



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

| as identified in the Construction Agreement

THE OWNER:

(Name, legal status and address)

| as identified in the Construction Agreement

THE ARCHITECT:

(Name, legal status and address)

| as identified in the Construction Agreement

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ADDITIONS AND DELETIONS:

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

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

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

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User Notes:

(1733782097)

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

(Paragraphs deleted)

16 COST OF THE WORK

(Paragraphs deleted)



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Construction Agreement between the Owner and Contractor (hereinafter the Agreement). Unless specifically enumerated in the Agreement, the Contract Documents do not include the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. Any purchase orders issued by the Owner to the Contractor with respect to the Project are only for the purpose of the Owner's internal payment process. Despite the terms on the face of any such purchase order, the Contract is not subject to the Owner's standard Purchase Order Terms and Conditions.

§ 1.1.2 The Contract

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification, which is a formal written amendment signed by both parties that expressly modifies the Contract, a Change Order as defined herein, or a Construction Change Directive as defined herein. Except as expressly stated herein, the Contract Documents shall not be construed to create a contractual relationship between any persons or entities other than the Owner and the Contractor or a cause of action in favor of any third party against either the Owner or the Contractor. The Owner shall, however, be entitled to performance and enforcement of obligations under the Contract and have a direct contractual right against any of the Contractor Parties to enforce obligations under the Contract intended for its benefit.

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for administration, materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Scope paragraphs in the Specifications are brief abstracts that do not itemize or otherwise limit the scope of work discussed in such section.

§ 1.1.7 Instruments of Service

Instruments of Service are the Drawings, Specifications and other documents or representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect, the Architect's consultants, or other design professionals, to describe and define the Work. Instruments of Service also include studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the Architect.

§ 1.1.9 Contractor Parties

The Contractor Parties are the Contractor, Subcontractors, Sub-subcontractors, and Suppliers (each as defined in Article 5 below), and anyone directly or indirectly employed, retained, or contracted by any of them or anyone for whose acts they are responsible or liable.

§ 1.1.10 Related Party

A Related Party is (1) any parent, subsidiary, affiliate, division or other entity or enterprise having any common ownership or management with the Contractor, (2) any entity or enterprise in which any director, stockholder, officer, or management employee of the Contractor, or any of their immediate family members, owns any interest in excess of five percent (5%) in the aggregate, (3) any person, entity or enterprise that has the right to control the business or affairs of the Contractor, or (4) any member of the immediate family of any person identified above.

§ 1.1.11 Laws

The terms "Law" and "Laws" mean all laws, statutes, codes, ordinances, rules, regulations, standards, and lawful orders and any other requirements of public authorities and other organizations applicable to the Contractor Parties, the Work and the Project, including the laws of the State of Tennessee and the charter, code, and regulations of the Metropolitan Government of Nashville and Davidson County.

§ 1.1.12 Stipulated Sum / GMP Contract

If the Agreement provides that the Contract Sum is guaranteed not to exceed a Guaranteed Maximum Price (or "GMP"), the Contract is a "GMP Contract." However, if the Agreement provides that the Contract Sum is a stipulated sum, the Contract is a "Stipulated Sum Contract" and the term "Guaranteed Maximum Price" as used herein shall mean "Contract Sum."

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.2.4 In the event of an inconsistency in the Contract, the Agreement takes precedence over all other Contract Documents except Modifications, the General Conditions take precedence over all other Contract Documents except the Agreement, and the sections of Division 1 of the Specifications take precedence over all other sections of the Specifications.

§ 1.2.5 In the event of a discrepancy, omission or conflict within or between any of the Contract Documents regarding the Work, the Contractor shall report the discrepancy, omission, or conflict to the Architect and Owner in writing. Subject to Section 1.2.4, and unless otherwise specifically stated in the Specifications and Drawings, the Specifications and Drawings are of equal authority and priority; figures shall govern over scaled measurements; large scaled drawings shall govern over small scale drawings; descriptive writings shall govern over legends indicating material or conditions; and the provision or interpretation that results in the greater quantity, higher quality, and higher level of safety shall prevail unless otherwise directed by Owner in writing. The terms of this provision shall not relieve the Contractor of its obligation to report such discrepancy, omission or conflict or of any other obligation under the Contract.

§ 1.3 Capitalization

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

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§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Headings, captions and section titles in the Contract are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of provisions. Further, the Owner and the Contractor hereby acknowledge and agree that any ambiguities in the Contract shall not be construed against either the Owner or the Contractor based on one or the other being the drafting party.

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

§ 1.5.1 Instruments of Service, including the Drawings and Specifications, are the property of the Owner, Architect, or their consultants, and they retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. Unless otherwise specifically provided in the Agreement, none of the Contractor Parties, shall own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any copyrights or other reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and Suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any applicable protocols, solely and exclusively for performance of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. None of the Contractor Parties shall use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to report, consent, approve, notify or give notice to the other party, such report, consent, approval, or notice shall be provided in writing to the designated representative of the party to whom the report, consent, approval, or notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic mail to an e-mail address specified in the Agreement.

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

§ 1.7 Digital Data Use and Transmission

(Paragraph deleted)

§ 1.7.1 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The Contractor shall have access to the Project's virtual plan room for the purpose of downloading and accessing the Instruments of Service, including the Drawings, Specifications and other documents that might illustrate, describe and define the Work. The Contractor shall keep the passwords and access information confidential and follow proper protocols governing such transmissions. The Contractor acknowledges that discrepancies could exist between documents that are sealed and scanned and documents transmitted in other digital formats.

§ 1.7.2 The Owner and Contractor shall use the Owner's web-based contract and project management system for the transmission and signing of the Contract, Modifications, Applications for Payment and other certain documents. The Contractor shall keep the passwords and access information confidential, timely upload requested information and documentation, and follow proper protocols governing such transmissions.

§ 1.8 Building Information Models Use and Reliance

If building information modeling (or "BIM") is to be used in connection with the Project, Contractor shall obtain and maintain the appropriate software licenses and comply with any current BIM standards and guidelines of the Owner. Any BIM information generated by the Contractor or any of the Contractor Parties shall be Instruments of Service.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative (the "Owner's Representative") who shall have the authority expressly provided herein and represent the Owner with respect to all communications and notice. The Owner's Representative does not have the authority to approve or sign a Change Order or other Modification. Only the persons who signs the Agreement on behalf of the Owner, and others so designated in the Agreement, have the authority to sign a Change Order or other Modification on behalf of the Owner.

(Paragraph deleted)

§ 2.2 No information or services required or furnished by the Owner shall relieve or release, and nothing in Section 2.3 shall be construed to relieve or release, the Contractor from its review and inspection obligations set forth in Section 3.2.

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner may employ a successor architect whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Contractor shall be entitled to reasonably rely on the accuracy of information and surveys furnished by the Owner, but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness so as not to delay the progress of the Work. If the Owner receives a written request from the Contractor for other information under the Owner's control and required for the Contractor's performance of the Work, the Owner shall furnish such information with reasonable promptness so as not to delay the progress of the Work. The Contractor shall exercise reasonable care to verify and confirm the accuracy of any information furnished by the Owner under Section 2.3 within twenty-one (21) days of receipt, and promptly notify Owner and Architect in writing of any discovered inaccuracies. If the Contractor fails to exercise such reasonable care, the Contractor shall be responsible for costs and damages that would have been avoided had the Contractor performed its obligations.

§ 2.3.6 Unless otherwise provided in the Contract Documents, Contractor shall have access to electronic versions of the Drawings, Specifications and other Instruments of Service required for the performance of the Work via Project's virtual plan room.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or otherwise fails to timely carry out Work in accordance with the Contract Documents, the Owner may, without prejudice to other remedies the Owner has under the Contract, at law or in equity, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.5 Owner's Right to Carry Out the Work

In addition to Owner's rights under Article 14 and elsewhere in the Contract Documents, if the Contractor defaults or neglects to timely carry out the Work in accordance with the Contract Documents and fails within a forty-eight (48) hour period after receipt of notice from the Owner to commence and continue correction of such default or neglect

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with diligence and promptness, the Owner may, without prejudice to other remedies the Owner has under the Contract, at law or in equity, correct such deficiencies by whatever reasonable method the Owner determines. In such case, the cost of correcting the deficiencies, including Owner's expenses and compensation for the additional services of the Architect, consultants and vendors deemed necessary or helpful by the Owner to address the deficiencies, shall be deducted from amounts owed the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, or the Contractor has already received final payment, the Contractor shall pay the difference to the Owner upon demand. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim in accordance with Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor's Representative identified in the Agreement, or otherwise designated in writing, has express authority to bind the Contractor with respect to all matters under this Contract, and notice served on the Contractor's representative shall be deemed served on the Contractor. The term "Contractor" means the Contractor or the Contractor's representative, as appropriate.

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

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

§ 3.1.4 In addition to any other representations and warranties contained in the Contract Documents and imposed by Law, and as an inducement for the Owner to enter the Contract, the Contractor represents, warrants and agrees that:

- .1 the Contractor is financially solvent and able to pay all debts as they mature, and it possesses sufficient working capital to complete the Work and pay all costs associated therewith and timely and fully perform all obligations in the Contract Documents;
- .2 the Contractor is able to provide the services, plant, tools, materials, supplies, equipment, labor and other items required to complete the Work and timely and fully perform its obligations in the Contract Documents;
- .3 the Contractor is authorized to do business in Nashville, Tennessee, and it is properly licensed or registered as necessary by or with all governmental and public and quasi-public authorities having jurisdiction; and
- .4 the Contractor possesses a high level of experience, expertise and competence in the business of administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project, and the Contractor will perform the Work with the care, skill and diligence of such a contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Signing of the Agreement or GMP Amendment, as applicable, by the Contractor is a representation that the existing Contract Documents include sufficient detail for purposes of entering into the Contract and that the Contractor has (1) carefully examined all existing Contract Documents in detail, (2) visited, inspected and become familiar with the Project site, including visible existing site conditions, utility locations, access to the site, the normal working hours specific to the Project, physical characteristics of the site and surrounding areas, (3) become familiar with local conditions and Laws under which the Work is to be performed, (4) carefully reviewed the schedule and considered the Contractor's obligations to correct delays in accordance with Section 3.10.4 and 8.3.1, and (5) correlated personal observations with requirements of the Contract Documents. If the Contractor fails to perform the obligations of this Section 3.2.1, neither the Guaranteed Maximum Price nor the Contract Time will be adjusted for additional costs or delay that would have been avoided if the Contractor had performed such obligations.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work or ordering materials, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner, shall take field measurements of existing grades, elevations, dimensions, locations and other conditions related to that portion of the Work, field verify the locations, character and depth of existing utilities and shall inspect and observe any other relevant conditions at the Project site.

The Contractor shall be responsible for ascertaining correct dimensions and materials, shall not ascertain dimensions by scaling drawings, and shall promptly notify the Architect and Owner in writing of any illegibility, omission or inconsistency for clarification. When the Project involves modifications to existing improvements, the Contractor shall be responsible for verifying existing conditions and coordinating such conditions with the requirements of the Contract Documents. These obligations are for the purpose of facilitating coordination and construction by the Contractor and for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents that could affect constructability, costs or the Contractor's performance. Before proceeding with any portion of the Work affected thereby, the Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor experienced with similar projects and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable standards and Laws, but, in the event a discrepancy or conflict within or between any of the Contract Documents and any applicable standards or Laws becomes known to the Contractor, the Contractor shall, before proceeding with the Work or affected portion of the Work, promptly report such discrepancy or conflict in writing to the Architect and Owner and not proceed with that portion of the Work until so directed by the Architect who shall determine the appropriate Work in accordance with the Contract Documents in consultation with the Owner. The Contractor shall similarly report any specified materials, systems, procedures or methods that the Contractor considers improper, inadequate, obsolete or unsuitable for purposes intended.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices, reports or requests for information under Sections 3.2.2 or 3.2.3, the Contractor shall assert any Claims as provided in Articles 7, 8, and 15. If the Contractor fails to report an error, inconsistency, omission, discrepancy, or conflict that it should have recognized in its performance of the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall be responsible for such costs and damages to the Owner that would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, differences between field measurements or conditions and the Contract Documents, or discrepancies or conflicts within or between any of the Contract Documents and any applicable standards or Laws.

§ 3.3 Supervision and Construction Procedures

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

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor Parties.

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

§ 3.3.4 The Contractor shall review all specified or recommended construction and installation procedures applicable to the Work, including those recommended by manufacturers and suppliers, and shall promptly report to the Architect and Owner any objections the Contractor has to such procedures and advise the Architect and Owner if any procedure deviates from good construction practice or might adversely affect or invalidate any warranty or guarantee.

§ 3.4 Labor, Materials and Equipment

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

§ 3.4.2 The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect, and in accordance with a Change Order or Construction Change Directive and the procedures for substitutions set forth in the Specifications. Except as specifically stated in the written approval, the approval of a request for substitution shall not modify the requirements of the Contract Documents, including performance criteria, grade, material and warranty requirements.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor Parties. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall work with the Owner and Subcontractors, Sub-subcontractors and Suppliers to maximize tax savings on purchases of equipment, materials and products in accordance with the tax savings procedures set forth in Section 00 73 00.03 of the Specifications, including identifying, documenting, tracking and coordinating purchases to be paid directly by Owner. Other than the direct payment by the Owner, the Contractor Parties shall remain solely responsible and liable for all other aspects of the purchase and installation of such equipment, materials and products, including scheduling, transportation, receiving, unloading, inventorying, inspecting, handling, storing, protecting and testing. Amounts owed to Subcontractors shall be reduced, deductive subcontract change orders shall be entered and, upon or before Substantial Completion, the Guaranteed Maximum Price shall be reduced by Change Order to account for all Owner direct payments for equipment, materials and products and for realized tax savings.

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, and other special warranties and guarantees of manufacturers, Subcontractors, Sub-subcontractors, Suppliers, and any others applicable to the Work or required by the Contract Documents shall be issued in the name of the Owner, or shall be fully transferable and assigned to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall perform the Work in a manner that does not adversely affect or invalidate any such warranties or guarantees.

§ 3.5.3 Vendor and manufacturer warranties and guarantees required by the Contract Documents commence upon the date of Substantial Completion. If any warranties or guarantees obtained from vendors or manufacturers will expire prior to a required warranty or guarantee period because certain equipment or improvements are installed prior to Substantial Completion, the Contractor shall pay to extend such warranties or guarantees to satisfy the requirements of the Contract Documents. The Contractor shall remain responsible for fulfilling the requirements of the required vendor and manufacturer warranties and guarantees even if the Contractor fails to obtain such extensions.

§ 3.6 Taxes

The Owner is a nonprofit entity entitled to special tax benefits. The Contractor shall cooperate with Owner to reduce taxes and maximize tax savings on the Project, including compliance with the Owner's tax savings procedures in accordance with Section 3.4.4 and Section 00 73 00.03 of the Specifications. The Contractor shall otherwise pay all sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted as of the date of the Agreement, whether or not yet effective or merely scheduled to go into effect. The initial Guaranteed Maximum

Price includes all applicable taxes, including those that might ultimately be avoided through the Owner's tax savings procedures. All tax savings shall be retained by, be returned to, or otherwise benefit the Owner.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Contractor shall secure and pay for the building permit as well as all other permits, fees, licenses, reviews, authorizations, approvals and inspections by government agencies or other authorities having jurisdiction over the Project that are necessary for proper performance and completion of the Work and legally required at the time the initial Guaranteed Maximum Price is formally agreed upon in writing, including temporary and permanent permits, road work and right-of-way permits, occupancy permits, fire safety approvals, utility permits, grading permits, and structural, foundation, mechanical, electrical, plumbing and other trade permits, and inspections, fees and approvals related thereto. Without limitation, the Contractor shall be responsible for paying all review and inspection fees and charges, providing any deposits, bonding or other security required by the authorities and coordinating all submittals, resubmittals and responses. The Owner shall be responsible for capacity and impact fees and charges.

§ 3.7.2 The Contractor Parties shall comply with and give notices required by Law, including performance of the Work in compliance with the applicable laws, statutes, ordinances, standards, codes, rules and regulations, and lawful orders of the Equal Employment Opportunity Commission, the Tennessee Occupational Safety and Health Administration, the Tennessee Department of Environment and Conservation and other public authorities applicable to performance of the Work. To the full extent permitted by Law, the Contractor shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, costs, fines, penalties and expenses, including attorney, expert and consultant fees and expenses, arising out of or resulting from any failure of the Contractor Parties to comply with or give notices required by Law.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to Laws, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs, damages, losses and expenses, including attorney, expert and consultant fees and expenses, attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than two (2) days after first observance of the conditions. However, if the Contractor is delayed or suspends any operations based on such concealed or unforeseen conditions or the Contractor encounters any utilities at unknown locations, the Contractor shall provide such written notice to the Architect and Owner immediately and provide immediate written notice of any unknown utility locations to Facilities Information Services. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall request an equitable adjustment in the Guaranteed Maximum Price or Contract Time, or both, in accordance with the Change Order procedures set forth in Articles 7 and 8. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents or that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor of such determination, stating the reasons. If the Contractor disputes the Architect's determination or recommendation, the Contractor must proceed with its Claim in accordance with Article 15. Nothing herein shall be construed to negate the Contractor's inspection obligations set forth in Section 3.2 or the Contractor's responsibility for costs and damages to the Owner arising out of the Contractor's failure to perform such obligations.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall immediately notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take action to obtain governmental authorization, if any is required, to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner in writing but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Guaranteed Maximum Price and Contract Time, if any, arising from the existence of such remains or features must be made as provided in Articles 7, 8 and 15.

§ 3.8 Allowances and Contingencies

§ 3.8.1 The Guaranteed Maximum Price includes all allowances stated in the Contract Documents, including all specific contingencies and allowances and the General Contingency, if any, specified in the Agreement. All allowances and contingencies must be included and separately itemized in the Schedule of Values. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2

(Paragraphs deleted)

The General Contingency, if any, is for general unspecified purposes limited only as set forth herein. Conversely, specific contingencies or allowances are only for the particular items and purposes originally anticipated and described in the Contract Documents, such as scope gaps in a particular line item of the Schedule of Values or specific portions of the Work that cannot be defined until a later date. All allowances and contingencies, including any General Contingency and all specific contingencies or allowances, are limited to costs actually incurred by the Contractor that are includable in the Cost of the Work as defined in Article 16 but were not otherwise specifically provided for in the calculation of the Guaranteed Maximum Price and are not the proper basis for a Change Order.

§ 3.8.3 The use of a General Contingency or a specific contingency or allowance for any item in excess of \$5,000 must be requested by the Contractor with a formal written allocation request approved by the Owner in writing. Any Application for Payment that allocates costs in excess of \$5,000 to a contingency or allowance line item of the Schedule of Values must be accompanied by a written request in accordance with Section 7.4.2 signed by the Owner's Representative specifically approving such allocation or use. The written request must provide adequate detail of the costs and expenses and describe the facts and circumstances that warrant the use of the contingency or allowance. In addition to prior written approval for costs in excess of \$5,000, all expenses allocated to an allowance or contingency must be properly documented and approved for payment in accordance with the standard Application for Payment procedures. The Contractor is required to maintain a log itemizing all proposed and approved uses of any contingencies and allowances.

§ 3.8.4 Whenever expenses covered by an allowance will exceed the amount of the allowance due to changes in the Work, the Contractor must, prior to incurring such costs, request a Change Order increasing the amount of the allowance and the Guaranteed Maximum Price in accordance with the procedures set forth in Article 7. Expenses incurred for items covered by an allowance that exceed the amount of the allowance shall be the responsibility of the Contractor and not included in the Cost of the Work or Contract Sum unless the excess expenses are caused by a change in the Work for which the Owner is responsible and approved in accordance with Article 7.

§ 3.8.5 Prior to final payment, the unused portions of the allowances and contingencies shall be returned via a Change Order reducing the Guaranteed Maximum Price by the difference between the amounts of all the allowances and contingencies and the amounts properly allocated to such allowances and contingencies in accordance with Sections 3.8.

§ 3.8.6 If the Contract is a GMP Contract, when the amount of any subcontract or purchase is less than the amount anticipated and allocated to the item(s) in the Schedule of Values or within the Guaranteed Maximum Price, the Contractor shall reallocate the difference (the "Buyout Savings") to the General Contingency or a specific contingency or allowance with the Schedule of Values adjusted accordingly in accordance with Section 9.2.

§ 3.8.7 If the Contract contains unit pricing, such pricing includes all materials, equipment, labor, delivery, installation, overhead, profit and all other costs or expenses in connection with, or incidental to, the performance of the unit of work to which the pricing applies except as otherwise specifically provided. If a portion of the Contract Sum is based on unit pricing, the Guaranteed Maximum Price includes an allowance based on an estimate of the unit pricing work.

§ 3.9 Superintendent, Project Managers, Key Employees and Staffing

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

§ 3.9.2 The Contractor, promptly after signing the Agreement, shall provide in writing for Owner's approval the names and qualifications of proposed project managers, superintendents, and key employees and consultants for the Project. At a minimum, proposed superintendents and project managers must have recent experience with similar types of construction, must be competent, and must be capable of reading and understanding the Contract Documents and of effectively communicating in the necessary language(s) with its personnel and the personnel of all Subcontractors, Sub-subcontractors, and Suppliers. Except as otherwise provided in the Agreement, failure of the Owner or Architect to reply to Contractor's proposed project managers or superintendents within a reasonable period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ and assign to the Project any proposed project manager, superintendent, or key employee or consultant to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not replace any project manager, superintendent, key employee or consultant working on the Project, or assign such personnel to other projects in a manner that affects their ability to perform their duties on the Project, without substantial justification and the Owner's prior written consent, which shall not unreasonably be withheld. In the event that any employee, agent or consultant of any of the Contractor Parties fails to properly perform or otherwise hinders the Project's progress, the Contractor shall replace such person or entity as reasonably requested by the Owner in writing. In the event the Contractor removes personnel or staffs the Project with fewer or less costly employees than proposed and approved in accordance with Section 16.4.5, the Guaranteed Maximum Price shall be adjusted accordingly.

§ 3.9.4 The Contractor Parties shall, 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 Project. Owner reserves the right to remove any employee of the Contractor Parties from the Project if arrested, charged or convicted of any such crimes or if the employee conceals such information. Further, the Contractor Parties shall validate social security identification numbers and not assign any undocumented persons to the Project.

§ 3.10 Contractor's Schedules

§ 3.10.1 Construction Schedule The Contractor shall maintain a critical path construction schedule for the Work that complies with all scheduling requirements set forth in the Specifications. The schedule must:

- .1 provide for the expeditious and practicable performance of the Work in accordance with the time limits stated and schedules included in the Contract Documents;
- .2 be comprehensive and related to the entire Project;
- .3 provide a detailed graphic representation of all activities, events and sequencing that will occur during the performance of the Work in a precedence-style critical path method format satisfactory to the Owner and Architect;
- .4 identify each phase of construction and occupancy;
- .5 illustrate each phase of each trade or category of the Work;
- .6 provide separate representations for each major area, floor, portion or section of the Project;
- .7 incorporate the limitations of existing conditions and work by separate contractors and Owner;
- .8 incorporate delivery dates and installation periods for Owner furnished equipment and products;
- .9 incorporate reasonable review periods for submittals and re-submittals; and
- .10 identify dates that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

§ 3.10.2 Submittal Schedule The Contractor, promptly after signing the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule that complies with all scheduling requirements set forth in the Specifications for the Owner's and Architect's approval. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect, Owner, and others reasonable time to review submittals and re-submittals. If the Contractor fails to comply with an approved submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Guaranteed Maximum Price or extension of Contract Time based on the time required for review of submittals by Architect, Owner, and others required.

§ 3.10.3 Progress Schedules On a monthly basis, the Contractor shall issue, for the Owner's approval, an updated critical path construction schedule and submittal schedule(s) in a format that illustrates completed and projected progression of the Work for the relevant time periods. The monthly schedules shall be issued as of the end of each calendar month. In no event, however, shall such revisions or updates be construed as adjustments to the Guaranteed Maximum Price or Contract Time unless such adjustments are incorporated into the Contract by Change Order. These progress schedules shall be available and promptly posted in the Contractor's meeting rooms and offices at the Project site and promptly distributed to the Owner, the Architect and the Contractor Parties whom must comply with such schedules. The submittal of the monthly progress schedules is a condition precedent to the Owner's obligation to make progress payments and the failure to submit these schedules timely shall cause a delay in the processing of monthly progress payments. In addition, the Contractor shall maintain, and update at least weekly, a two week "look-ahead" schedule and, if the Contract Sum is expected to equal or exceed five million dollars (\$5,000,000), the Contractor shall provide the scheduling software source file with its monthly updated construction schedule, e.g. the XER, MPP, or XML file.

§ 3.10.4 Owner-Furnished Equipment Schedule The Contractor shall prepare an Owner-furnished equipment schedule for the approval of the Owner and Architect that lists the projected dates of delivery for all equipment and products to be furnished by the Owner in chronologic order of relevant critical path dates. The Contractor shall be responsible for coordinating the delivery of all equipment and products to be furnished by the Owner with the construction schedule in order to avoid delays in the progress of the Work.

§ 3.10.5 Schedule Delays The Contractor shall perform the Work in general accordance with the most recent schedules approved by the Owner. In the event the Contractor or Owner determines that the performance of the Work has not progressed or reached a level of completion required under the Contractor's schedule to achieve a deadline stated in the Contract Documents, the Contractor shall propose a plan of specific actions that will expedite the progress and correct the delay (a "Schedule Correction Plan"). Upon approval by the Owner, the Contractor shall implement the Schedule Correction Plan. The Owner's right to require such measures is for the purpose of ensuring the Contractor's compliance with the construction schedule. Contractor shall not be entitled to an adjustment in the Guaranteed Maximum Price with respect to additional costs incurred due to the Schedule Correction Plan except as provided under Section 8.3. In the event the Owner deems it necessary to supplement the Contractor's efforts to correct delays caused by one or more of the Contractor Parties, the Contractor shall be responsible to the Owner for the costs incurred in accordance with Section 2.5.

§ 3.11 Project Meetings and Reports

§ 3.11.1 The Contractor shall coordinate and manage project meetings and otherwise comply with any meeting requirements described in the Specifications. The Contractor shall be responsible for scheduling, preparing, maintaining and distributing written agendas, coordinating and keeping attendance, taking, maintaining and distributing meeting minutes and action item lists and presiding over all such meetings. The agendas, minutes and other documents associated with each meeting shall be timely distributed to all invitees.

§ 3.11.2 The Contractor shall prepare and maintain daily, weekly and monthly reports as may be further described in the Specifications. The weekly and monthly reports shall be promptly uploaded to the project management website and promptly sent electronically to the Architect, the Owner's Representative and any others requested by the Owner. An updated Project Issues Log maintained in accordance with Section 7.4 shall be attached to each weekly and monthly report. Submitting the monthly report is a condition precedent to the Owner's obligation to make progress payments, and the failure to submit monthly reports timely shall cause a delay in the processing of monthly progress payments.

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

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

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

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

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

§ 3.12.5 As may be further described in the Specifications regarding submittal procedures, the Contractor shall obtain, review for compliance with the Contract Documents, approve, and submit to the Architect, and others if required by the Contract Documents, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect and Owner with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall be responsible for identifying deviations between such submittals and the requirements of the Contract Documents. If the Contractor fails to perform its obligations under Section 3.12, the Contractor shall pay for any additional services of the Architect required at the Architect's standard hourly rates in effect at the time, at no expense to the Owner.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by any approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and the change has been approved in accordance with Article 7. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by any approval thereof.

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are required of the Contractor by the Contract Documents, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall be entitled to reasonably rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall notify the Owner and Architect promptly upon its discovery of any inadequacy in any such information or criteria. The Contractor shall cause such services or certifications to be provided by an appropriately licensed or registered design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Under this Section 3.12.10, the Architect will review and approve or take other appropriate action on

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submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

(Paragraphs deleted)

§ 3.12.11 The Contractor shall prepare and issue coordination drawings locating conduit, piping, ductwork and other items to avoid conflicts and obstructions, preserve head room, keep openings and other passageways clear, overcome interference with structural conditions, and coordinate between the trades. Coordination drawings shall include mechanical, electrical, plumbing, telecommunications, data, fire protection and all other building systems. The Contractor shall be responsible for proper installation and coordination of the systems and equipment in the space available.

§ 3.13 Use of Project Site and Owner Operations

§ 3.13.1 The Contractor shall confine operations at the site to areas within the construction limits set by the Owner and permitted by Laws and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment. All personnel of the Contractor Parties must comply with the Owner's work rules and standard practices governing employee behavior while at the Project site or otherwise on or adjacent to Owner property.

§ 3.13.2 The Contractor shall coordinate the Work with the Owner and conduct the Work in a manner that eliminates or minimizes any adverse impact on the Owner's ongoing operations at or in close proximity to the Project. Existing operating systems, utilities and services, including water, steam, electric, HVAC, sanitary, storm, emergency, telecommunications, data, etc., must remain operational throughout the performance of the Work except as specifically provided in the Contract Documents. If an interruption of such systems, utilities or services is necessary, the interruption must be coordinated and scheduled with the Owner in accordance with Section 01 31 13.01 of the Specifications, and the Contractor is solely responsible for compliance with the Owner's standard protocols. The Owner shall have the right to direct a postponement or rescheduling of any portion of the Work that interferes with the Owner's ongoing operations.

§ 3.13.3 In addition to maintaining existing operating systems, utilities and services and compliance with scheduling restrictions, the Contractor shall maintain noise separation for the construction area and separation of dust and demolition items from areas in and around the Project site that remain operational.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the full extent permitted by Law, the Contractor shall indemnify, hold harmless, and if Owner elects, defend the Owner, and its agents and employees, (collectively, the "Indemnified Parties") from and against claims, damages, losses, liabilities, and expenses, including attorneys' and experts' fees and expenses, 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 Contract, provided that such claim, damage, loss, liability, or expense is caused, in whole or in part, by the acts or omissions of one of the Contractor Parties, regardless of whether or not such claim, damage, loss, liability, or expense is caused in part by any of the Indemnified Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of defense or indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In any and all claims, demands and suits against any of the Indemnified Parties by an employee of any of the Contractor Parties, the defense and indemnification obligations under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by any of the Contractor Parties under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 If any defense or indemnity obligation of the Contractor under this Section 3.18, or any other defense or indemnity obligation in favor of any of the Indemnified Parties required by or contained elsewhere in the Contract, is held to be unenforceable, Contractor agrees to defend, indemnify and hold harmless such persons or entities to the full extent permitted by Law. Further, the liability of the Contractor arising out of its defense and indemnity obligations under the Contract shall survive completion, expiration or termination of the Contract, shall not be limited or diminished in any way by insurance coverage, 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.

§ 3.19 Record Documents and Samples at the Project Site

The Contractor shall maintain at the Project site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate as-built conditions, field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals (the "Contractor's Record Documents"). The Contractor's Record Documents shall be available onsite to the Owner and Architect at all times while the Work is in progress, shall be updated at least monthly for review and comment at monthly meetings and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor's Record Documents for underground utilities shall be submitted to the Architect within thirty (30) days of completion of such utility work. Submittal to the Architect of all other documents required by the Contract Documents and closeout procedures is a condition precedent to final payment.

§ 3.20 Project Closeout/Turnover Meeting

The Contractor shall conduct a closeout/turnover meeting with the Owner's plant operations staff, the Owner's Representative, and the Architect to be held within ten (10) days prior to the proposed Substantial Completion date. At this meeting, the Contractor shall review and present the prepared Operation and Maintenance Manual and all applicable asset spreadsheet information, testing and balancing reports, internal commissioning reports, warranties, current BIM models, and other documents required by the Specifications and other Contract Documents. The Owner's commissioning agent, if any, shall present its findings, if complete, and the parties shall plan and discuss the proposed

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Date of Substantial Completion, submittal of the Contractor's Record Documents and other required documents, and other closeout/handover requirements, procedures, and issues.

§ 3.21 Post Completion Inspection

The Contractor shall schedule and conduct an inspection of the Project, or portion thereof if delivered in phases, approximately eleven (11) months, and no later than twelve (12) months, following the Date of Substantial Completion. The inspection shall be conducted with the Owner and Architect for the purpose of complying with and identifying obligations under Section 12.2 during the one-period for correction of the Work.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

§ 4.1.2 Unless requested by the Owner in writing, and consented to by the Architect, the duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will have authority to act on behalf of the Owner as provided in the agreement between the Owner and the Architect.

§ 4.2.2 The Architect will visit the site at various times as agreed with the Owner to observe the progress and quality of the Work, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

§ 4.2.4 Communications

Communications between any of the Owner, Architect, and Contractor relating to the performance or administration of the Contract shall be made or confirmed in writing, with copies to the Architect and Owner. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with the Contractor Parties shall be through the Contractor unless otherwise provided in the Contract Documents or authorized by the Contractor. Communications by and with Separate Contractors shall be through the Owner. All communications related to a change in the work or a Modification must be documented in writing as required by the Contract Documents. The Contract Documents may specify other communication protocols for specific circumstances.

§ 4.2.5 Based on the Architect's evaluations of the Work as provided in Section 4.2.2, and the Contractor's Applications for Payment, the Architect will review and certify the appropriate amounts due the Contractor and will issue Certificates for Payment in such amounts.

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with

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information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect and Owner and with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will review and take the appropriate action on Change Orders and Potential Change Orders, and other requests that require the Architect's action as provided in Article 7. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date or dates of final completion; issue Certificates of Substantial Completion in accordance with Section 9.8; receive, review and forward to the Owner, for the Owner's review and records, affidavits, certificates, written statements, manuals, guarantees, warranties, record documents and other documents and submittals required by the Contract and assembled by the Contractor in accordance with Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The Architect will interpret, report on and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as not to delay the Project.

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if approved by the Owner and consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as not to delay the Project. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.1.3 A Supplier is a person or entity, other than a Subcontractor in accordance with Section 5.1.1, that has a direct contract with the Contractor to provide a portion of the Work or otherwise provide materials, equipment, tools,

construction equipment, machinery, water, heat, utilities, transportation or any other items, facilities or services for the Project. The term "Supplier" is referred to throughout the Contract Documents as if singular in number and means a Supplier or an authorized representative of the Supplier.

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

§ 5.2.1 If the Contract is a Stipulated Sum Contract, the Contractor, as soon as practicable and no later than thirty (30) days prior to commencement of the Work, shall notify in writing the Owner and Architect of the persons or entities proposed for each principal portion of the Work (including those who are to provide materials or equipment fabricated to a special design), including subcontractors, sub-subcontractors, suppliers, vendors and manufacturers. The Contractor shall solicit and consider bids from any persons or entities specified by the Owner. With respect to each potential Subcontractor, the Contractor shall provide (a) contact information; (b) a description of the scope of work; (c) an itemization of the labor and material costs; (d) stipulated labor rates, unit pricing, overhead and profit for changes in the Work and (e) a cost comparison of any and all competing bids. Within fourteen (14) days of receipt of the information, the Owner or the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall not constitute any type of waiver of any requirements of the Contract Documents.

§ 5.2.2 If the Contract is a GMP Contract, the Contractor, as soon as practicable and no later than thirty (30) days prior to commencement of the Work, shall obtain bids from persons and entities (including those who are to provide materials or equipment fabricated to a special design) for each portion of the Work, including subcontractors, sub-subcontractors, suppliers, vendors and manufacturers, and submit such bids to the Owner and the Architect along with an analysis of such bids and recommendations. Unless otherwise approved by the Owner, the Contractor shall obtain competitive bids from at least three (3) qualified bidders with respect to each portion of the Work and solicit and consider bids from persons or entities specified by the Owner. With respect to each potential subcontractor, the Contractor shall provide (a) contact information; (b) a description of the scope of work; (c) an itemization of the labor and material costs; (d) stipulated labor rates, unit pricing, overhead and profit for changes in the Work and (e) a cost comparison of all competing bids. Before submittal to the Owner and the Architect, the Contractor shall review the bids in detail and verify that each bid complies in format and detail to the requirements of the Contract Documents. The Owner shall then determine, with the advice of the Contractor and the Architect, the bids to be accepted by the Contractor. The acceptance or approval by the Owner of a bid from a Subcontractor or Supplier shall not constitute any type of waiver of any requirements of the Contract Documents. If requested by the Owner, potential bidders for principal or critical portions of the Work must be pre-approved by the Owner and invitations to bid shall be submitted to the Owner and the Architect for review and approval prior to being issued to potential bidders.

§ 5.2.3 If the Owner has reasonable objection to or declines to select a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected person or entity had submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, was reasonably qualified in accordance with Section 5.2.5 and was capable of performing its portion of the Work, an appropriate Change Order adjusting the Guaranteed Maximum Price by the difference between the bid proposed and the bid ultimately selected shall be warranted if the bid proposed was specifically relied upon in the determination of the Guaranteed Maximum Price. However, no increase in the Guaranteed Maximum Price or Contract Time shall be allowed for such difference unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not contract with a person or entity who does not meet the qualifications set forth below in Section 5.2.5 or to whom the Owner has made an objection. The Contractor shall not be required to contract with a person or entity to whom the Contractor has made reasonable objection. The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected unless the Owner approves in advance in writing.

§ 5.2.5 Prior to submitting or proposing a person or entity to the Owner and Architect for approval, the Contractor shall obtain, and furnish if requested, documentation that such person or entity (a) is financially solvent and able to pay all debts as they mature, and possesses sufficient working capital to complete its portion of the Work and pay all costs associated therewith; (b) is able to provide the services, plant, tools, materials, supplies, equipment, labor and other items required to complete its portion of the Work and timely and fully perform its obligations; (c) is authorized to do business in Nashville, Tennessee, and properly licensed or registered as necessary by or with all governmental and public and quasi-public authorities having jurisdiction; (d) possesses a high level of experience, expertise and

competence with projects of the size, complexity and nature of this particular Project; and (e) meets any other qualifications set forth in the Contract Documents. The Contractor shall also disclose in writing if any proposed Subcontractor, Sub-subcontractor or Supplier is a Related Party and provide full disclosure of all details regarding the nature of the relationship. Subcontractors and Suppliers for principal or critical portions of the Work must be pre-approved by the Owner prior to being invited to bid on the Project.

§ 5.2.6 Prior to submitting a bid, each prospective Subcontractor and Supplier shall review in detail the Contract Documents applicable to its proposed portion of the Work and shall be given an opportunity to inspect the site and meet with the Architect and applicable engineers.

§ 5.2.7 The Contractor may perform trade work with the Contractor's own forces or through a Related Party only if specifically approved in writing by the Owner after receipt of full written disclosure of the parties' relationship, the circumstances warranting the self-performance, a full breakdown of the proposed pricing and the results of competitive bidding. The competitive bidding shall include written bid proposals from at least two (2) potential subcontractors preapproved by Owner, the Owner shall receive and open the proposals and the Contractor shall submit its written bid proposal at least twenty-four (24) hours before the bid deadline. Any agreement between the Contractor and a Related Party must be in writing and in accordance with the same terms and conditions as any other Subcontractor, Sub-subcontractor or Supplier. With respect to trade work performed by the Contractor's own forces, the details of such arrangement must be specified in the Agreement or incorporated into the Contract by Modification, and if performed on the basis of cost plus a fee, the cost of such work shall be subject to the "Cost of the Work" restrictions set forth in Article 16, specified labor and labor burden rates, and a guaranteed maximum cost.

§ 5.2.8 No contract shall be awarded to a Subcontractor or Supplier on the basis of cost plus a fee without the prior written approval of the Owner. If an agreement with a Subcontractor is awarded on a cost plus a fee basis, the reimbursable costs must be preapproved by the Owner and consistent with the limitations in Article 16, the agreement must include a guaranteed maximum price, and the agreement must grant the Contractor and Owner the same accounting and audit rights and obligations with respect to the Subcontractor as the Owner has with respect to the Contractor under the Contract. The Contractor shall be responsible for performing and paying for the audit and the cost incurred therefor shall be includable in the Cost of the Work in accordance with Section 16.6.16.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor and Supplier to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's or Supplier's Work that the Contractor, by these Contract Documents, assumes toward the Owner. Each Subcontract and Supplier agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor and Supplier so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, or Supplier, unless specifically provided otherwise in writing, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with its suppliers and Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor and Supplier, prior to the bidding and signing of the subcontract or supplier agreement, copies of the Contract Documents to which the Subcontractor or Supplier will be bound. The Contractor shall require that Subcontractors similarly make copies of applicable portions of such documents available to their respective proposed suppliers and Sub-subcontractors.

§ 5.3.2 All agreements with Subcontractors and Suppliers shall be in writing, shall conform to and incorporate all of the applicable provisions of the Contract Documents, including the Owner's payment obligations and rights, shall include provisions that allow the Owner to suspend or terminate the Work without payment for work not performed in accordance with Article 14 and shall specifically provide that Owner is an intended third-party beneficiary of such agreement without Owner liability to the Subcontractor or Supplier for any benefits conferred. If requested by the Owner, Contractor shall furnish copies of agreements with Subcontractors or Suppliers within five (5) days of any such request.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each agreement with a Subcontractor or Supplier for a portion of the Work is hereby assigned by the Contractor to the Owner, provided that:

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

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

§ 5.4.2 Such assignment of a subcontract or supplier agreement to the Owner under this Section 5.4 does not relieve the Contractor of its duties, liabilities, obligations or responsibilities under the Contract Documents or its duties, liabilities, obligations or responsibilities that arise under the assigned agreement prior to the assignment, nor shall any such assignment be deemed a waiver by the Owner of any action or claim that the Owner could assert against the Contractor.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean a person or entity other than the Contractor, a Subcontractor, Sub-subcontractor or Supplier, retained under direct contract with the Owner or another Separate Contractor to perform work on portions of the Project or operations on the Project Site. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors.

§ 6.1.2 The Contractor shall provide for coordination of the Work with the activities of the Owner's own forces and of each Separate Contractor. The Contractor shall adjust its construction schedule as necessary to accommodate for such activities. Provided such adjustments are approved by the Owner, the construction schedules shall be the schedules to be used by the Contractor, Separate Contractors, and the Owner, and the Contractor shall provide for the coordination of their activities.

(Paragraphs deleted)

§ 6.2 Mutual Responsibility

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

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including those payable to Separate Contractors, because of any of the Contractor Parties' delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction, provided such delay, activity, damage or defect is not caused in part by any of the Contractor Parties and a Claim is asserted in accordance with Articles 7, 8 and 15.

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

(Paragraph deleted)

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible, and the portion allocated to the Contractor shall be deducted from the amounts owed the Contractor.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after the signing of the Contract, and without invalidating the Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Guaranteed Maximum Price and Contract Time can only be adjusted by a Change Order.

§ 7.1.2 A Change Order is the written agreement regarding a change in the Work among the Owner, Contractor, and Architect. The Owner may also order modifications, additions, deletions, and other changes in the Work by a Construction Change Directive, which is a written order signed by the Owner directing a change in the Work prior to full agreement on adjustment, if any, in the Guaranteed Maximum Price or Contract Time, or both. No changes in the Work shall be incorporated into the Work until directed by the Owner in writing.

§ 7.1.3 Changes in the Work shall be performed in accordance with the provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work upon written direction, unless otherwise provided in the Change Order or Construction Change Directive.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument signed by the Owner, Contractor, and Architect that incorporates into the Contract Documents, by reference and attachment, one or more Potential Change Orders issued and approved in writing in accordance with Section 7.3. Each Change Order is a complete statement of the agreement upon each of the following:

- .1 The change(s) in the Work;
- .2 The amount of the adjustment, if any, in the Guaranteed Maximum Price; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The Contractor shall not be entitled to any increase in the Guaranteed Maximum Price or extension of the Contract Time for furnishing labor, materials, equipment, services or other items that are not required by the Contract Documents as amended in accordance with Article 7. Nor shall the Contractor be entitled to any Change Order for changes in the Work arising out of a default or negligence of any of the Contractor Parties.

§ 7.2.3 A Change Order shall constitute 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 or delay attributable to the change and any and all adjustments to the Guaranteed Maximum Price and Contract Time unless specifically noted otherwise in the Change Order, and shall constitute a waiver by Contractor of its right or claim to any other adjustments to the Guaranteed Maximum Price or Contract Time due to the change unless specifically noted otherwise in the Change Order.

§ 7.2.4 The Contractor shall endeavor to minimize the number of Change Orders by combining multiple Potential Change Orders and by limiting the frequency as needed for timely payment of Subcontractors and Suppliers.

§ 7.3 Potential Change Orders

§ 7.3.1 A Potential Change Order (also known in the industry as a change order request or change order proposal) is a written instrument prepared by the Contractor for written approval by the Owner and Architect, regarding a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price or Contract Time, or both. A properly prepared, approved, and signed Potential Change Order is necessary for each change in the Work prior to incorporation into the Contract Documents via Change Order. Each Potential Change Order must be a complete statement of the proposed:

- .1 Change in the Work;

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- .2 Amount of adjustment, if any, in the Guaranteed Maximum Price; and
- .3 Extent of the adjustment, if any, in the Contract Time.

§ 7.3.2 Whenever the Contractor receives a Construction Change Directive or becomes aware of circumstances or conditions that will change or result in a change in the Work or for any reason warrant adjustments in the Guaranteed Maximum Price or Contract Time, the Contractor shall promptly notify the Owner in writing in accordance with Section 7.4 with an approximate estimate of the changes in cost and schedule attributable to the change in the Work. If the Owner agrees that consideration of a Potential Change Order is warranted, the Contractor shall promptly prepare and submit a Potential Change Order to the Architect and Owner specifying the change in the Work, the basis for the request, and the proposed adjustments. The Contractor must include all available documentation supporting the reasons for the request and any proposed adjustments in accordance with Sections 7.3 and 8.3.

§ 7.3.3 If the Potential Change Order provides for an adjustment to the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum based on a detailed estimate in accordance with Section 7.3.4 that is properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 Unless the Contractor and Owner agree otherwise, adjustments to the Guaranteed Maximum Price shall be determined on the basis of reasonable costs incurred and saved by those persons or entities performing the portions of the Work affected by the change, plus or minus an amount for overhead and profit for each as set forth in Section 7.3.9. The Contractor and each Subcontractor and Sub-subcontractor shall furnish an itemized estimate and keep and present, in such form and detail as the Owner prescribes, an itemized accounting of actual costs incurred and saved together with appropriate supporting data, including subcontractor change orders and other agreements related to the change. Such estimates and accountings shall separately itemize overhead and profit, each trade and service, labor, materials, equipment, and all other significant portions of the Work, and provide detail with respect to quantities, labor hours and rates, taxes, and insurance. If the Contract is a GMP Contract, costs for the purposes of this Section 7.3.4 with respect to the Contractor shall be limited to those includable in the Cost of the Work in accordance with Article 16; otherwise, expenditures and savings for the purposes of this Section 7.3.4 shall be subject to Section 7.3.9 and limited to the following costs directly attributable to the change:

- .1 Costs of labor, including only hourly wages, applicable payroll taxes, fringe benefits required by written agreement or Law, workers' compensation insurance, and other employee costs if approved in writing by the Owner;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated in the Work or delivered and suitably stored at the Project site for subsequent incorporation in the Work;
- .3 Rental costs of machinery and equipment, exclusive of hand tools at market prices;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes; and
- .5 Costs of supervision and field office personnel.

§ 7.3.5 The Architect shall review each Potential Change Order and, if reasonably necessary or requested by the Owner, promptly prepare the drawings, specifications, and other documents required to properly price, implement, and document the change in the Work. If such documents are prepared or the Architect identifies any deficiencies in the Contractor's submittal, the Contractor shall promptly revise the Potential Change Order as necessary. When the Architect determines that the Potential Change Order is complete and in accordance with the requirements of the Contract, the Architect shall sign the Potential Change Order and send the same, with all documentation, to the Owner for review and consideration.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work, prepare a Potential Change Order in accordance with Sections 7.3.2 and 7.3.4, and keep and maintain detailed records of time, materials, and costs of each of the Contractor Parties with respect to the change in the Work; otherwise, the Contractor shall promptly proceed with the change in the Work upon the Owner's written approval of a Potential Change Order.

§ 7.3.7 A Potential Change Order submitted by the Contractor and approved in writing by the Owner indicates the parties' agreement therewith and constitutes a settlement of all matters relating to the change in the Work that is the subject of the Potential Change Order, including all direct and indirect costs associated with such change, any and all adjustment in Guaranteed Maximum Price and Contract Time, and the method for determining them. Such Potential Change Order shall be effective immediately and the Contractor shall prepare a Change Order, if applicable, incorporating the change in the Work into the Contract Documents for the signatures of the Architect, Contractor and Owner.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Guaranteed Maximum Price shall be determined on the basis of reasonable costs incurred and saved by those performing those portions of the Work affected by the change, including an amount for overhead and profit for each entity as set forth in Section 7.3.9. When both additions and credits covering related Work or substitutions are involved in a change, the amount for overhead and profit shall be adjusted on the basis of net cost decrease or increase, if any, with respect to that change.

§ 7.3.9 For purposes of determining adjustments to the Guaranteed Maximum Price for changes in the Work, adjustments shall be subject to any rates and pricing set forth in the agreements with the Subcontractors, but in no event shall combined overhead and profit rates exceed:

- .1 Ten percent (10%) for Subcontractors or Sub-subcontractors with respect to work performed by their own forces;
- .2 Five percent (5%) for Subcontractors or Sub-subcontractors with respect to work performed by their subcontractors; or
- .3 Five percent (5%) for the Contractor with respect to work performed by its own forces or Subcontractors or Sub-subcontractors.

However, the combined overhead and profit of all tiers, including the Contractor and all Subcontractors and Sub-subcontractors of any tier, included in any Change Order shall not exceed in the aggregate twenty-five percent (25%) of the labor, materials and equipment costs included in the Change Order. Also, if the Contract is a GMP Contract, the amount allowed for overhead for the Contractor shall be the same percentage or ratio as the Overhead Fee in the Agreement and the amount allowed for profit shall be the same percentage or ratio as the Contractor's Fee in the Agreement, but no more than five percent (5%) combined.

§ 7.3.10 To the extent the Owner and Contractor cannot reach agreement concerning a pending Potential Change Order or any other request for adjustments in the Guaranteed Maximum Price and Contract Time, Claims must be made in accordance with the applicable provisions of Article 15.

§ 7.4 Project Issues Log

§ 7.4.1 The Contractor shall maintain and keep current a log that identifies and tracks the status, costs, and time impacts of all issues that require Owner notice, approval, or attention (the "Project Issues Log"), which shall include all known changes, conditions, events, and other issues that might:

- .1 Result in a change in the Work, including alternates, substitutions, adjustments to the construction schedule, Change Orders, Potential Change Orders, and changes that might not require adjustment(s) to the Contract Sum, Guaranteed Maximum Price, or Contract Time;
- .2 Warrant a Schedule Correction Plan;
- .3 Result in the use of a general or specific contingency or allowance;
- .4 Result in an early release of a portion of retainage;
- .5 Warrant an adjustment in the Schedule of Values;
- .6 Impact the costs and expenses incurred by the Contractor, including discrepancies in scopes of work, potential disputes with Subcontractors or Suppliers, etc.;
- .7 Require the Owner's written approval in accordance with Article 16; or
- .8 Cause delays or otherwise impact the schedule or the timing of the Work.

§ 7.4.2 For each item added to the Project Issues Log, including items that will not require adjustment(s) to the Contract Sum, Guaranteed Maximum Price, or Contract Time, the Contractor shall promptly prepare and submit to the Owner and Architect a written notice or request, in a form satisfactory to the Owner, based on the best available

information at the time and updated as reasonably necessary to keep the Owner and Architect well informed with respect to status and potential costs and delays. At a minimum, each notice or request must:

- .1 Describe the potential, proposed, or approved changes, conditions, event, or issue;
- .2 Itemize all costs and expenses that have been or might be incurred or saved as a result of the issue in a manner consistent with the estimates and accounting described in Section 7.3.4;
- .3 Reference any associated written contingency or allowance allocation request, Change Orders, and Potential Change Orders; and
- .4 Indicate whether the issue involves (a) a change in the Work, (b) an adjustment to the Contract Sum, Guaranteed Maximum Price, or Contract Time, (c) the use of a general or specific contingency or allowance, (d) an adjustment to the Schedule of Values, (e) an adjustment to the construction schedule or a Schedule Correction Plan, (f) the written approval of the Owner to include a certain expense in the Cost of the Work or (g) the early release of a portion of the retainage.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The Date of Commencement of the Work is the date of the Agreement, unless otherwise stipulated in the Agreement or in a Notice to Proceed from the Owner. The "Date of Commencement" as used herein is not defined by the date the Contractor actually commences the Work.

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

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

§ 8.2 Progress and Completion

§ 8.2.1 The Contract Time and other specific time limits, deadlines, and milestone dates stated in the Contract Documents are of the essence of the Contract, and the Contractor's failure to comply with any of these time limits shall constitute a material breach of the Contract. By signing the Agreement, the Contractor confirms that it has become familiar with any scheduling limitations that may apply to the Work and that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date(s) of any bonds or insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and final completion within the required time.

§ 8.2.4 The Contractor shall not commence operations at the site prior to obtaining the necessary authorizations, licenses, and permits in accordance with Section 3.7 and providing copies of such to the Owner and Architect. The Contractor shall notify the Owner in writing not less than five (5) days before commencing operations at the site to allow for timely notices.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work in accordance with Article 7; (3) by fire, unavoidable casualties, or other causes beyond the control of the Contractor or other Contractor Parties; or (4) by delay authorized by the Owner, and provided such delay is not caused in part by any of the Contractor Parties, the Guaranteed Maximum Price shall be adjusted in accordance with Article 7 to incorporate the additional costs necessary to correct such delay under a Schedule Correction Plan implemented in accordance with Section 3.10.5. Adjustments in the Guaranteed Maximum Price or Contract Time shall not be granted for labor disputes or delays in deliveries. The Contractor shall not be entitled to an extension of the Contract Time unless the Work is delayed as described above and such delay cannot possibly be corrected by a plan of specific corrective actions in accordance with Section 3.10.5.

§ 8.3.2 Whenever the Contractor becomes aware of circumstances or conditions that might warrant a Schedule Correction Plan, an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time, the Contractor shall promptly notify the Owner in accordance with Section 7.4 and proceed in accordance with Section 7.3. Delays caused by concealed or unknown conditions shall also be subject to the provisions of Section 3.7.4. To the extent the Contractor and the Owner cannot agree with respect to an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time, Claims relating to time must be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Additional costs for Owner-provided furniture and equipment, including storage, double handling, re-shipping, etc., and rental and other expenses for temporary replacement facilities or utilities incurred by the Owner because of a failure to obtain Substantial Completion within the Contract Time shall be considered direct damages.

§ 8.3.4 The Contractor shall not be entitled to an extension of the Contract Time for a delay caused by weather conditions unless such delay cannot possibly be corrected by a plan of specific corrective actions in accordance with Section 3.10.5. Adjustments to the Guaranteed Maximum Price or Contract Time in accordance with Section 8.3.1 to correct for delays caused by weather shall be limited to the actual delays in the critical path of the Contractor's construction schedule and such conditions that are more severe than could have been reasonably anticipated in accordance with the records of the National Weather Service.

§ 8.4 Working Hours and Restrictions

§ 8.4.1 No portion of the Work shall be performed at the site outside the normal working hours specific to the Project except as provided in the Contract Documents or as specifically approved by the Owner in writing. Notwithstanding the foregoing, the Owner shall 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 the ongoing operations of the Owner. The Contractor shall be responsible for identifying all legal and facility specific limitations and incorporating such limitations into the Contractor's construction schedule, including limited pedestrian or vehicle access, noise restrictions, partial occupation, and use of adjacent structures. No construction activity shall take place during commencement activities, which are in May each year.

§ 8.4.2 Before scheduling or performing any portion of the Work at the site outside normal working hours, including any measures proposed to correct delays in accordance with Section 3.10.5, the Contractor shall submit a written request and plan to the Owner with specific detail on the proposed activities, times, and dates. The Contractor's activities at the site outside normal working hours shall be limited to those specifically approved by the Owner in writing. Neither approvals nor denials of requests to perform activities outside normal working hours shall warrant or be construed as adjustments to the Guaranteed Maximum Price or Contract Time, and additional costs incurred by the Contractor due to the performance of activities outside normal working hours shall be the responsibility of the Contractor unless otherwise specifically stated and approved.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Guaranteed Maximum Price includes the allowances set forth in the Contract Documents and shall be adjusted prior to Final Payment in accordance with Section 3.8.

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

§ 9.2 Schedule of Values

§ 9.2.1 As soon as practicable and no later than thirty (30) days prior to commencement of the Work, the Contractor shall submit for the Owner's approval a schedule of values allocating the entire Guaranteed Maximum Price to the various portions of the Work (the "Schedule of Values"). The Schedule of Values shall be prepared in the form of AIA Document G703™-1992, Continuation Sheet, and prepared in such detail, and supported by the data to substantiate its accuracy, as may be required by the Architect and the Owner. The Schedule of Values, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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§ 9.2.2 The Schedule of Values shall include separate line items for each Subcontractor and Supplier with values equal to the actual amounts owed for the particular portion of the Work to such Subcontractors and Suppliers under their agreements with the Contractor. General conditions costs, the General Contingency, specific contingency or allowances, and all other allowances for particular trades and unknown conditions must also be itemized separately. If the Contract is a GMP Contract, the Contractor's Fee, Overhead Fee, staffing costs, and each of the Direct Reimbursable Costs shall also be separate line items. The Schedule of Values must also include an additional column for the values initially allocated and approved by Owner, which values shall not change in subsequent schedules.

§ 9.2.3 All cost allocations to general or specific contingency or allowance line items within the Schedule of Values that exceed \$5,000 must have prior written approval in accordance with Section 3.8.3, and the written request signed by the Owner's Representative must be submitted with the Application for Payment.

§ 9.2.4 The Schedule of Values shall be updated as necessary to incorporate Change Orders that have been signed by all parties in accordance with Article 7. Such Change Orders shall be itemized separately unless otherwise directed by the Owner. The Schedule of Values shall also be updated as necessary to incorporate changes in the allocation of the Guaranteed Maximum Price due to the use of allowances approved in accordance with Section 3.8.3 or due to Buyout Savings in accordance with Section 3.8.6. All modifications to the allocation of the Guaranteed Maximum Price within the Schedule of Values must be specifically approved in writing by the Owner's Representative and such approval must be submitted with the Application for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 Promptly after the last day of each month, the Contractor shall submit concurrently to the Owner and the Architect an itemized Application for Payment prepared in accordance with the most recently approved Schedule of Values for completed portions of the Work. The application shall be submitted as requested by the Owner's Representative, shall be in the form of AIA Document G702™-1992, Application and Certificate for Payment, and submitted with the documentation required by the Contract Documents, Owner, or Architect to support the Contractor's right to payment, such as copies of requisitions, and releases and waivers of liens, from Subcontractors and Suppliers, and shall reflect adjustments for retainage.

§ 9.3.1.1 Applications for Payment shall include monthly reports, updated logs, and updated progress schedules in accordance with Sections 3.10 and 3.11, a written itemization of the taxes saved and amounts paid directly by Owner for equipment, materials, and products in accordance with Section 3.4.4, an updated cash flow schedule for the remainder of the Project, an updated retainage account statement and summary, a Contractor's progress release and affidavit in the form attached hereto as Exhibit A, and a notarized affidavit from the Contractor listing the payees, dates, and amounts of all payments made and all payments owed to Subcontractors and Suppliers for the Project to date. Each application shall also include the releases collected by the Contractor in accordance with Section 9.6.8. The Owner's receipt of such affidavits, schedules, reports, and other documents are conditions precedent to the Owner's obligation to make the progress payments to the Contractor.

§ 9.3.1.2 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work that has actually been completed and confirmed by the Architect. Applications for Payment that indicate a percentage of completion for any portion of the Work in excess of one hundred percent (100%) will be rejected. If expenses actually incurred for any line item in the Schedule of Values exceed the last value approved for such line item, the Contractor shall request an adjustment to the Schedule of Values in accordance with Section 7.4 and submit the approved request with the Application for Payment.

§ 9.3.1.3 If the Contract is a GMP Contract, and unless otherwise provided in the Agreement, Applications for Payment shall also include a detailed job cost report generated by software approved by the Owner and supporting documentation, such as copies of payroll records with hours detail, employee time sheets, cash ledgers, evidence of payments, receipts, bills, invoices, Subcontractor pay applications, and other documentation the Owner or Architect may request.

§ 9.3.1.4 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or Supplier within seven (7) days after receipt of payment from the Owner in accordance with Section 9.6.2.

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

§ 9.3.3 If the Contract is a Stipulated Sum Contract, the amount of each progress payment shall be, subject to other provisions of the Contract Documents, computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored in accordance with Section 9.3.2;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract amounts, if any, withheld or nullified in accordance with Section 9.5; and
- .5 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less amounts withheld pursuant to Sections 9.8.5 and 9.8.6.

§ 9.3.4 If the Contract is a GMP Contract, the amount of each progress payment shall be, subject to other provisions of the Contract Documents, computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work and includable in the Cost of the Work under Section 16.2, as determined by multiplying the percentage of completion of such portion of the Work by its monetary value in the Schedule of Values;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment purchased and delivered and suitably stored in accordance with Section 9.3.2, and includable in the Cost of the Work under Section 16.3;
- .3 Add the appropriate portion of the Staffing Fee, which shall be the Staffing Costs includable in the Cost of the Work under Section 16.4 or, if the Staffing Fee is a stipulated sum, based on (i) the percentage of completion of the Work or (ii) a monthly distribution of the Staffing Fee preapproved by the Owner in writing;
- .4 Add the Direct Reimbursable Costs includable in the Cost of the Work under Section 16.6;
- .5 Add the appropriate portion of the Overhead Fee based on (i) the percentage of completion of the Work or (ii) a monthly distribution of the Overhead Fee preapproved by the Owner in writing;
- .6 Add the appropriate portion of the Contractor's Fee based on (i) the percentage of completion of the Work or (ii) a monthly distribution of the Contractor's Fee preapproved by the Owner in writing;
- .7 Subtract the aggregate of previous payments made by the Owner;
- .8 Subtract amounts, if any, withheld or nullified in accordance with Section 9.5;
- .9 Subtract amounts, if any, to account for shortfalls or errors subsequently discovered between previous progress payments and the documentation substantiating the Cost of the Work; and
- .10 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less amounts withheld pursuant to Sections 9.8.5 and 9.8.6.

§ 9.3.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of any of the Contractor Parties or any other persons or entities having provided labor, materials, or equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly

due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the accuracy and completeness of the information and documentation in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject (a) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (b) to results of subsequent tests and inspections, (c) to correction of minor deviations from the Contract Documents prior to final completion, and (d) to specific qualifications expressed in writing by the Architect.

§ 9.4.3 However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) made a detailed examination, audit, or arithmetic verification of the documentation or reviewed copies of requisitions received from Subcontractors and Suppliers and other documentation requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims asserted or reasonable evidence indicating probable assertion of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or Suppliers or to furnish satisfactory evidence of payment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure of the Contractor to comply with any Laws; or
- .8 failure to carry out the Work in accordance with, or any other failure to comply with, the Contract Documents.

§ 9.5.2 Notwithstanding certification of payment by the Architect, the Owner may withhold payment for any of the reasons set forth in Sections 9.5.1 or 9.5.4. When Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, or the Contractor disputes any withholding of payment by the Owner, the Contractor may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3 or the Contractor is otherwise in default as described in such section, or if the Architect reasonably believes it is necessary to protect the Owner from loss for which the Contractor is responsible, the Owner may, at its sole option, make direct payments to the unpaid

Subcontractors, Sub-subcontractors, or Suppliers and deduct such payments from amounts owed the Contractor. In addition, any time the Owner reasonably believes it is necessary to protect the Owner from loss for which the Contractor is responsible, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor, Sub-subcontractor, or Supplier for Work properly performed or material or equipment suitably delivered. If the Owner makes such payments by direct payment or joint check, the Owner shall notify the Architect and the Contractor, and the Contractor shall reflect such payment on its next Application for Payment. No payment or joint check issued hereunder, or anything contained in this Section 9.5.3, shall be construed to create an obligation of Owner to any Subcontractor, Sub-subcontractor, or Supplier.

§ 9.5.5 The Contractor's obligations under the Contract Documents to timely submit specific schedules, certificates of insurance, monthly reports, information, and other documentation are conditions precedent to the Owner's obligations to make payments to the Contractor and the Architect shall withhold certifications for payment if the Contractor fails to meet such obligations.

§ 9.6 Progress Payments

§ 9.6.1 Provided the Owner's Representative has approved the Application for Payment, the Architect has issued a Certificate for Payment, and the Owner does not withhold payment, or a portion thereof, in accordance with Section 9.5, the Owner shall, within forty-five (45) days of receipt of a proper and complete Application for Payment, make payment to the Contractor in the amount certified by the Certificate for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, less retainage as set forth in Section 9.6.9. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors and its material and equipment suppliers in a similar manner. Unless otherwise approved by the Owner in writing, the Contractor shall not release retainage to Subcontractors or make advance payments to Subcontractors or Suppliers for materials or equipment that have not been delivered and suitably stored at the site. Contractor, however, shall be solely responsible to Subcontractors for retainage releases and payments due under the Law.

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

§ 9.6.4 Upon Owner's written request, the Contractor shall furnish to the Architect and Owner written evidence that the Contractor has properly paid Subcontractors and Suppliers with respect to the amounts paid by the Owner to the Contractor for subcontracted Work. The Owner and Architect shall have the right to contact and obtain such written information from the Subcontractors and Suppliers directly. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or Supplier, except as may otherwise be required by law.

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

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

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors or provided by Suppliers shall be held by the Contractor for those Subcontractors or Suppliers who performed Work or provided materials, or both, under contract with the Contractor for which payment was made by the Owner. Except as otherwise required by Law, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Before each progress payment to a Subcontractor or Supplier with contracts for the Project totaling in excess of Twenty-Five Thousand Dollars (\$25,000), the Contractor must obtain a progress release and affidavit in the form attached hereto as Exhibit B, properly completed and signed by the Subcontractor or Supplier. The Contractor must

maintain these progress releases and submit them to the Owner upon Substantial Completion, and at any other time demanded by the Owner. Before the final payment to such Subcontractors and Suppliers, the Contractor must obtain a final release and affidavit in the form attached hereto as Exhibit C, properly completed and signed by the Subcontractor or Supplier. These final releases must be submitted to the Owner with the final Application for Payment in accordance with Section 9.10.2.

§ 9.6.9 Unless otherwise approved by the Owner in writing, the Contractor shall withhold retainage of five percent (5.0%) from all payments to Subcontractors and deposit such retainage into a separate, interest bearing escrow account in accordance with Section 66-34-104 of Tennessee Code Annotated. The Contractor shall also deposit into the escrow account five percent (5.0%) of all amounts paid to the Contractor by the Owner for self-performance under Section 5.2.6. The Contractor shall establish the escrow account with a financial institution and under an escrow agreement approved by the Owner. No amounts shall be disbursed from the escrow account except as allowed by the Agreement and all disbursements must be approved in advance by Owner with a Retainage Release Form. With each Application for Payment, the Contractor shall submit an updated retainage summary and an account statement evidencing the proper balance and payments to the account.

§ 9.6.10 To the full extent permitted by law, and provided the Contractor has been paid in accordance with the Contract Documents with respect to the portion of the Work for which the lien claim or other claim for payment is asserted, the Contractor shall defend, if the Owner elects, and indemnify and hold harmless the Owner from and against any and all claims, losses, liability, damages, and expenses, including attorney, expert, and consultant fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor, Sub-subcontractor, or Supplier of any tier, or by any other person or entity asserting the claim based on the Work. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If any mechanics' or materialmen's liens, or liens of like nature, are at any time asserted or recorded against the Project as a result of activities of any of the Contractor Parties or any other person or entity making a claim by reason of having provided services, labor, materials or equipment relating to the Work, Contractor, at its expense, shall promptly substitute a surety bond or take and diligently prosecute another appropriate action to have the same discharged within fifteen (15) days after notice of assertion or filing thereof or such lesser period as shall be necessary to prevent judgment, execution, or foreclosure of such lien or any other adverse consequences for Owner. Upon Contractor's failure to do so, Owner, in addition to any other right or remedy that Owner has, may take such action as reasonably necessary to protect Owner's interest, including payment or settlement of the lien and any related legal action, and Contractor shall reimburse Owner, or Owner may deduct from amounts owed Contractor, any amounts and damages paid or incurred by the Owner, including any attorney, expert and consultant fees and expenses, in connection with such lien and legal action..

§ 9.7 Failure of Payment

Subject to the Architect's and Owner's rights to withhold certification and payment as set forth in Section 9.5, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within twenty-one (21) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date required in accordance with Section 9.6.1 the amount certified by the Architect and approved by the Owner's Representative, then the Contractor may, upon thirty (30) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. Upon such payment, the Contractor shall promptly resume the Work and submit a Potential Change Order for an adjustment to the Guaranteed Maximum Price for the costs incurred due to the shut-down, delay, and start-up and the costs to be incurred to implement a Schedule Correction Plan.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can legally and reasonably occupy and utilize the Work for its intended use. Substantial Completion shall not be considered achieved until (a) all mechanical, electrical, plumbing, heating, air conditioning and other systems are fully tested and operational as designed and specified, (b) all required inspections by public authorities have been completed and all permits, approvals, and certificates required for use and occupancy of the improvements have been issued, (c) all unfinished portions of the Work, including all items on the comprehensive list prepared in accordance with Section 9.8.2 can be completed within thirty (30) days, (d) all known defects and deficiencies in the Work can be corrected within thirty (30) days, and (e) the completion of unfinished work and the correction of known defects and deficiencies will not interfere with the Owner's intended use of the Project, including Owner's operations and the installation of furniture, fixtures, equipment, or inventory.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof that the Owner agrees to accept separately, is substantially complete in accordance with Section 9.8.1 and all conditions set forth in the Specifications, the Contractor shall prepare and submit to the Owner and the Architect a comprehensive list of all unfinished items to be completed and all known defective or deficient items to be corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. In addition to the list, the Contractor must also submit to the Architect and the Owner (a) consent of any surety, (b) a Change Order adjusting the Guaranteed Maximum Price to deduct the unused portions of any contingency and other allowances in accordance with Section 3.8.5, and (c) all permits, approvals, certificates, manuals, testing results, reports, progress releases, and other documentation required prior to or upon Substantial Completion by the Specifications or other Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Contractor's list, that is not sufficiently complete in accordance with Section 9.8.1 and the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection to determine Substantial Completion. If an inspection requested by the Contractor to establish Substantial Completion determines that Substantial Completion has not been achieved, the Contractor shall pay for additional inspections at Architect's standard hourly rate in effect at the time of inspection, at no expense to the Owner.

§ 9.8.4 When the Work or designated portion thereof is found to be substantially complete in accordance with Section 9.8.1, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Special warranties with specific durations required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion or the Contract Documents.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, the Owner shall approve the release of the retainage applying to the Work or designated portion thereof, less such amounts necessary to protect the Owner with respect to unsettled Claims and those portions of the Work that remain incomplete or are otherwise not in accordance with the requirements of the Contract Documents.

§ 9.8.6 The Contractor's obligations under the Specifications and other Contract Documents to submit specific permits, approvals, certificates, manuals, testing results, reports, progress releases, and other documentation relative to the Owner's use and occupancy of the improvements prior to or upon Substantial Completion are conditions precedent to the Owner's obligations to make payments to the Contractor, and the Architect shall withhold certifications for payment if the Contractor fails to meet such obligations.

§ 9.9 Partial Occupancy or Use

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

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

§ 9.9.3 Unless otherwise agreed in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work that does not comply with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Contractor, Owner, and Architect will promptly perform a walkthrough and make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, including all conditions for final payment, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect shall not issue the final Certificate for Payment until the conditions precedent listed in Section 9.10.2 and, if applicable, 9.10.6, have been fulfilled. If the Contractor requests the final inspection and it is determined that final completion has not been achieved, the Contractor shall pay for any additional services required of the Architect at the Architect's standard hourly rates in effect at the time, at no expense to the Owner.

§ 9.10.2 In addition to all other conditions specified in the Specifications or other Contract Documents or by Law for final acceptance and final payment or the approval of the release of any remaining retainage, neither final payment nor any remaining retained percentage shall be released until the Contractor submits to the Architect the following:

- .1 a Contractor's final statement and release in the form attached hereto as Exhibit D and a final payment affidavit from the Contractor that payrolls, bills and invoices for labor, materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld as retainage by Owner) have been paid or otherwise satisfied, and that itemizes all payees, dates and amounts of all payments made and all payments owed to Subcontractors and Suppliers for the Project;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect;
- .3 a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .4 consent of surety, if any, to final payment;
- .5 assignment to the Owner of, and delivery to Owner of all information regarding, all warranties and guarantees relating to the Work, ;
- .6 all required approvals by public authorities, including certificates of use and occupancy;
- .7 any other items or documents required of the Contractor by the Specifications, other Contract Documents, or the Owner's project closeout/handover procedures, such as the Contractor's Record Documents, operation and maintenance manuals, BIM models, system studies, equipment manuals, bonds, etc.,
- .8 unconditional affidavits of payment and releases of liens from each Subcontractor required under Section 9.6.8; and
- .9 if requested by the Owner, a final notarized affidavit from the Contractor listing the payees, dates, and amounts of all payments made and all payments owed to Subcontractors and Suppliers for the Project and other documentation establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, in such form and substance as necessary under Law or otherwise designated by the Owner.

If a Subcontractor or Supplier refuses to furnish a release or waiver required by the Owner, the Contractor, if requested by the Owner, shall furnish and record a bond or other security satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund or otherwise pay to the Owner all money that the Owner may be compelled to pay in discharging or in defending against the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of any of the Contractor Parties or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without

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

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

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

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, a Sub-subcontractor, or a Supplier shall constitute a waiver of Claims by that payee except those previously made in writing and specifically identified in writing by that payee as remaining unsettled with the final Application for Payment.

§ 9.10.6 If the Contract is a GMP Contract, the Contractor must submit a final accounting with its final Application for Payment, which must at least include (a) the final job cost detail report with all supporting documentation, (b) a complete and final Project Issues Log with all Change Orders, Potential Change Orders, and written notices and requests, and (c) complete final employee time records for the Project. The Owner or its auditors shall have thirty (30) days from receipt to review and report on the Contractor's final accounting to the Architect and Contractor in writing. Within seven (7) days of receipt of such report, provided all other conditions for final payment have been met, the Architect shall either issue the final Certificate for Payment based on the Cost of the Work accepted in such report as substantiated by the Contractor's final accounting or notify the Contractor and Owner in writing of its reasons for withholding the certificate as provided in Section 9.5. If the Cost of the Work accepted in the report is less than the amount claimed by the Contractor, the Contractor may initiate a Claim in accordance with Article 15 within twenty-one (21) days after the issuance of the final certificate, otherwise such Claim shall be deemed waived. Pending final resolution of any disputed amounts, the Owner shall pay the Contractor any undisputed amounts certified by the Architect.

§ 9.10.7 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (a) the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 and to satisfy other requirements that extend beyond final payment, (b) if the Contract is a GMP Contract, the Owner has accepted the Contractor's final accounting for the Cost of the Work, (c) the Contractor has submitted a final Application for Payment with all documentation required by Section 9.10.2 and (d) a final Certificate for Payment has been issued by the Architect, certifying for payment the entire unpaid balance of the Contract Sum.

§ 9.10.8 Final completion of the Project, which includes the completion and correction of all items on the comprehensive list referred to in Section 9.8.2 and the Contractor's performance of all other obligations to be performed prior to final payment, shall be achieved no later than thirty (30) days following the date of Substantial Completion, unless otherwise provided in the Agreement.

§ 9.11 Accounting and Audits

§ 9.11.1 The Contractor shall keep full and detailed records and accounts of all costs related to the Project and exercise such controls as necessary for proper financial management under the Contract and to substantiate costs. The accounting and control systems shall be in accordance with industry standards and generally accepted accounting principles and reasonably satisfactory to the Owner. Documenting and substantiating costs and preparing and submitting accurate Applications for Payment shall be the responsibility of the Contractor, and the review and approval of any Application for Payment by the Owner or Architect shall not be found to be a waiver or acceptance of any failure of an Application for Payment to comply with the requirements of the Contract Documents.

§ 9.11.2 The Contractor shall maintain, preserve, and make available upon reasonable notice for audit, copying, and examination by Owner and its auditors, for at least three (3) years after final payment, all documents, records, and accounts related to the Project, including all books, correspondence, e-mail, reports, logs, notes, diaries, time sheets, testing and inspection results, instructions, schedules, drawings, receipts, vouchers, checks, back charges, cash and trade discounts, rebates, releases, affidavits, waivers, requests for proposal, Supplier and service contracts, subcontracts, proposals and bids from all bidders, bidding documents and analysis, estimates and takeoff sheets, purchase orders, delivery tickets and documentation, storage receipts and documentation, leases, contracts, commitments, bonds, security, guarantees, vouchers, receivables, memoranda, written policies and procedures, overhead documentation, documentation supporting accounting entries, and all other information related to performance under the Contract ("Records"). In addition to access to Records, the Owner and its auditors shall be granted access to the Contractor's facilities, access to all current and former employees to discuss matters pertinent to the Contract, and access to adequate work space to conduct the audits, interviews, and examinations. If requested by the Owner, the Contractor shall furnish any Records related to the Project in a useable electronic format. Under the Contractor's agreements with Subcontractors and Sub-subcontractors, such persons and entities shall also be subject to an Owner audit under this Section 9.11 to verify the accuracy of records, information, and representations made to the Contractor and the Owner and to confirm compliance with the Contract Documents.

§ 9.11.3 In the event any such audit reveals that the Contractor was paid more than the amount it was entitled to under the Contract, Contractor shall reimburse Owner for any such improper payments within thirty (30) days of written demand. In the event the audit reveals that the Contractor was paid in excess of one-quarter percent (0.25%) more than the amount it was entitled to under the Contract or it reveals that improper payments were the result of intentionally false or misleading statements in Applications for Payment, the Contractor shall also reimburse Owner for all costs and expenses incurred to perform the audit. All costs and payments, including stipulated sum contracts and change orders, shall be subject to audit and review for compliance with contractual requirements and verification of representations. Any disputes between the Owner and Contractor regarding the results or performance of an audit pursuant to this Section 9.11 shall be resolved in accordance with Article 15.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract, and be responsible for compliance with any additional safety requirements set forth in the Specifications.

§ 10.2 Safety of Persons and Property

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

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

§ 10.2.2 The Contractor shall comply with, and give notices required by Laws bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor also shall promptly notify the Owner and the Architect of any damage, injury or loss to the persons or property related to the project.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; providing safe and accessible alternate pedestrian routes, directional signage, security fencing, and screening around the site and equipment; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall be solely responsible for the adequacy of such safeguards and precautionary measures.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for performance of the Work, the Contractor shall exercise utmost care, and require that those performing

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such activities exercise utmost care, and carry on such activities under supervision of properly qualified and, if necessary, licensed or registered, personnel.

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of others for whose acts the Owner is legally responsible, notice of the injury or damage, whether or not insured, shall be promptly given to the Owner in accordance with Articles 7, 8 and 15. The notice shall provide sufficient detail to enable the Owner to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor Parties shall comply with all Laws and standards, criteria, and other requirements regarding hazardous waste, materials or substances, including asbestos-containing materials, lead-based paints, mold, radon, and polychlorinated biphenyl (PCB), (hereinafter "Hazardous Materials") in performing the Work. Unless specifically consented to by the Owner in writing or specifically required by the Contract Documents, no underground or above-ground storage tanks or drums shall be placed on the site and no Hazardous Materials shall be brought onto the site, handled on the site, or otherwise incorporated into the Work by any of the Contractor Parties. If the Contractor Parties encounter Hazardous Materials not addressed in the Contract Documents, the Contractor shall, upon recognizing the condition, immediately (a) stop Work in the affected area until receipt of written notification from the Owner that Work shall proceed, (b) take any immediate reasonable precautions to prevent or contain the movement, spread, or disturbance of the suspected Hazardous Materials and to protect persons and property, and (c) notify the Owner and Architect of the condition and consult and cooperate with the Owner with respect to the Owner's investigation and response.

§ 10.3.2 Upon receipt of the Contractor's notice of the presence of potential Hazardous Materials, the Owner shall obtain the services of an environmental consulting firm or asbestos abatement or lead-based paint contractor, as appropriate, to verify the presence or absence of the material or substance reported by the Contractor and, in the event any Hazardous Materials are found to be present, to investigate, document, and remediate the condition as required by Law. Upon receipt of a written opinion from such consulting firm or contractor that Work in an area can safely and legally resume based on its investigation and, if necessary, remediation, abatement, containment, and governmental approvals, Work in the affected area shall resume. Provided the Contractor does not breach this Section 10.3, and the Contractor so requests in writing, to the extent attributable to the presence of potential Hazardous Materials, the Contract Time shall be extended appropriately and the Guaranteed Maximum Price shall be increased in accordance with the provisions of Articles 7 and 8 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up and the reasonable additional costs to be incurred to implement a Schedule Correction Plan.

§ 10.3.3 To the full extent permitted by Law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including attorneys', experts', and consultants' fees and expenses, arising out of or resulting from performance of the Work in the affected area if in fact a material or substance identified by the Contractor in accordance with this Section 10.3 presents the risk of bodily injury or death and Owner fails to comply with its obligations under Section 10.3.2, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to

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injury to or destruction of tangible property (other than the Work itself), and provided that such damage, loss, or expense is not due to any fault or negligence of, or breach of this Section 10.3 by, any of the Contractor Parties.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are specifically consented to by the Owner in writing or required by the Contract Documents, and the Contractor complies with all of its obligations under this Section 10.3.

§ 10.3.5 To the full extent permitted by Law, the Contractor shall indemnify and hold harmless the Owner, and its agents, consultants and employees, from and against any and all claims, damages, losses, costs and expenses, including attorneys', experts' and consultants' fees and expenses, arising out of or resulting from (1) any Hazardous Materials brought to the site and negligently handled by any of the Contractor Parties, or (2) the failures of any of the Contractor Parties to comply with the requirements of this Section 10.3.

§ 10.3.6 If, without negligence or a breach of this Section 10.3 on the part of any of the Contractor Parties, the Contractor is held liable by a government agency for the cost of remediation of any Hazardous Material or substance not brought onto the site by any of the Contractor Parties, and solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all reasonable cost and expense thereby incurred. This indemnity shall not be valid unless the Contractor has given prompt written notice to the Owner of such potential claim or action by a government agency and has given the Owner a reasonable opportunity to assume the defense and handling of such potential agency action or claim.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall promptly act, at the Contractor's reasonable discretion, to prevent threatened damage, injury, or loss and shall notify the Owner and Architect as soon as reasonable possible. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined in accordance with Articles 7, 8 and 15.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Liability Insurance

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 11.1 or elsewhere in the Contract Documents to cover claims that might arise out of or result from the Contractor's operations and completed operations under the Contract. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies with A-C or better ratings by A.M. Best Company, licensed or registered and lawfully authorized to issue insurance in Tennessee. Contractor shall maintain the required insurance without interruption from no later than the Date of Commencement until the expiration of the period for correction of Work as set forth in Section 12.2.2, except that the completed operations coverage of the Commercial General Liability and any Professional Liability, Contractor's Professional Liability, and Pollution Liability coverages, shall be maintained for at least five (5) years following final completion of the Work.

§ 11.1.2 The Contractor shall purchase and maintain the following types of insurance with limits of liability that are no less than the limits of the Contractor's existing policies and no less than the following limits or limits required by Law:

- .1 Commercial General Liability:**
 - (a) \$2,000,000 General – aggregate – per project
 - (b) \$2,000,000 Products and Completed Operations – aggregate
 - (c) \$1,000,000 Personal and Advertising Injury – per occurrence
 - (d) \$1,000,000 Bodily Injury and Property Damage – per occurrence
 - (e) \$50,000 Damage to Premises – per occurrence
 - (f) \$5,000 Medical Expenses – per person
- .2 Automobile Liability (including owned, non-owned and hired motor vehicles):**

\$1,000,000 Combined Single Limit – per accident
- .3 Worker's Compensation and Employer's Liability:**
 - (a) State and Federal (as applicable): Statutory Limit
 - (b) Employer's Liability (without restriction to Worker's Compensation coverage):
 - (i) \$500,000 per occurrence for bodily injury by accident
 - (ii) \$500,000 policy limit by disease

- (iii) \$500,000 per employee for bodily injury by disease
- .4 Contractor's Pollution Liability (including mold coverage): \$1,000,000/\$2,000,000
- .5 Professional Liability (errors and omissions): see Section 11.1.8
- .6 Umbrella/Excess Liability: see Section 11.1.10

§ 11.1.3 The required insurance shall be in form and substance reasonably satisfactory to the Owner and shall provide all major divisions of coverage in conformance with the standard terms, conditions, and coverages of the Insurance Service Office (ISO) and National Council on Compensation Insurance (NCCI) policies, forms, and endorsements. The required insurance shall be written on an occurrence basis, except for any Professional Liability or Pollution Liability coverages, which shall be written on a claims-made basis. The Contractor shall disclose to the Owner all deductibles and self-insured retentions. If requested by the Owner, the Contractor shall provide certified copies of all insurance policies applicable to the Work.

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

§ 11.1.5 The Contractor shall provide certificates of insurance in the general form of ACORD 25-S supplemented with AIA Document G715, or one or more other forms, acceptable to the Owner evidencing compliance with the requirements in this Article 11 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of the Commercial General Liability coverage for completed operations, and any Professional Liability, Contractor's Professional Liability, and Pollution Liability coverages, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 11.1.1. The certificates specifying the Owner as the Certificate Holder shall be signed by an authorized representative or agent of the insurer and indicate the amount of any deductibles and self-insured retentions. Certificate Holders must receive written notice at least thirty (30) days prior to cancellation or expiration of the stated coverage and written notice of and information concerning any reduction of coverage on account of revised limits or claims paid under a general aggregate, or both, within ten (10) days of knowledge.

§ 11.1.6 To the full extent permitted by law, the Contractor shall cause the Commercial General Liability and Umbrella/Excess Liability policies of the Contractor and all Subcontractors to include the Owner, and any other entities, such as landlords or tenants, as requested by the Owner, as additional insureds for claims caused in whole or in part by the negligent acts or omissions of any of the Contractor Parties for losses during the Contractor's operations and during completed operations. The additional insured coverage shall be primary and non-contributory to any of the additional insureds' insurance policies and shall provide full coverage up to the monetary limits of the policies for both ongoing and completed operations.

§ 11.1.7 The Contractor shall obtain a waiver of subrogation endorsement to each insurance policy required by this Section 11.1, including Worker's Compensation and Employer's Liability, that waives the insurer's right to subrogate a claim against the Owner. The Contractor also shall require each of its Subcontractors to obtain similar endorsements in favor of the Owner.

§ 11.1.8 If any provision of the Contract Documents requires any of the Contractor Parties to provide professional services, including any architectural, engineering, design, construction management, surveying, or other professional service, such party must obtain Professional Liability (errors and omissions) coverage with limits of liability that are no less than (a) the limits of such party's existing professional liability policy or (b) 5,000,000 per claim and in the aggregate and, if the construction cost of such party's portion of the Work is expected to be greater than \$75,000,000, no less than \$20,000,000 per claim and in the aggregate. Unless otherwise provided in the Agreement, the Contractor shall also obtain and maintain Contractor's Professional Liability (errors and omissions) coverage with limits of liability of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate. Unless otherwise provided in the Agreement, the Contractor shall also obtain and maintain Pollution Liability coverage with limits of liability of not less than \$1,000,000.

§ 11.1.9 The Commercial General Liability policy required by this Section 11.1 shall at a minimum include broad form property damage, independent contractors protective, personal and advertising injury without the employment exclusion, and blanket contractual liability that applies to Contractor's indemnity obligations contained in Section 3.18 and elsewhere in the Contract Documents. Further, the policy shall not contain an exclusion or restriction of coverage for (a) claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim, (b) claims for property damage to the Work where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor, (c) claims for bodily injury other than to employees of the insured, (d) claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured, (e) claims or loss excluded under a prior work endorsement or other similar exclusionary language, (f) claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language, (g) claims related to roofing, (h) claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, (i) claims related to earth subsidence or movement, or (j) claims related to explosion, collapse and underground hazards.

§ 11.1.10 The Umbrella/Excess Liability insurance required by this Section 11.1 shall provide following form coverage in excess of the underlying Commercial General Liability, Completed Operations and Worker's Compensation and Employer's Liability policies. If the Guaranteed Maximum Price is \$10,000,000 or less, this coverage shall have limits of liability of not less than \$5,000,000 per occurrence and in the aggregate; if the Guaranteed Maximum Price is between \$10,000,000 and \$25,000,000, this coverage shall have limits of liability of not less than \$10,000,000 per occurrence and in the aggregate; if the Guaranteed Maximum Price is between \$25,000,000 and \$50,000,000, this coverage shall have limits of liability of not less than \$25,000,000 per occurrence and in the aggregate; and if the Guaranteed Maximum Price is \$50,000,000 or greater, this coverage shall have limits of liability of not less than \$25,000,000 or forty percent (40%) of the Guaranteed Maximum Price per occurrence and in the aggregate.

§ 11.1.11 Unless otherwise agreed in writing, and in addition to any other coverages required by the Contract Documents, the Contractor shall require all Subcontractors to obtain, confirm, and maintain during the Work Commercial General Liability, Automobile Liability, Worker's Compensation and Employer's Liability, and Umbrella/Excess Liability insurance policies providing coverages as broad as the coverages required of the Contractor except with monetary limits of liability proportional to the amount of the Subcontractor's portion of the Work. Each Subcontractor must furnish its certificates of insurance identifying the Owner as an additional insured prior to entering the site.

§ 11.1.12 The Contractor and, as applicable, the Subcontractors, shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitations inadequacy, or absence of coverage.

§ 11.2 Property Insurance

§ 11.2.1 Unless the Owner elects and informs the Contractor in writing before commencement of the Work that the Owner will provide builder's risk property insurance for the Project through its insurance programs, the Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in Tennessee, property insurance 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 Project on a replacement cost basis. This insurance shall be maintained until Substantial Completion; shall allow for partial occupancy by the Owner; shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project 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 construction 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. 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 the property insurance required by this paragraph, except such rights as they have to proceeds of such insurance. Except to the

extent the losses are caused by one of the Contractor Parties, deductibles paid by the Contractor are Direct Reimbursable Costs.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Contractor fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, and the Owner is damaged by the failure or neglect of the Contractor to purchase or maintain the required insurance, the Contractor shall reimburse the Owner for all reasonable costs and damages attributable thereto.

§ 11.2.3 Unless the Owner specifically agrees otherwise in writing, the insurance required by this Section 11.2 shall also include, with sub-limits approved by the Owner in writing: loss of use, business interruption, and delay in completion insurance; ordinance or law insurance; expediting cost insurance; extra expense insurance; civil authority insurance; ingress/egress insurance; and soft costs insurance.

§ 11.2.4 It is expressly agreed that the Contractor waives any claim for damage or loss to its equipment against the Owner, and the Contractor shall require each of the Subcontractors to waive the same. Any insurance policy covering the Contractor's or the Subcontractors' equipment against loss by physical damage shall include an endorsement that waives the insurer's right to subrogate a claim against the Owners.

§ 11.3 Waivers of Subrogation

§ 11.3.1 Unless such waiver adversely affects any insurance coverage or proceeds thereof, the Owner and Contractor waive all rights against (1) each other and any of their consultants, subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for losses caused by fire or other perils to the extent the losses are recovered from property insurance required by the Agreement, except such rights as they have to such proceeds. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims in accordance with this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

(Paragraphs deleted)

§ 11.4 In no event shall any failure by the Owner to promptly enforce the provisions of Article 11 be construed as a waiver by the Owner of the Contractor's obligation to obtain, maintain, or require the insurance specified in Article 11. If the Contractor fails to purchase or maintain, or fails to require to be purchased and maintained, the insurance specified in Article 11, the Owner may, but shall not be obligated to, purchase equivalent insurance coverages on the Contractor's behalf, and Owner shall be entitled to be reimbursed for any premiums paid therefor in the manner set forth in Section 2.5.

§11.5 Adjustment and Settlement of Insured Loss

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

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

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dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6 Performance Bond and Payment Bond

§ 11.6.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of all obligations arising thereunder.

§ 11.6.2 The Contractor shall furnish to the Owner a copy of each Contractor, Subcontractor, and Sub-subcontractor bond applicable to the Work prior to the commencement of any portion of the Work covered by such bond, and this obligation shall be a condition precedent to the Owner's obligation to make progress payments. Upon the request of any other person or entity appearing to be a potential beneficiary of any bond covering payment obligations, the Contractor shall promptly furnish a copy of such bond or hereby authorizes a copy to be furnished by the Owner or the Architect.

§ 11.6.3 All bonds required under Section 11.5 shall (a) clearly display the surety's address and the bond number on the front of the bond, (b) meet all applicable statutory requirements, (c) be issued by a surety lawfully authorized to do business in Tennessee, listed in the Federal Register and currently rated B+ or better by A.M. Best Company, (d) include certified and current copies of the powers of attorney and (e) be in a form approved and satisfactory to the Owner.

§ 11.6.4 Unless otherwise provided in the Agreement or approved by the Owner in writing, the Contractor shall require bonds from each Subcontractor and Sub-subcontractor with contract(s) in excess of \$250,000 that cover complete and faithful performance of such Subcontractor's or Sub-subcontractor's performance and payment obligations in amounts at least equal to the contract value of such Subcontractor's or Sub-subcontractor's agreement(s). The Contractor may require bonds from other Subcontractors or Sub-subcontractors at its discretion, but such decision will not warrant an increase in the Guaranteed Maximum Price. All bonds provided by Subcontractors and Sub-subcontractors shall include the Owner as a named obligee.

§ 11.6.5 When specifically approved by the Owner in writing, the Contractor may enroll certain Subcontractors into its subcontractor default insurance program in lieu of requiring bonding from such Subcontractors, provided such enrollment reduces the Guaranteed Maximum Price. If proposed, the Contractor shall provide to the Owner all information requested regarding the Contractor's subcontractor default insurance program.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or the Architect's request or to requirements specifically expressed in the Contract Documents or prior to any inspection required under Law, it must, if requested in writing by the Owner or the Architect, be uncovered for examination and be replaced at the Contractor's expense without reimbursement from the Owner or increase in the Contract Sum or Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Owner or the Architect has not specifically requested to examine prior to its being covered, the Owner or the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Guaranteed Maximum Price and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense without reimbursement from the Owner or increase in the Contract Sum or Contract Time.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or non-conforming Work, including additional testing and inspections, costs of uncovering and replacement, and compensation for the Architect's and the Owner's other consultants' services and expenses made necessary thereby, shall be at the Contractor's expense without reimbursement from the Owner or increase in the Contract Sum or Contract Time.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5 and Section 12.2.1, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any other warranty or guarantee required by or contained in the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it in accordance with Section 12.2.1 promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after its discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require such correction by the Contractor under this Section 12.2.2.1, but not any other remedy. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum and Guaranteed Maximum Price will be reduced by the costs that would be reasonably incurred to remove and correct the deficiencies. Such adjustment shall be effected whether or not final payment has been made, and, if final payment has been made, the Contractor shall pay the amount of such adjustment to the Owner promptly upon request.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law and Venue

The Contract shall be governed by the law of Tennessee, and the venue for any formal action initiated in connection with the Contract shall be in Nashville, Davidson County, Tennessee.

§ 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project or an affiliated entity of the Owner. The Contractor shall sign all documents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Except as provided in the Contract Documents, the rights and remedies provided under the Contract shall be in addition to the rights and remedies otherwise available at law or in equity.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as specifically agreed in the Contract Documents or otherwise in writing. Further, no failure to enforce any term or provision of the Contract Documents shall constitute a waiver of any subsequent obligation to comply with such term or provision or a waiver of any other term or provision of the Contract Documents or any performance required under the Contract, except as specifically agreed in the Contract Documents or otherwise in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable standards and Laws. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity selected by the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. With respect to any testing or inspections paid for directly by the Owner pursuant to the Contract Documents, the Contractor shall still be responsible for coordinating and arranging for the timely completion of such services. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Owner and the Architect can be present for such procedures. Reports and results from testing and inspections shall be distributed by the Contractor to the Owner and the Architect.

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including the costs of additional testing, inspections, and repeated procedures, the costs of uncovering, replacement, and correction, and compensation for the Architect's and the Owner's other consultants' services and expenses, shall be at the Contractor's expense without reimbursement from the Owner or increase in the Contract Sum or Contract Time.

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is past due at a rate of Two Percent (2.0%) per annum.

§ 13.6 Enforceability

If a court of competent jurisdiction, or other authority, finds any provision of the Contract to be invalid or unenforceable in whole or in part, such finding shall not affect the validity or enforceability of any other provisions of the Contract or the remainder of the provision in question. In lieu of each provision of the Contract, or part thereof, that is determined to be invalid or unenforceable, there shall be substituted as part of the Contract a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as is possible.

§ 13.7 Counterparts

The Agreement and Modifications may be signed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

§ 13.8 Confidentiality

In connection with performance under this Agreement, the Contractor Parties may become aware of certain confidential information, including information regarding the Project, Owner's operations, student information or any other records or business knowledge of the Owner (the "Confidential Information"). This Confidential Information is owned exclusively by the Owner, is used in the operation of its business and is secret, confidential and proprietary to Owner. Each of the Contractor Parties shall maintain the confidentiality of all Confidential Information, including all Project related information except as required by law. Each of the Contractor Parties agrees to (a) use the Confidential Information only as necessary to fulfill its obligations under this Agreement or applicable law and, thus, restrict disclosure only to those persons who need to know for those purposes, (b) use a reasonable standard of care in maintaining the Confidential Information in strict confidence and (c) return or destroy all documents, copies, notes or other materials containing any Confidential Information upon completion of the Work or upon Owner's request. Accordingly, none of the Contractor Parties shall divulge information concerning the Project to anyone (including information in applications for permits, variances and similar items) without the Owner's prior written consent. The Owner reserves the right to release all Project information and to time its release, form and content. The obligations of this Section 13.8 shall survive final completion or termination of the Contract.

§ 13.9 Publicity

Unless otherwise specifically approved by the Owner in writing, none of the Contractor Parties shall 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 Section 13.9 shall survive final completion or termination of the Contract.

§ 13.10 Immigration and Equal Opportunity

The Contractor represents, warrants, and covenants 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 shall discriminate against any employee or applicant for employment or any potential bidder, subcontractor, supplier, or vendor based on race, color, ethnicity, gender, sexual orientation, age, disability, religion, national origin, genetic information, military service, gender identity, gender expression and socioeconomic status, or any other category prohibited by law.

§ 13.11 Disadvantaged Entities

To the extent documented and maintained in the ordinary course of business, the Contractor shall report to the Owner statistics on a quarterly basis regarding the participation of Disabled Veteran Business Enterprises (DVE), "Historically Underutilized Business Zones" (HUBZone), local small business enterprises (LSBE), small business enterprises (SBE), and "Veteran-Owned Small Business" (VOSB) as subcontractors, sub-subcontractors, suppliers, consultants, and vendors on the Project. This section does not in any way relieve the 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. Nor does this section in any way relieve the Contractor from the obligations and requirements of Article 5.

§ 13.12 Conflicts

The Contractor represents and warrants that none of its principals, nor any employee, subcontractor, supplier, or consultant performing any portion of the Work, is a faculty member, employee, postdoctoral scholar, student, or agent of the Owner and that neither the Contractor nor any of its principals, or any employees, subcontractors, suppliers, or consultants performing Work, has a personal or other business relationship with any department of the Owner authorizing payment under the Contract. The Contractor represents and warrants that none of its principals, nor any employee, subcontractor, supplier, 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 Contract. The 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 or to compromise or influence Contractor's judgment with respect to the Work.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of any of the Contractor Parties for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment and has not notified the Contractor of the reason for withholding payment as provided in Section 9.4.3;

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of any of the Contractor Parties, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for Substantial Completion, or one hundred twenty (120) days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for the portion of the Work completed, including reasonable overhead and profit of the Contractor Parties earned with respect to the portion of the Work completed, and costs necessarily incurred by reason of such termination. None of the Contractor Parties shall be entitled to recover costs not incurred or overhead or profit on Work not performed.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of any of the Contractor Parties because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters necessary to the progress of the Work, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contractor's right to complete the Work under the Contract, in whole or in part, if the Contractor:

- .1 refuses or fails to supply proper supervision or enough properly skilled workers or proper materials, equipment, tools, or construction equipment and machinery;
- .2 fails to make payment to Subcontractors or Suppliers in accordance with the Contract Documents and the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 disregards or violates any Laws;
- .4 fails to timely perform the Work in accordance the schedules under Section 3.10;
- .5 refuses or fails to promptly correct rejected or non-conforming Work or remedy property damage for which it is responsible;
- .6 is adjudged bankrupt, or if Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency; or
- .7 otherwise is guilty of a material breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate the Contractor's right to complete the Contract upon written notice from the Owner to the Contractor and the Contractor's surety, if any. However, if the reason for termination can be reasonably cured within seven (7) days, the Contractor shall be given such opportunity by written notice from the Owner of the default prior to termination. Upon such termination, the Owner may, subject to any superior prior rights of the surety:

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

§ 14.2.3 When the Owner terminates the Contractor's right to complete the Contract for one or more of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Within fourteen (14) days of such termination, the Contractor shall submit to the Owner and the Architect a complete and current accounting of the Contractors' costs, liabilities, and obligations related to the Project with supporting documentation, including copies of all agreements and change orders with each Subcontractor and Supplier, copies of all bills, invoices, pay requests, correspondence, and change order requests with respect to each Subcontractor and Supplier, and evidence of all payments made by the Contractor to, and lien waivers from, each Subcontractor and Supplier. If requested by the Owner, each Subcontractor and Supplier shall submit a similar accounting with documentation directly to the Owner. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, sign and deliver all such papers and take all such steps, including separate written assignments of such subcontracts and other contractual rights of the Contractor, as the Owner requires for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.2.4 If the Contract is a Stipulated Sum Contract, the Owner shall pay the Contractor only an amount equal to the unpaid balance of the Contract Sum less the costs of finishing the Work, including compensation for the Architect's and the Owner's other consultants' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, including fees and expenses of attorneys, experts, and consultants and the damages described in Section 8.3.3, but if such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner upon demand. If the Contract is a GMP Contract, the Owner shall pay the Contractor only an amount equal to the unpaid balance of the Contract Sum based on the Cost of the Work as of the date of termination, but if such Contract Sum and the costs and damages incurred by the Owner exceed the Guaranteed Maximum Price, the Contractor shall pay the difference to the Owner upon demand. The amount to be paid to the Contractor or Owner, as applicable, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contractor's right to complete the Contract.

§ 14.2.5 The Owner shall also owe the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Contract Sum or Cost of the Work under Section 14.2.4.

§ 14.2.6 Termination by the Owner of the Contractor's right to complete the Work under the Contract under this Section 14.2 shall not affect the Owner's rights and remedies under the Contract Documents or at law or equity, and shall not terminate the Contractor's liability under the Contract Documents with respect to any portions of the Work or actions or omissions of any of the Contractor Parties.

§ 14.2.7 If it is determined that termination of the Contractor's right to complete the Work under the Contract under this Section 14.2 was wrongful or otherwise improper, such termination shall be deemed a termination for convenience pursuant to Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Guaranteed Maximum Price and Contract Time shall be equitably adjusted for additional costs actually incurred and time consumed due to suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made if:

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

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§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contractor's right to complete the Work under the Contract for the Owner's convenience and without cause.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed by or on behalf of the Contractor, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for the portions of the Work properly completed, and direct costs incurred by reason of the termination, but not for costs, overhead, or profit for those portions of the Work not completed, or any other damages that might be alleged by Contractor. Amounts owed to Subcontractors and Suppliers under their respective agreements shall be in proportion to the Work properly completed, plus costs necessarily incurred by reason of the termination, but shall not include fees, overhead or profit for the portions of the Work not completed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor must initiate and commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of this Article 15 and within the time periods specified in this Article and by Law. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by a Potential Change Order or other written notice of the Claim to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party for an adjustment in the Contract Time or for an increase in the Contract Sum or Guaranteed Maximum Price, or for any other type of additional compensation, must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, otherwise the Claim is waived.

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

§ 15.1.4 Continuing Contract Performance

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

(Paragraphs deleted)

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§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for additional costs or compensation, including an increase in the Contract Sum or Guaranteed Maximum Price, written notice in accordance with Sections 7.3.2, 7.4, and 15.1 shall be given before proceeding to perform the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time or an adjustment to the Guaranteed Maximum Price due to a delay in the Work or the implementation of a Schedule Correction Plan, written notice in accordance with in Sections 7.3.2, 7.4, and 15.1 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work and a request for a specified adjustment to the Guaranteed Maximum Price or specific amount of increase in the Contract Time. In the case of a continuing delay, only one Claim within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, the notice of such Claim shall include documentation of data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction in accordance with the requirements of Section 8.3.

§ 15.1.7 Waiver of Claims for Consequential Damages Due to Delay

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

- .1 delay damages incurred by the Owner for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 delay damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment or award of direct damages or, if set forth in the Agreement, liquidated damages.

§ 15.1.8 Attorneys' Fees

In any legal proceeding or arbitration arising out of the Contract or related to the Project, the prevailing party shall be entitled to recover from the non-prevailing parties all costs the prevailing party incurred pursuing or 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 as reasonably determined by the court or arbitrator(s).

§ 15.2 Initial Decision

§ 15.2.1 Claims first recognized prior to final payment, but excluding those Claims arising under Sections 10.3 or 10.4, shall be referred to the Initial Decision Maker for initial decision. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within thirty (30) days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

§ 15.2.6 Either party may request mediation of an initial decision at any time.

(Paragraph deleted)

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

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting or disputing such Claim may proceed in accordance with the Law to comply with the lien notice or filing deadlines, or to seek to discharge or otherwise defend against such lien.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to litigation or arbitration.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, and delivered to the other party to the Contract and the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings.

§ 15.3.3 The Subcontractors, Sub-subcontractors, and Suppliers shall be bound by the mediation procedures of this Section 15.2. Contractor shall include these mediation provisions in all agreements with Subcontractors and Suppliers and shall require all Subcontractors and Suppliers to include these mediation provisions in all agreements with their subcontractors and suppliers of any tier, thereby providing for mediation in Nashville, Tennessee, as the initial method of dispute resolution among and between the Owner, Architect, Contractor, Subcontractors, Sub-subcontractors and Suppliers, and all other persons and entities performing any of the Work.

§ 15.3.4 The parties shall share the mediator's fees and expenses and other mediation fees equally. The mediation shall be held in Nashville, Tennessee. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 16 COST OF THE WORK

§ 16.1 General

§ 16.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work that are specifically included as set forth below in Section 16.2 through 16.6. Absent prior written approval of the Owner, such costs shall not exceed standard rates paid in Nashville, Tennessee.

§ 16.1.2 Except for purposes of defining costs and expenses that are includable in the Cost of the Work, Article 16 shall only apply to the Contract if the Contract is a GMP Contract.

§ 16.1.3 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost and submit such written approval with the applicable Application for Payment; otherwise, such costs are not includable in the Cost of the Work, which means the Contractor will not be entitled to reimbursement for such costs by the Owner. Costs in excess of amounts previously approved are not includable in the Cost of the Work.

§ 16.2 Subcontract and Trade Costs

§ 16.2.1 Payments made by the Contractor under an agreement with a Subcontractor entered into in accordance with Article 5 and the other requirements of the Contract are includable in the Cost of the Work. No Subcontractor shall be entitled to Overtime as defined in Section 16.4.6 unless approved in advance by the Owner in writing.

§ 16.2.2 Amounts specified for trade work performed by the Contractor's own forces in accordance with Section 5.2.6 are includable in the Cost of the Work. If performed on the basis of cost plus a fee, the amounts includable in the Cost of the Work are the additional costs incurred by the Contractor in accordance with Section 16.4 to self-perform plus the specified fee, subject to any other specified criteria and the guaranteed maximum cost specified for such self-performance.

§ 16.3 Materials and Equipment Costs

§ 16.3.1 Payments made by the Contractor under an agreement with a Supplier entered into in accordance with Article 5 and the other requirements of the Contract for materials or equipment incorporated into the Work are includable in the Cost of the Work, including those incorporated into the completed portion of the Work, those to be incorporated into the Work if suitably stored at the Project site, and those to be incorporated into the Work if delivered and suitably stored off the Project site with the Owner's prior written approval. These costs may include delivery, transportation and storage and may allow for reasonable waste and spoilage. Unused excess materials shall become the Owner's property at the completion of the Work and shall be properly stored at the Project site in accordance with the Owner's instructions or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited against the cost of the materials included in the Cost of the Work.

§ 16.3.2 Payments made by the Contractor under an agreement with a Supplier entered into in accordance with Article 5 and the other requirements of the Contract for materials, supplies, temporary facilities, machinery, equipment, services or other items provided at the Project site and consumed or otherwise necessary in the performance of the Work are includable in the Cost of the Work. These costs may include delivery, transportation, storage, installation, maintenance, dismantling and removal. With respect to items that are not fully consumed or have value remaining after use for the Project, the fair market value of the item immediately after its use for the Project shall be credited against its cost included in the Cost of the Work.

§ 16.3.3 Rental charges paid or costs incurred by the Contractor for certain temporary facilities and large machinery and equipment necessary at the site are includable in the Cost of the Work, including tower and mobile cranes, vertical hoisting, scaffold, bulldozers, excavators, hoe rams, forklifts, etc., provided such facilities, machinery, and equipment and costs are preapproved in accordance with this Section 16.3.3. These costs may include delivery, transportation, installation, minor repairs, insurance, dismantling and removal.

§ 16.3.3.1 Accompanying the submittal of the Schedule of Values required under Section 9.2, the Contractor shall submit for the Owner's written approval a rental equipment schedule itemizing all Section 16.3.3 rental charges and costs anticipated for the Project. With respect to each item, the schedule must provide detail regarding proposed rental rates, current market average rental rates, fair market value, the time period(s) and uses anticipated for the Project, and whether owned by the Contractor or a Related Party. Rental rates shall not exceed the AED Green Book rates. With

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respect to items owned by the Contractor or a Related Party, the rates for the Project shall be a fixed percentage of the AED Green Book rates and total rental cost cannot exceed seventy-five percent (75%) of the item's fair market value as of the date the item was first placed on the site. The Owner may require the Contractor to purchase proposed rental items as a Cost of the Work in lieu of renting.

§ 16.3.3.2 The approved schedule updated to illustrate and itemize actual rentals and rental charges and costs during the applicable pay periods must be submitted with each Application for Payment. For items owned by the Contractor or a Related Party, the costs includable in the Cost of the Work shall be limited by the specified fixed percentage referred to above in Section 16.3.3.1. If a rental agreement includes an option to purchase that is exercised, the equity accrued shall be credited against the total rental cost included in the Cost of the Work.

§ 16.4 Staffing Costs

§ 16.4.1 The Cost of the Work includes the Staffing Fee specified in either the Agreement or the GMP Amendment, which is the Contractor's sole reimbursement for all "Staffing Costs" defined in this Section 16.4 and all other costs incurred by the Contractor with respect to its own employees. The Contractor is not entitled to any other reimbursement or compensation with respect to Staffing Costs or any other costs incurred by the Contractor with respect to its own employees.

§ 16.4.2 Base or regular time wages of construction workers directly employed by the Contractor to perform labor for the Work at the Project site or, with the Owner's prior written approval, at off-site locations are Staffing Costs.

§ 16.4.3 Wages and salaries of the Contractor's project managers and supervisory and administrative personnel are Staffing Costs, but only for that portion of their time required for the Work.

§ 16.4.4 Costs paid or incurred by the Contractor for labor burden on wages and salaries includable under Sections 16.4.2 or 16.4.3, which includes taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements and customary benefits such as sick leave, medical, and health benefits, holidays, vacations, pensions, and retirement plan contributions, are Staffing Costs. The preapproved labor burden rates, along with the preapproved hourly bill rates, are the only costs includable in the Staffing Costs. There shall be no other separate reimbursement for the costs listed in this Section 16.4 or any other employment related costs, including bonuses, incentive pay, profit sharing, reimbursables, allowances, severance, training, travel, commuting, relocation, association dues, licensing, drug testing, etc.

§ 16.4.5 If the Staffing Fee is equal to the Staffing Costs, the Contractor shall submit, with the submittal of the Schedule of Values required under Section 9.2, a staffing schedule that specifies fixed hourly bill rates based on actual base wages or salaries and fixed labor burden rates for the Owner's written preapproval. The Staffing Costs includable in the Cost of the Work shall be limited to the actual time worked and the hourly bill rates and labor burden rates specified in the approved staffing schedule. With respect to costs includable under Section 16.4.2, the schedule shall specify hourly bill rates and labor burden rates for each trade, classification, and experience level for both regular time and overtime. With respect to costs includable under Section 16.4.3, the schedule shall identify the project managers, assistant project managers, superintendents, assistant superintendents, project engineers, and all other supervisory and administrative personnel proposed for the Project. For each individual identified, the schedule shall specify an hourly bill rate and labor burden rate and provide detail regarding their proposed duties and weekly anticipated time for the Project.

§ 16.4.6 Overtime wages paid to construction workers employed by the Contractor in accordance with Section 16.4.2, and additional labor burden costs actually incurred by the Contractor due to such overtime wages, are Staffing Cost includable in the Cost of the Work, provided the Owner specifically approves the overtime, the overtime rates, and the inclusion of the overtime costs in writing prior to the performance of the overtime labor. "Overtime" is time worked on the Project by an individual within the pay period work week in excess of forty (40) hours. Absent special circumstances and specific prior written approval of the Owner, overtime compensation paid to the Contractor's project managers and supervisory and administrative personnel is not includable in the Cost of Work. All overtime costs shall be itemized separately below each individual's base wages or salary and labor burden with the Applications for Payment, and such costs must be supported by proper documentation and time cards, including documentation of employees' time on other projects to the extent included to account for more than forty (40) hours per week. If the Staffing Fee is a stipulated sum, any additional compensation for overtime must be incorporated by Change Order in accordance with Article 7.

§ 16.4.7 If the Staffing Fee is equal to the Staffing Costs and the Contract Time is longer than eighteen (18) months, reasonable annual adjustments to the hourly bill rates and labor burden rates of the employees of the Contractor are Staffing Costs includable in the Cost of the Work, provided the adjustments are based on actual cost increases and do not exceed two percent (2%) on an annual basis, unless otherwise approved by Owner, and any increases are approved in writing by the Owner in advance. Raises in wages or salaries that cause such costs to increase by more than two percent (2%) on an annual basis are not includable in the Cost of the Work unless otherwise approved by Owner in writing in advance. Adjustments to hourly bill rates or labor burden rates shall not be grounds for an increase in the Guaranteed Maximum Price.

§ 16.5 Overhead Costs

§ 16.5.1 The Cost of the Work includes the Overhead Fee specified in the Agreement, which is the Contractor's sole reimbursement for all "Overhead Costs" as defined in this Section 16.5 and Section 00-73-00.01 of the Specifications. To the extent of any conflict between Section 00-73-00.01 of the Specifications and this Section 16.5, this Section 16.5 shall control. The Contractor is not entitled to any other reimbursement or compensation with respect to the Overhead Costs described in this Section 16.5.

§ 16.5.2 Premiums, except for builder's risk insurance, and deductibles paid by the Contractor for insurance required by the Contract or otherwise applicable to the Project are Overhead Costs.

§ 16.5.3 Mobilization and demobilization costs incurred by the Contractor are Overhead Costs, unless otherwise specifically includable under this Article 16.

§ 16.5.4 Payments made and costs incurred by the Contractor for temporary office, access, storage and waste facilities, including trailer rental, installation and removal, temporary ladders and stairs, temporary toilets, office furniture, machines, equipment, and supplies, are Overhead Costs.

§ 16.5.5 Payments made and costs incurred by the Contractor for safety protection, equipment and supplies within the Project site, including safety railings, safety training, drug testing, fire protection, fire extinguishers, barrels, hard hats, vests, glasses, medical protection and supplies, and first aid kits, are Overhead Costs.

§ 16.5.6 Payments made and costs incurred by the Contractor to keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract, including costs for staffing, materials, supplies, and equipment, are Overhead Costs.

§ 16.5.7 Payments made and costs incurred by the Contractor for small machinery, equipment, and hand tools provided by the Contractor at the Project site and necessary for the performance of the Work, including costs for delivery, transportation, insurance, and removal, are Overhead Costs. These costs include tools, pickup trucks, bobcats, tractor backhoes and attachments, concrete saws, submersible pumps, space heaters, water pumps, saws, laser levels, survey equipment, pressure washers, air compressors, air guns, welding machines, generators, mowers, trash buggies, and similar machinery and equipment.

§ 16.5.8 Payments made and costs incurred by the Contractor for fuel, maintenance, cleaning, and repair of machinery and equipment are Overhead Costs.

(Paragraph deleted)

§ 16.5.9 Payments made and costs incurred by the Contractor for photocopies, site signage, printing and document production, including coordination drawing productions, are Overhead Costs.

(Paragraph deleted)

§ 16.5.10 Payments made and costs incurred by the Contractor for postage and parcel delivery and document transmittal are Overhead Costs.

§ 16.5.11 Payments made and costs incurred by the Contractor for telecommunications and information technology are Overhead Costs, including internet, software, telephones, mobile phones, computers, tablets and other electronic devices, photography, and other information technology services and equipment.

(Paragraph deleted)

§ 16.5.12 Payments made and costs incurred by the Contractor for materials testing and laboratories required by the Contract Documents are Overhead Costs.

§ 16.5.13 Payments made and costs incurred by the Contractor for surveying are Overhead Costs.

(Paragraph deleted)

§ 16.5.14 Payments made and costs incurred by the Contractor for scheduling, audit, and LEED services, including scheduling consultants and accountants, are Overhead Costs.

§ 16.5.15 Payments made and costs incurred by the Contractor after final completion of the Project, or the relevant portion thereof if delivered in phases, to comply with post-completion obligations are Overhead Costs.

(Paragraph deleted)

§ 16.6 Other Direct Reimbursable Costs

(Paragraph deleted)

§ 16.6.1 In addition to the costs described in Sections above, the costs defined in this Section 16.6 as "Direct Reimbursable Costs" are includable in the Cost of the Work.

§ 16.6.2 Premiums paid by the Contractor for builder's risk insurance and bonds required by the Contract are Direct Reimbursable Costs.

§ 16.6.3 Provided the Contractor presents a cost comparison and the Owner specifically approves the costs in writing, premiums paid by the Contractor for subcontractor default insurance are Direct Reimbursable Costs.

(Paragraph deleted)

§ 16.6.4 Sales, use or other similar taxes imposed by a governmental authority that arise out of the Work and are paid by the Contractor are Direct Reimbursable Costs.

§ 16.6.5 Fees and charges paid by the Contractor to obtain and use utility services necessary to the performance of the Work that are not paid directly by the Owner are Direct Reimbursable Costs.

(Paragraph deleted)

§ 16.6.6 Payments made and costs incurred by the Contractor for dumpsters and the disposal of waste, including hauling and dump fees, that are not paid directly by the Owner are Direct Reimbursable Costs.

§ 16.6.7 Payments made and costs incurred by the Contractor for perimeter site protection and security, including fences, gates, sidewalk barricades, weather protection, erosion control and traffic and pedestrian control, and, if preapproved by the Owner in writing, for special security and site protection, such as watchman and guard service, are Direct Reimbursable Costs.

§ 16.6.8 Payments made by the Contractor for safety certifications of cranes and vertical hoisting are Direct Reimbursable Costs.

§ 16.6.9 Fees, charges and assessments necessarily paid by the Contractor to governmental authorities to obtain the building permit and other required permits and inspections that are the responsibility of the Contractor are Direct Reimbursable Costs.

§ 16.6.10 Royalties and license fees paid by the Contractor for the use of a particular design, process, or product required by the Contract Documents are Direct Reimbursable Costs, along with costs incurred by the Contractor to defend suits or claims for infringement of patent rights arising from such requirement of the Contract Documents and payments made by the Contractor in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made by the Contractor with the Owner's written consent. However, such costs of legal defenses, judgments, and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees, and costs are excluded by the last sentence of Section 3.17 or other provisions of the Contract, they are not includable in the Cost of the Work.

§ 16.6.11 Costs incurred by the Contractor in taking action to prevent threatened damage, injury or loss in accordance with Section 10.4 are Direct Reimbursable Costs.

§ 16.6.12 Costs incurred by the Contractor to repair or correct damaged Work are Direct Reimbursable Costs, but only if such damage was not caused by negligence or failure to fulfill a specific responsibility of the Contractor or any of the Contractor Parties, and only to the extent the cost of repair or correction was not recoverable from insurance, sureties, Subcontractors, Sub-subcontractors, Suppliers, or others and such non-recovery was not caused by a breach of the Contract or a breach of a contract for insurance by the Contractor or any of the Contractor Parties.

§ 16.6.13 Parking charges, both on the Owner's property and off-site.

§ 16.6.14 Other costs incurred by the Contractor in the performance of the Work may be Direct Reimbursable Costs if, and only to the extent, specifically provided in the Contract Documents or approved in advance by the Owner in writing.

§ 16.7 Costs Not To Be Reimbursed

§ 16.7.1 The Cost of the Work does not include (a) salaries and other compensation of the Contractor's personnel, including office based accounting, IT and administrative staff, senior operations and management staff and principals of the Contractor, except as specifically provided in Section 16.4, (b) expenses of the Contractor's principal office and offices other than the office at the site, (c) overhead and general expenses, except as included under Section 16.5, (d) payments made or costs incurred for preconstruction phase services, (e) banking or escrow account fees or expenses, and capital expenses, including interest on the Contractor's capital employed for the Work, (f) costs for personal vehicles, travel, relocation, or living expenses, (g) costs incurred for technology, including technology for data processing, accounting, payroll management and marketing, (h) costs of testing or compliance measures not specifically required by the Contract Documents, (i) fees and expenses of professional organizations such as ABC, AGC, etc., (j) fees and expenses of obtaining and maintaining licenses required for the Work, (k) costs of recruitment and training of the employees of Contractor and other Contractor Parties, (l) costs of entertainment, marketing, and business development, including merchandise and gifts, event tickets, sports, vacations, and meals, and meetings, or (m) costs for which any of the Contractor Parties recover under insurance.

§ 16.7.2 The Cost of the Work does not include costs arising out of or due to the negligence or failure of the Contractor or any of the Contractor Parties to fulfill a specific responsibility of the Contract, including (a) losses incurred from lost, damaged, or stolen tools or equipment, (b) fines and penalties assessed by governmental agencies or tribunals, such as OSHA, EPA, etc., (c) overtime costs and other costs incurred to accelerate the Work, (d) costs incurred to fulfill warranty obligations and (e) costs incurred to correct or repair damaged or defective Work.

§ 16.7.3 The Cost of the Work does not include any costs not specifically and expressly described in Sections 16.2 through 16.6 or any costs that would cause the Guaranteed Maximum Price to be exceeded.

§ 16.8 Discounts, Rebates, Refunds and Buyouts

The Contractor shall not be entitled to retain for its benefit any discounts, rebates, or refunds in connection with the Work or arising out of payments included in the Cost of the Work, including annual rebates or rewards based on total purchases of the Contractor, and such discounts, rebates, or refunds shall accrue to the benefit of the Owner as a reduction in the Cost of the Work, unless the Contractor has provided the Owner adequate written notice of the potential discount, rebate, or refund and the Owner has specifically declined to fulfill the conditions necessary to obtain such discount, rebate, or refund. Discounts obtained on early or cash payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the payee in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make such payments; otherwise, such discounts shall accrue to the Contractor provided the Owner has prior notice of and approves of the payments in writing. Trade discounts, rebates, refunds, and amounts received from sales of surplus or salvaged materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that such discounts, rebates, refunds, and amounts can be obtained. Savings obtained by the Contractor due to "buying out" agreements with Subcontractors, Suppliers, or other vendors at lower prices than those used to determine the Guaranteed Maximum Price shall accrue to the benefit of the Owner in accordance with Section 3.8.6. Otherwise, amounts that accrue to the Owner in accordance with the provisions of this Section shall be credited to the Owner in a reduction of the Cost of the Work.