<PROJECT NAME>> |
| Project Number: | <<PROJECT NUMBER>> |
| Change Order Number: | <<CHANGE ORDER NUMBER>> |

The Work of the Work Contract identified above is changed as follows: <<INSERT A DETAILED DESCRIPTION OF THE CHANGE IN THE WORK>>

If the Contract Sum is a Stipulated Sum or there is a Maximum Price, insert the following amounts.

|  |  |
| --- | --- |
| Original Contract Sum/Maximum Price…………………………... | $ <<INSERT AMOUNT>> |
| Net Change by Previous Change Orders………………………….. | $ <<INSERT AMOUNT>> |
| Contract Sum/Maximum Price before this Change Order………… | $ <<INSERT AMOUNT>> |
| Change in Contract Sum/Maximum Price by this Change Order…. | $ <<INSERT AMOUNT>> |
| New Contract Sum/Maximum Price………………………………. | $ <<INSERT AMOUNT>> |

If the Contract Sum is to be determined based on Time and Materials or Unit Pricing without a Maximum Price, it is estimated that this Change Order will <<TYPE “increase” or “decrease”>> the Contract Sum by $ <<INSERT AMOUNT>>.

The Contract Time is <<TYPE “increased” or “decreased”>> by <<NUMBER OF DAYS>> Days. The new Contract Time is *(check one)* [ ] <<NUMBER OF DAYS>> Days; or [ ] <<INSERT DATE>>**.**

**Attachments:**

|  |  |
| --- | --- |
| [ ]  | Contractor’s Potential Change Order dated <<INSERT DATE>>  |
| [ ]  | <<OTHER ATTACHMENTS>> |

**CONTRACTOR: OWNER:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Contractor Signature Owner Signature**