



**STANFORD UNIVERSITY**

**GENERAL CONDITIONS**

**FOR CONSTRUCTION PROJECTS**

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**ARTICLE 1**

THESE GENERAL CONDITIONS are a part of the construction Agreement between the Owner and the Contractor. If any provisions of these General Conditions are inconsistent with the provisions of the "Agreement", then the latter shall prevail.

**ARTICLE 2**

**DEFINITIONS**

2.1 Owner: Wherever the title "Owner" is used it is mutually understood to refer to The Board of Trustees of the Leland Stanford Junior University, a body having corporate powers under the State of California.

2.2 Contractor: Wherever the word "Contractor", "General Contractor" or the personal pronoun used in place thereof is used herein it shall be mutually understood to refer to an independent Contractor who has or have entered into a contract with Stanford University to do the contemplated work.

2.3 Contract Documents: Wherever the word "Agreement" or "Contract Documents" is used it is mutually understood to refer to the "Agreement" and the documents listed therein, plus any (a) subsequent written amendments signed by the Owner and the Contractor, (b) Change Orders, (c) field orders issued pursuant to Paragraph 12.5, (d) any other document required to be produced hereunder and which these General Conditions specify shall become part of the Agreement Documents or the construction Agreement. The Contract Documents form the construction Agreement. Any conflicts between any of the provisions of the Contract Documents shall be resolved by the Owner in its sole reasonable judgment. Contractor agrees to notify Owner in writing of any such conflicts which become known to Contractor.

2.4 Work: Wherever the word "Work" is used it is mutually understood to refer to the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction. "Work" includes everything not specified in the Contract Documents but consistent therewith and reasonably inferable therefrom as being necessary to produce the intended results.

The Contractor and all Subcontractors shall refer to all of the Agreement Documents, including those showing primarily the work of the mechanical, electrical and other specialized trades, and to all of the Sections of the Specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results.

2.5 Project: Wherever the word "Project" is used it is mutually understood to refer to the total construction of which the Work performed under the Contract Documents may be the whole or part.

2.6 Contracting Officer: Wherever the word "Contracting Officer" is used it is mutually understood to refer to a representative of the Owner authorized to execute the "Agreement", amendments to the

Contract Documents and Change Orders. The Owner's Provost; Vice Provost, Institutional Planning; Director of Procurement, and their successors and written delegates are authorized Contracting Officers.

2.7 Project Manager: Wherever the word "Project Manager" is used it is mutually understood to refer to the representative of the Owner authorized to represent the Owner on all matters affecting the Project, except that the Project Manager may not be authorized to act as Contracting Officer. The Project Manager shall be designated in writing by the Owner and may be replaced from time to time by Owner upon written notice to the Contractor.

2.8 Architect: Wherever the word "Architect" is used it is mutually understood to refer to the person designated as such in writing by the Project Manager. Architect may be either an independent contractor of Owner or may be an engineer or other professional. The Project Manager may replace the Architect, if so will provide written notice to the Contractor. The Architect shall have no authority to bind the Owner, except as authorized or ratified by the Project Manager.

2.9 Construction Manager: For this document only, the word "Construction Manager" shall mean the Owner's field representative.

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

2.11 The Mechanical and Electrical Drawings are diagrammatic only, and are not intended to show exact physical locations or configurations of work. Such work shall be installed to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance with exposed. Exact locations of fixtures and outlets shall be coordinated with the construction documents and a shop drawing submitted to the Architect and its consultants for approval before the work is roughed in.

2.12 Test boring and soil test information included with the Contract Documents or otherwise made accessible to the Contractor was obtained by the Owner for use by the Architect in the design of the Work. The Owner does not hold out such information to the Contractor as an accurate or approximate indication of sub-surface conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed except as provided in subparagraph 12.2.

**ARTICLE 3**

**PROJECT ADMINISTRATION**

3.1 The Owner, acting through the Project Manager, shall administer this construction Agreement as provided herein.

3.2 Designated Representative: The Project Manager may delegate any duty with respect to construction and/or contract administration to a designated representative. Contractor shall refer to the Project Manager for resolution of any dispute, problem or confusion encountered with any delegee or consultant of the Owner.

3.3 Communications: The Project Manager from time to time may require lines of communication, meetings, presentations,

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inspections, written or oral reports, or other procedures appropriate in his judgment to improve the administration, quality or progress of the Project. Contractor agrees to cooperate fully with all such requests. All communication will be addressed to and flow through the Project Manager unless otherwise directed.

3.4 Job Site Meetings: Job site meetings shall be held on a regular basis, once a week or on such other schedule established by the Project Manager. The Architect and appropriate consultants, the Contractor's Superintendent and the Contractor will attend. The Construction Manager will chair the meeting, the Contractor will prepare the official minutes, and the Contractor will prepare an agenda for new business. Decisions reached in the meeting shall be recorded and binding upon the Owner, Architect and Contractor unless Owner, Architect or Contractor objects thereto at or before the next job meeting following distribution of the minutes.

3.5 Approvals/Interpretations/Clarifications: When requested by the Contractor or the Owner the Architect will prepare and issue to the Owner such written recommendations, clarifications, interpretations of the Contract Documents as may be required for the complete and accurate installation of the Work including drawings and specifications, within a reasonable time agreed upon with the Contractor and/or the Owner.

3.6 Owner Access: Owner and its agents and invitees shall at all times have access to the Work by the Project Manager or the Construction Manager (including for site visits by potential occupants) wherever it is in preparation or progress. Contractor shall cooperate with Owner and shall facilitate such access, including providing facilities, furnishing escorts and preparing the Work so that it is safe for access.

3.7 Owner Authority: The Project Manager or his designated representative shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with these General Conditions whether or not such Work be fabricated, installed or completed.

### 3.8 Owner/Contractor Responsibilities

3.8.1 Owner shall furnish the Contractor with a site plan showing utility locations, existing buildings and improvements, and physical characteristics, all as derived from existing records of the Owner. If necessary for the Project, Owner will provide a geologic study or soil survey. Contractor shall promptly review all such materials and shall inspect the Project site to verify their accuracy and completeness. Contractor shall report any discrepancies (whether perceived from such inspection or later discovered) promptly to the Project Manager.

3.8.2 Owner shall furnish Contractor with a specified number (set forth elsewhere in the Contract Documents) of sets of Drawings and Specifications. Contractor shall purchase them directly from source designated within the Contract Documents for additional sets requested by him. Contractor may retain possession of all such sets, but agrees to take reasonable precautions to prevent disclosure of their contents

to persons other than Subcontractors and others working on the Project. All Drawings and Specifications furnished by the Architect, and all copies thereof and the copyright therein, are the property of the Architect or the Owner. Contractor agrees not to copy them or use them for purposes other than construction of the Work without Owner's prior written consent.

3.9 Owner's Right to Carry Out the Work: If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, following receipt by the Contractor of such notice, may, without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

## ARTICLE 4

### CONTRACTOR'S EXECUTION AND SUPERVISION

4.1 Before starting the Work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Agreement, Conditions of the Contract, Drawings, Specifications, Addenda and other Contract Documents and shall at once report to the Architect any error, inconsistency or omission he may discover. Any necessary change shall be ordered as provided in Article 12, subject to the requirements of 1.2 and other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to the Architect and Owner, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents he could have discovered such, the Contractor shall bear all costs arising therefrom.

4.1.1 The Contractor shall give the Architect timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work.

4.1.2 The Contractor shall not proceed with any work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Architect as provided in subparagraph 4.1.1. If the Contractor proceeds with such work without obtaining further drawings or instructions, he shall correct work incorrectly done at his own expense.

### 4.2 Supervision and Construction Procedures

4.2.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.

4.2.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their

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- agents and employees, and other persons performing any of the Work under a contract with the Contractor.
- 4.2.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in the administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor.
- 4.3 Project Management
- 4.3.1 Before commencing any work, the Contractor shall provide a written description of its management team satisfactory to Owner. Such team shall include at least one competent Superintendent and necessary Assistants identified by name and satisfactory to Owner who shall be present at the work site at all times that work is being performed, and available for consultation with the Owner. Failure to do so may be just cause for a suspension of operations until a qualified superintendent is assigned to the project. This delay will not be grounds for extension of the contract completion date. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Communications shall be confirmed in writing if requested by Contractor, in each case.
- 4.3.2 The Owner shall have the right to require replacement of the superintendent employed by the Contractor, if the Owner has reasonable grounds for rejection. The Contractor shall not remove or reassign the superintendent, without the concurrence of the Owner.
- 4.3.3 The Contractor shall retain a competent Registered Professional Engineer or Registered Land Surveyor, acceptable to the Architect and Owner, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated work.
- 4.3.4 The Contractor shall establish the building grades, lines, levels, column, wall and partition lines required by the various subcontractors in laying out their work.
- 4.3.5 The Contractor shall coordinate and supervise the work of all Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of work and the storage of materials.
- 4.3.6 The Contractor shall prepare and submit to the Owner for approval a progress schedule as described in subparagraph 8.2.3 (6 month major - every 2 week rolling).
- 4.4 Labor and Materials
- 4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. For temporary electric power, Contractor shall connect at location specified by Owner, provide meter if so directed, and pay a reasonable charge for such services. Water will be provided by Owner free of charge and Contractor agrees to take all reasonable steps to conserve water. Upon permanent building connection to electric power, steam, chilled water, gas or other utilities, Contractor shall pay the cost of such Owner supplied utilities until acceptance by Owner of the Project mechanical and electrical systems.
- 4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.
- 4.5 Warranty
- 4.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Agreement will be new unless otherwise specified in Contract Documents, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of material and equipment. This warranty is not limited by the provisions of Paragraph 13.3.
- 4.5.2 Warranty on Substitution: Warranty on substitutions, if approved by Owner, shall be identical to the as-specified warranty set forth elsewhere in the Contract Documents..
- 4.5.3 In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials or articles to be furnished under this Agreement, whether or not the phrase "or equal" is used after such name, the Contractor shall furnish the product of the named manufacturer(s) without substitution, unless a written request for a substitute has been submitted by the Contractor and approved in writing by the Architect and Owner.
- 4.6 Taxes
- The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.
- 4.7 Permits, Fees and Notices
- 4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspection necessary for the proper execution and completion

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of the Work which are legally required at the time the bids are received.

- 4.7.2 The Contractor shall give and post all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.
- 4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents reviewed by him are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner and Architect in writing, and any necessary changes shall be accomplished by appropriate modification.
- 4.7.4 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect and Owner, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

### 4.8 Documents and Samples at the Site

4.8.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Owner and shall be delivered to the Owner upon completion of the Work.

4.8.2 Record (As Built) Drawings and Annotated Specifications: The Architect or Owner shall provide the Contractor with reproducible drawings for recording changes in the Work from the official plans and specifications. Contractor will prepare or cause to be prepared and maintain on a current basis an accurate and complete set of (i) Record Drawings showing clearly all changes, revisions and substitutions during construction, including without limitation field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features and (ii) annotated specifications showing clearly all changes, revisions and substitutions during construction. In the event of a specification that allows the Trade Contractor to elect one of several brands, makes or types of material of equipment, the annotations shall show which of the allowable items the Trade Contractor furnished. These Record Drawings and annotated specifications will be kept at the site, and Contractor will update them as often as necessary to keep them current, but no less often than monthly. The Record Drawings and annotated specifications will, throughout the Construction Phase, be available for inspection by Owner and Architect.

On completion of the Work, Contractor will provide a complete set of Record Drawings and annotated specifications to Architect, certifying them to be a complete and accurate reflection in all material respects of the actual construction conditions of the Work. Contractor will also review the record set of drawings prepared by Architect

pursuant to the Architect's Agreement and either notify Owner that such drawings are consistent in all material respects with the Record Drawings and annotated specifications. If not, specify any inconsistencies so that such drawings can be corrected by Architect and again reviewed by Contractor until Contractor can notify Owner that such drawings are consistent in all material respects with the Record Drawings and annotated specifications. Recording of such changes by the Contractor and Subcontractor shall be a prerequisite to the acceptance of the monthly progress payment and final payment. All such record drawings and specifications prepared by the Contractor shall be legible, clean, complete and contain all necessary explanations and measurements. At the completion of the construction, this Record set will be turned over to the Architect for his assistance in preparing the final as-built drawings and specifications. All such Record drawings and specifications submitted by the Contractor shall be legible, clean, complete and contain all necessary explanations and measurements.

4.8.3. The Contractor shall prepare and deliver to the Architect for its review and comments, copies of an operating and maintenance manual for the project in accordance with FDG guidelines. The manual shall contain full information for each item of mechanical, electrical, or other operating equipment, copies of warranties therefore, schematic diagrams of control systems, circuit directors for each electric and communications panelboard, and charts showing the tagging of all valves. The Contractor shall obtain and include in the manual reduced scale photocopies of the revised electrical, mechanical and plumbing drawings. The manual shall also contain complete keying schedules and paint color schedules and paint color samples. Each volume of the manual shall be clearly indexed, and shall include a directory of all subcontractors and maintenance contractors, indicating the area of responsibility of each, and the name and telephone number of the responsible member of each organization. The volumes shall be bound in multi-ring binders with black plastic covers. Typewritten, drawn or photographic material shall be protected by clear plastic sleeves.

### 4.9 Shop Drawings, Product Data and Samples

4.9.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.9.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

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

4.9.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the Work of the Owner or any separate Contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

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- 4.9.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 4.9.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect and/or Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Architect and/or Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.
- 4.9.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.
- 4.9.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.
- 4.9.9 All shop drawings, Product Data and Samples submitted to Owner or his representative become the property of Owner. Additionally, Owner shall own all copyright and other intangible rights to Shop Drawings, and Contractor agrees to execute any documents acknowledging or evidencing such ownership.
- 4.9.10 Contractor agrees to maintain all shop drawings in confidence and to prevent their disclosure to any persons and prevent any copying thereof, except for Contractor's use on the Project.
- 4.9.11 Shop Drawings, Product Data and Samples shall be reviewed and their acceptance so noted by the Contractor prior to submittal to the Architect or Consultants. The Architect and/or the Consultants shall also review and forward the submittals and their appropriate recommendation to the Owner. The Owner shall return the submittal to the Contractor with appropriate comments. The Owner will retain two copies of accepted submittals, one for the Owner's records and one for the Construction Manager's use on the jobsite.
- 4.9.12 The Contractor shall submit one reproducible copy and 4 prints of each Shop Drawing. Drawings shall be rolled on mailing tubes, not folded. He shall submit six (6) copies of manufacturer's Product Data unless otherwise instructed by the Architect. Each submission shall be accompanied by a transmittal form in a format determined by the Architect and Owner.
- 4.9.13 Samples shall be identified by a permanent label giving the manufacturer's name, trade name, material type, intended application, project name, Contractor's name, and Subcontractor's or supplier's name and date of submission. Manufacturer's installation directions shall be provided with each sample. Each submission shall be accompanied by a transmittal form in a format determined by the Architect and Owner. The Contractor shall prepay all transportation costs and deliver samples to the Architect's office, job site or testing laboratory as directed by the Architect. Samples will not be returned unless return is requested at time of submission; all packing and transportation costs for the return of samples shall be paid by the Contractor.
- 4.9.14 Samples shall be of adequate size to permit proper evaluation of the material by the Architect. Where variations in color, texture, dimensions or other characteristics are to be expected, the Contractor shall submit samples showing the maximum range of variation. Materials exceeding the range of variation of the approved samples shall not be used in the work.
- 4.9.15 In order to permit coordinated selection of colors and finishes, the Contractor shall deliver samples of all items of interior finish to the Architect at one time. Samples of such materials will not be accepted if submitted individually.
- 4.9.16 If both Shop Drawings and Product Data or Samples are required for the same item, the Architect may require both to be submitted before approving either.
- 4.9.17 No mechanical or electrical engineer or other consultant to the Architect shall have authority to approve Shop Drawings, Product Data or Samples unless the Architect has notified the Contractor in writing that such authority has been delegated by him to such engineer or consultant.
- 4.9.18 No acceptance or approval of any Shop Drawing, Product Data or Sample, nor any indication or request marked by the Architect on any Shop Drawing shall constitute an authorization for any increase in the Contract Sum. Any claim by the Contractor for such increase must be made in accordance with subparagraph 12.1 before proceeding with the work. One complete file of submittals, etc. shall be maintained in CSI format for use by the Owner and Architect. This file shall be turned over to the Owner at the close of the project.
- 4.10 Use of Site
- 4.10.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment. The Project Manager may designate off site staging areas.
- 4.10.2 Owner will designate adequate parking space for vehicles of Contractor and person working at the site. Contractor agrees to require all Subcontractors and other persons working under this Construction Contract to park only in such designated parking space and to comply with all of Owner's rules and regulations pertaining to parking and traffic. Owner will designate routes to be used by trucks and other vehicles

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- having a gross unladen weight greater than ten (10) tons and Contractor agrees that all such trucks and vehicles will use solely such routes.
- 4.10.3 Owner will designate the boundaries of the site to be used for the Work. Contractor agrees to contain all work to such site, except to the extent unfeasible, and agrees to use such site solely for the purpose of constructing the Work.
- 4.10.4 Contractor agrees to comply with reasonable requests of the Project Manager concerning use of the site.
- 4.10.5 Owner will insist on rigid control of dust, storage, waste, disposal and proper maintenance of all haul routes used by Contractor and its forces.
- 4.10.6 The Contractor and each Subcontractor shall obtain a "Service Vehicle Permit" for each of their company owned vehicles. Service Vehicle Permits may be purchased from the Stanford Transportation Office. This Permit will allow Contractor and Subcontractor to obtain "X" Parking Stickers for their employees. No "X" sticker will be issued unless this permit has been purchased.
- 4.11 Cutting and Patching of Work
- 4.11.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.
- 4.11.2 The Contractor shall not damage or endanger any portion of the Work or the Work of the Owner or any separate contractors or adjacent property by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the Work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner or any separate Contractor his consent to cutting or otherwise altering the Work.
- 4.12 Cleaning Up
- 4.12.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.
- 4.12.2 Immediately prior to the Architect's inspection for Substantial Completion, the Contractor shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures, and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken and scratched glass and plastic shall be replaced by the Contractor at his expense.
- 4.12.3 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 3.9 and the cost thereof shall be charged to the Contractor.
- 4.12.4 All materials except waste, rubbish and spoilage, equipment and facilities paid for or provided directly by the Owner shall be transferred to the Owner upon completion of the Work.
- 4.13 Communications
- The Contractor shall forward all communications to the Owner through the Project Manager, with copies to person designated by the Project Manager.
- 4.14 Royalties and Patents
- The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner/Architect harmless from loss on account thereof, except that the Owner/Architect shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner and Architect.
- 4.15 Equal Employment Opportunity: During the performance of this Agreement, Contractor agrees to comply with all the requirements concerning Equal Employment Opportunity and Affirmative Action contained in the attachment hereto. Submission of monthly Manpower Utilization Reports required for compliance with the Equal Employment Policy of the Owner shall be a prerequisite for acceptance of the Monthly Progress Payment.
- 4.16 Use of University Trademarks: Contractor agrees not to use University's name or other trademarks (together referred to herein as the "Marks"), or the name or trademarks of any related organization, or to quote the opinion of any of University's employees or agents ("Quotes"), either in writing or orally, without the prior written consent of the University's Assistant Vice President of Business Development. This prohibition includes, but is not limited to, use of the Marks or Quotes in press releases, advertising, marketing materials, other promotional materials, presentations, case studies, reports, websites, application or software interfaces, and other electronic media.

## 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 any of the Work at the site. The term subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate contractor or his subcontractors.



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- 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.
- 5.2 Award of Subcontracts and Other Contracts for Portions of the Work
- 5.2.1 The Contractor was required to set forth in his bid a list of the names of Subcontractors or other persons or organizations (including those who are to furnish materials or equipment fabricated to a special design) proposed by him to perform all portions of the Work having a value in excess of one-half of one percent (.005) of the Contractor's total bid. The Contractor was required, further, clearly to set forth and identify in his bid the portion of the Work which each such Subcontractor, person or organization will perform.
- 5.2.2 If the Contractor failed to list in his bid a Subcontractor for any portion of the Work having a value in excess of one-half of one percent (.005) of the Contractor's total bid, he shall perform such portion of the Work himself, and he shall not be permitted to subcontract such portion of the Work to any person or organization without the prior written consent of the Owner.
- 5.2.3 The Contractor shall not be permitted to substitute any person or organization for any Subcontractor, person or organization who has been accepted by the Owner, nor to permit any subcontract to be transferred, or to allow the Work under any subcontract to be performed by any person or organization other than the Subcontractor, person or organization (including those who are to furnish materials or equipment fabricated to a special design) who has been accepted by the Owner, without the prior written consent of the Owner.
- 5.2.4 The Contractor shall not contract with any Subcontractor or person or organization who has not been accepted by the Owner. The Contractor will not be required to contract with any Subcontractor or person or organization against whom he has a reasonable objection, unless the Subcontractor has been specified by Owner before receipt of Contractor's bid.
- 5.2.5 The Agreement Sum shall remain unchanged if the Owner requires a change in any subcontractor or person or organization previously accepted by the Owner due to performance unsatisfactory to the Owner, otherwise the Agreement Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.
- 5.3 Subcontractual Relations
- 5.3.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner. Said

agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such documents available to his Sub-subcontractors.

**ARTICLE 6**

**WORK BY OWNER OR BY SEPARATE CONTRACTOR**

- 6.1 Owner's Right to Perform Work and to Award Separate Contracts
- 6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or any similar or dissimilar conditions. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.
- 6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- 6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.
- 6.2 Mutual Responsibility
- 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.
- 6.2.2 If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate Contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate Contractor's work as fit and proper to

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receive his Work, except as to latent defects which may subsequently become apparent in such work by others.

- 6.2.3 Any cost caused by defective or ill-timed work shall be borne by the party responsible therefor.
- 6.2.4 Should the Contractor cause any damage to the Work or property of the Owner, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.
- 6.2.5 Should the Contractor cause any damage to the work or property of any separate Contractor, the Contractor shall upon due notice promptly attempt to settle with such other Contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor. Either the Owner or the Contractor at Owner's option shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court or arbitration costs which the Owner has incurred.

### 6.3 Owner's Right to Clean Up

- 6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.12, the Owner may clean up and charge the cost thereof to the Contractors responsible therefor as the Owner shall determine to be just.

## ARTICLE 7

### MISCELLANEOUS PROVISIONS

- 7.1 Governing Law: The Agreement shall be governed by the laws of the State of California.
- 7.2 Successors and Assigns: The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.
- 7.3 Bonds and Letter of Credit
- 7.3.1 All bonds required hereunder, unless waived in writing by Owner, shall be in the amount of 100% of the Agreement Sum and shall be in such form, and with such California corporate surety, as are satisfactory to the Owner in Owner's sole discretion. The amount of the bonds shall be increased in accordance with any increase in the Agreement price as established by Change Order. Contractor shall deliver all bonds required hereunder to the Owner not later than the date of execution of this Agreement, or if the Work is commenced

prior thereto in response to a notice to proceed, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be issued. Owner may require an irrevocable stand-by Letter of Credit in lieu of the Payment and Performance bonds. If Payment and Performance bonds are waived in favor of a Letter of Credit, an acceptable form of Letter of Credit shall be submitted prior to execution of the Agreement, in accordance with Owner's Letter of Credit Agreement, which shall accompany, and be a part of the Agreement.

- 7.3.2 Contractor shall deliver to the Owner a payment bond securing the faithful payment of all obligations arising under this Agreement. Contractor shall pay all premiums for such bond, which costs shall be included within the bid submitted by the Contractor on this Agreement.
- 7.3.3 Contractor shall deliver a performance bond securing the faithful performance of this Agreement. Contractor shall pay all premiums for such bond, which costs shall be included within the bid submitted by the Contractor on this Agreement. Concurrent with the submission of bids on this Agreement, the Contractor shall list separately the identity of the surety for the performance bond and the amount of the premium therefor.
- 7.3.4 When required by Owner, Contractor shall deliver a Letter of Credit securing the faithful payment of all obligations arising under this Agreement. Contractor shall pay all premiums for the Letter of Credit. The Contractor's estimated cost for the Letter of Credit shall be identified within the Contractor's bid proposal and the actual cost shall be included within this Agreement, which will be reimbursed to Contractor by Owner.

### 7.4 Rights and Remedies

- 7.4.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 7.4.2 No action or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed in writing.

7.5 Continuation of Work During Disputes: Unless otherwise specified in writing by Owner, Contractor shall continue to maintain full progress in the Work during any court or other dispute-resolution proceedings and Contractor shall not cease or slow down work. While work is proceeding, Owner shall continue to make payments to Contractor in accordance with the Contract Documents.

7.6 Owner's Field Office: Unless otherwise provided for in the Contract Documents, the Contractor shall provide at the site, from commencement to completion of the Work, a field office, minimum size 10' x 12', for the exclusive use of the Owner and any other person designated by the Owner. The Contractor shall provide the field office with a separate telephone and data line for the use of the Owner and its

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agents, with suitable lighting and space heating (as determined by the Owner), and with suitable janitorial service. The Contractor shall furnish the field office with an adequate table for examining drawings, storage for the drawings, a file cabinet, chairs and a desk capable of being locked.

7.7 Valid Agreement: This Agreement shall be and remain valid, and any bond required to be furnished hereunder and the obligation of any surety or sureties shall be and remain valid, binding and effectual and shall not be discharged by any change, modification or alteration made in this Agreement, or by the performance of any extra work by the Contractor, or by any extension of time for performance hereunder, or otherwise.

7.8 Contractor/Owner not Employer/Employee: The Agreement Documents shall create only an independent contractor relationship between Owner and Contractor. In no event shall the Contract Documents be construed as creating any employer-employee, joint venture or partnership relationship between Owner and Contractor for any subcontractor or any Sub-subcontractor.

7.9 Owner/Contractor Right of Interest: The Contract Documents shall not be deemed or construed to confer upon any person or entity, other than the Owner and Contractor, any right or interest, including any third party beneficiary status or any right to enforce any provision of the Contract Documents.

7.10 Words and Abbreviations: Words and abbreviations used in the Contract Documents which have a well-known technical or trade meaning in the San Francisco Bay Area are used in accordance with such recognized meanings.

7.11 Entire and Complete Agreement: The Contract Documents constitute the entire and complete agreement between the Owner and the Contractor with respect to the Project, and supersede all prior negotiations, agreements, understandings and representations.

7.12 Construction Lender: The names and addresses of the construction lenders on this Agreement are: **Not Applicable: No construction lender is involved at this time.**

7.13 Living Wage and Benefit Guidelines: This Agreement is subject to University's "Living Wage and Benefit Guidelines for Stanford Contractors," which can be found at [http://fingate.stanford.edu/staff/buypaying/policy\\_notes/living\\_wage\\_benefit\\_guide.html](http://fingate.stanford.edu/staff/buypaying/policy_notes/living_wage_benefit_guide.html) hereinafter "The Guidelines."

Contractor represents and warrants that it will comply with The Guidelines as amended by University from time to time. Contractor acknowledges that failure to comply with The Guidelines will be deemed a material breach of this Agreement. Contractor agrees to provide in a timely manner upon University's written request, but in any event not more than 10 business days, written evidence of compliance satisfactory to the University.

7.14 Original Signatures: The parties hereby agree that facsimile signatures whether transmitted by telephonic facsimile machine or computer transmitted files will be considered original signatures for all purposes including, but not limited to, authentication of this document (or any amendment prepared and executed in accordance with the terms of this document) in any legal proceeding.

## ARTICLE 8

### TIME LIMIT-SCHEDULE AND PROGRESS OF THE WORK

#### 8.1 Definitions

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the "Agreement" for completion of the Work, including authorized adjustments thereto. It is expressly agreed, by and between the Contractor and the Owner, that the Contract Time is a reasonable time for the completion of the Work under this Agreement, taking into consideration 120% of the average number of rain days for the Contract period, based upon the last twenty-five year records of the U.S. Weather Bureau, and foreseeable industrial conditions prevailing in the locality of the Project.

8.1.2 The date of commencement of the Work is the date established in Owner's Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the "Agreement" or such other date as may be established therein.

8.1.3 The Date of Completion is the date certified by the Owner's Project Manager that the Work is fully completed, including all punch list work.

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

#### 8.2 Progress and Completion

8.2.1 Construction Schedule: Contractor shall submit to the Owner a written Construction Schedule within 21 days after receiving notice of the award of this Agreement, and before the first progress payment is made. The construction Schedule shall be complete in all respects, and shall be in such form and to the level of detail as is required by the Owner. Unless otherwise advised by the Owner, the schedule shall show for each component of the work, the following, listed separately for each subcontractor:

- A. Manpower required for crafts
- B. Equipment required
- C. Earliest start and finish dates
- D. Latest start and finish dates
- E. Required shutdowns of existing facilities or services
- F. Tests and inspections

8.2.2 The schedule shall be reviewed and updated each and every month and when warranted, Contractor shall revise the schedule to conform with the actual situation at the job.

8.2.3 The schedule shall be based on a Critical Path Method Network technique and shall be limited to the construction

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time allowed by the Contract Documents. It shall include a sequential list of milestone dates of signification events particular to the Project and shall relate the events to the placement of materials and the procurement and delivery of equipment and testing and inspection. A time scale shall be established in such a way that anyone examining the schedule will know which trades should be represented on the job and what work should be in progress on any workday. If, in the judgment of the Owner, it is necessary to accelerate any part of the Work the Contractor shall, when so directed, concentrate his efforts on such portions of the Work, he will forward the schedule and his comments to the Owner, after review by the Architect. Contractor promptly shall make such revisions of the construction schedule as may be requested by the Owner. Upon Owner's written acceptance of the construction schedule, such schedule shall become a part of this construction Agreement.

Within two weeks after award of the Agreement, the Contractor shall submit to the Owner a Progress Schedule showing for each class of work included in the Schedule of Values, the percentage completion to be obtained and the total dollar value of the work to be completed as of the first of each month until Substantial Completion. All calculations shall be on the basis of work in place, but including the value of materials delivered but not in place, if they have been reviewed and accepted by the Owner.

8.2.4 Contractor shall submit to the Owner a revised (updated) construction schedule within 10 days after each of the following events:

- A. Any revision in the schedule necessitated by weather conditions, shortages, labor disputes or any other cause of delay.
- B. Changes in the construction schedule resulting from Change Orders in the Work.
- C. After a suspension of the Work ordered by the Owner as provided in Paragraph 8.4.
- D. Upon request by the Owner.

8.2.5 The acceptance by Owner of any construction schedule or revision thereof shall not constitute an agreement or authorization by the Owner to extend the Contract Time of Completion, to acceleration or delay of Contractor's work, or to any additional compensation of Contractor. All such agreements and authorizations shall be made only by written Change Orders signed by both the Contractor, the Owner and the Architect.

8.2.6 Failure to Progress: If at any time during the progress of the Work, Contractor's actual progress is inadequate to meet the requirements of the Agreement or any construction schedule submitted and approved, Owner may so notify Contractor who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by Owner, Contractor does not sufficiently improve performance to meet the currently approved contract construction schedule, Owner may require an increase in

Contractor's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant, all without additional cost to Owner. Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Contractor of its obligation to achieve the quality of work and rate of progress required by the Agreement. Failure of Contractor to comply with the instructions of Owner may be grounds for determination by Owner that Contractor is not prosecuting the Work with such diligence as will assure completion within the times specified. Upon such determination, Owner may terminate Contractor's right to proceed with the performance of the Agreement, or any separable part thereof, in accordance with the applicable provisions of this Agreement. In addition, the Contractor will be held liable for all damages to Owner.

8.2.7 All time limits stated in the Contract Documents are of the essence of the Agreement.

8.2.8 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall complete it fully within the Contract Time.

8.2.9 If in any Application for Payment, the total value of the completed Work in place, as certified by the Architect, is less than 90% of the total value of the Work in place estimated in the Progress Schedule, the Owner may, at his option, require the Contractor to accelerate the progress of the Work without cost to the Owner by increasing the work force or hours of work, or by other reasonable means approved by the Architect.

8.2.10 If the Architect has determined that the Contractor should be permitted to extend the time for completion as provided in paragraph 8.3., the calendar dates in the Progress Schedule shall be adjusted accordingly to retain their same relationship to the adjusted date of Substantial Completion, and the dollar value of work to be completed as of the first of each months shall be adjusted pro-rata.

8.2.11 If the Contractor fails to submit any Application for Payment in any month, the Architect shall, for the purpose of this evaluation of progress, certify separately to the actual value of the Work in place completed as of the first of the month to the best of his knowledge.

### 8.3 Delays and Extensions of Time

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual and unavoidable delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, then the Contract Time shall be extended by Change Order for such reasonable time agreed to by the Owner and Contractor.

8.3.2 Any claim for extension of the time, increased cost, or damages, shall be made by notifying Owner within five (5)

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days and submitting in writing within 10 days after the commencement of the delay; otherwise it shall be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work, and submit revised construction schedules.

8.3.3 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 3.5 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 Extensions of time accepted by the Owner as a result of changes in the Work shall be incorporated in the Change Order for such work or it shall be deemed waived by Contractor.

8.3.5 No damages or compensation of any kind shall be due or paid to Contractor because of delays in the progress or completion of the Work, whether such delays be avoidable or unavoidable, except solely for delays to the extent caused by interference of Owner and those additional criteria included in Article 8.3.1 above. Strikes and other labor disputes of Owner's employees or any others shall not be deemed interference of Owner giving rise to damages or extra compensation to Contractor. Contractor shall make a written claim to Owner for any allowable delay damages within twenty (20) days after occurrence of the event giving rise to such damages, otherwise such damages shall be deemed waived.

### 8.4 Owner's Right to Stop the Work

8.4.1 Upon notice in writing to Contractor, the Owner, at its sole option, may suspend at any time the performance of all or any portion of Work to be performed under the Agreement. Upon such notice of suspension of Work, Owner may designate the amount and type of plant, labor and equipment to be committed to the Work Site. During the period of suspension, Contractor shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.

8.4.2 Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- A. immediately discontinue Work on the date and to the extent specified in the notice; and
- B. place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice; and
- C. continue to protect and maintain the Work including those portions on which Work has been suspended.

8.4.3 As full compensation for such suspension Contractor shall be reimbursed for his reasonable out-of-pocket expenses directly related to such suspension, but in no event shall Owner be liable or responsible for any consequential or indirect damages. Upon receipt of notice to resume suspended Work,

Contractor shall immediately resume performance of the suspended Work to the extent required in the notice. Any claim on the part of Contractor for time or compensation shall be made by notifying Owner within 5 days and submitting in writing within 10 days after receipt of notice to resume Work and Contractor shall submit for review a revised construction schedule. No compensation or extension of time shall be granted if suspension results from Contractor's noncompliance with any provision of this Agreement.

## ARTICLE 9

### PAYMENTS AND COMPLETION

9.1 Schedule of Values: Before the first Application for Payment, the Contractor shall submit to the Architect for his review a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. After review by the Architect, he will forward the schedule of Values to the Owner. This schedule, unless objected to by the Owner, shall be used only as a basis for the Contractor's Applications for Payment.

### 9.2 Applications for Payment

9.2.1 At least ten days before the date for each progress payment established in the "Agreement", the Contractor shall submit to the Owner, through the Architect, an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. Prior to submittal of itemized applications for payment, the Contractor will review a preliminary draft of the proposed payment request to determine the percentage of completion on each of the items in the schedule of Values. After agreement the formal application shall be signed by the Contractor and the Owner's representative and forwarded by the Contractor to the Architect.

9.2.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale and such other procedures at Contractor's expense satisfactory to the Owner to establish the Owner's title to such materials or equipment and otherwise protect the Owner's interest, including applicable insurance and storage in a bonded warehouse not subject to seizure by Contractor's bonding agency.

9.2.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the Construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interest or encumbrances, hereinafter referred to in this Article 9 as

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"liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. Upon Owner's request Contractor shall furnish documentation proving the absence of any such liens and interests.

9.2.4 Similarly, title to all property, facilities, etc. furnished by the Owner will be retained by the Owner at completion of work, unless Owner authorizes disposal. See also 4.12.4.

9.3 Certificates for Payment: The Architect will, within seven days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Owner who will notify the Contractor in writing his reasons for withholding a Certificate as provided in Subparagraph 9.5.1.

### 9.4 Progress Payments

9.4.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

9.4.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.4.3 The Owner may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such Subcontractor.

9.4.4 The Owner shall have no obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.4.5 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents, nor a waiver of any claim, nor shall release any surety in any way or to any extent.

### 9.5 Payments Withheld

9.5.1 The Owner or his representative (the Architect) may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary reasonably to protect the Owner. If the Architect is unable to make representations to the Owner as provided in Subparagraph 9.3.1 and to certify

payment in the amount of the Application, he will notify the Contractor and the Owner as provided in Subparagraph 9.3.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Architect may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of the Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- A. defective work not remedied,
- B. third party claims filed or reasonable evidence indicating probable filing of such claims,
- C. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- D. reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum,
- E. damage to the Owner or another contractor,
- F. reasonable evidence that the Work will not be completed with the Contract Time,
- G. persistent failure to carry out the Work in accordance with the Contract Documents,
- H. failure to maintain and update Record (as-built) drawings as prescribed herein,
- I. non-compliance with the Equal Employment Opportunity requirements of the Agreement, including submission of Monthly Manpower Utilization Reports, or
- J. any other reasonable cause.

9.5.2 The Owner may withhold all or part of any payment due to any reason stated in 9.5.1. When the above grounds in Subparagraph 9.5.1 are removed, payment shall be made for amounts withheld because of them.

### 9.6 Substantial Completion

9.6.1 The Work or a portion thereof is defined as substantially complete, when the Work or portion thereof, is fully acceptable for occupancy by the Owner. When the Contractor considers that the Work or a portion thereof is substantially complete, the Contractor shall inspect the Work and prepare a punch list of items to be corrected. When all corrections have been made, Contractor shall submit in writing to the Architect and the Owner a statement that all corrections and/or completion's have been made and requesting inspection by the Architect and the Owner's representative. Failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with Contract Documents. When the Owner and the Architect, on the basis of inspection, determines that the Work or a designated portion thereof is substantially complete, the

## GENERAL CONDITIONS

Architect will then prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion and a formal punch list, based on the observations of the Owner and his consultants. The Certificate of Substantial Completion shall include the Architect's and the Owner's Punch List, state the portion or all of the Work to be accepted for occupancy, whether or nor the mechanical and electrical systems are accepted by the Owner for maintenance, the mutual responsibilities of the Owner and Contractor for security, maintenance, utilities including mechanical and electrical systems, damage to the Work, insurance, and shall fix the time within which the Contractor shall complete the punch list items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their signatures and shall be effective upon execution by both parties.

9.6.2 Upon issuance and acceptance of the Certificate of Substantial Completion and upon application by the Contractor and Certification by the Architect, the Owner shall make payment for the value of the Work completed, less the cost of completing the punch list and retention.

### 9.7 Final Completion and Final Payment

9.7.1 Upon receipt of written notice from the Contractor to the Owner that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and the Owner's representative will promptly make such inspection and, when they find the Work acceptable under the Contract Documents and the Agreement fully performed, the Architect will recommend acceptance of the Work to the Owner. The Owner shall then issue a Notice of Acceptance of the Work, which notice shall establish the date of completion, and the Owner shall file a Notice of Completion of the Work with the appropriate County Recorder's Office. After the Owner's issuance of the Notice of Acceptance of the Work, the Architect shall promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Architect's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.7.2 have been fulfilled.

9.7.2 Neither the final payment nor the remaining retained percentage shall become due until fifty-five (55) days after the date of the recording of the Notice of Completion and the Contractor submits to the Architect (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment and (3), if required by the Owner, other data

establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by the Owner. If any Subcontractor files a mechanic's lien against the Owner or refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.7.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Order affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.3, the written consent of the surety to the 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 the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.7.4 In the event that the completion date specified in the Agreement has passed, the work is not fully completed, and the Owner assumes occupancy but cannot justify filing a Notice of Completion within the statutory 10 day period, then the lien period is extended to 90 days in accordance with California Civil Code Section 3086 (a). In the event of such delay, final payment shall not be due until 115 calendar days after Owner files Notice of Completion.

9.7.5 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- A. unsettled liens,
- B. faulty or defective Work,
- C. the Contract Documents,
- D. terms of any warranties required by the Contract Documents, or
- E. claims reserved by the Owner.

9.7.6 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the making of the final Application for Payment.

9.7.7 Any conflict between above and Section 3260 shall be decided in accordance with the California Civil Code.

**GENERAL CONDITIONS**

9.8 Records, Accounts and Allowances

9.8.1 Contractor shall keep for three years after Actual Completion such full and detailed books and records as may be necessary for proper financial management under this Agreement. All of Contractor's books and records shall be kept and maintained within the San Francisco Bay Area. At all reasonable times, the Owner and its agents shall be afforded full access to all of the Contractor's books and records. The Contractor shall preserve all books and records for a period of three years after the final payment under this Agreement. As used herein, "books and records" include all of Contractor's books, records, accounts, correspondence, instructions, drawings, receipts, vouchers, memoranda, and all similar data relating to this Agreement.

9.8.2 For cost reimbursement contracts and time and material change orders. Immediately upon award of this Agreement, the Contractor shall establish accounting procedures acceptable to the Owner and complying with Generally Accepted Accounting Principles for all costs incurred by the Contractor under this Agreement. Contractor shall permit Owner and its agents to review its accounting procedures and shall make such revisions to its procedures as may reasonably be requested by the Owner to verify and control costs incurred under this Agreement. No change shall be made in such accounting procedures except with the prior written approval of the Owner. With each request for progress payments, the Contractor shall submit all receipts and invoices, including payroll data, justifying the costs incurred by the Contractor. In no event shall the Owner be obligated to reimburse the Contractor for costs in excess of prices reasonably obtainable in the local market at the time the products or services were obtained by the Contractor, including such discounts as are reasonably obtainable. Any overpayments revealed by such audits shall be promptly repaid by the Contractor, and any underpayments revealed by such audits shall be promptly paid by the Owner. If such audit shall reveal an overpayment in excess of 5% for the period involved, then the costs of such audit shall be borne by the Contractor.

9.8.3 The Contractor shall include in the Agreement Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such person as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

9.8.4 Unless otherwise provided in the Contract Documents:

If this agreement is for the provision of services with a value of \$10,000 or more within a 12-month period, then until the expiration of four years after the furnishing of any services pursuant to this agreement, Contractor shall make available, upon written request from the Secretary of the United States Department of Health and Human Services or from the United States Comptroller General, or any of their duly authorized representatives, this Agreement and such books, documents and records of Contractor as are necessary to certify the nature and extent of the reasonable cost of services to Owner. If Contractor enters into an agreement with any related organization to provide services pursuant to this agreement

with a value of \$10,000 or more within a 12-month period, such agreement shall contain a clause identical in content to the first sentence of this paragraph. This paragraph shall be of force and effect only to the extent required by law.

9.9 Price Reduction for Defective Cost or Pricing Data

9.9.1 This Article 9.9 applies to any portion of the Work, including any change under Article 12, where Contractor's compensation therefor is based in any way on actual cost (whether or not subject to a guaranteed or not-to-exceed maximum), or where Contractor's compensation is based on data submitted by the Contractor or any Subcontractor or Sub-subcontractor (e.g., a negotiated or agreed-upon lump sum, or unit-pricing). This Article does not apply to lump sum compensation selected by the Owner as the result of competitive bidding.

9.9.2 The Agreement Sum, or other amounts payable by the Owner, shall be reduced to the extent the Owner finds that any pricing data or cost is defective, unreasonable, not directly applicable to Work, or not necessary to the Work. Profits, fees and overhead also shall be reduced accordingly. Examples of unreasonable costs include, but shall not be limited to: materials, services or rentals not taking advantage of lowest available price, discounts or other terms reasonably obtainable; work inefficiently or negligently incurred; equipment or materials of a capacity or quality beyond that reasonably necessary; standby charges during delays not caused by the Owner; charges exceeding those prevailing in the industry. Such reductions may be made at any time upon written notice to the Contractor. If the Contractor already has been paid for such costs, then Contractor agrees to refund such amounts promptly.

**ARTICLE 10**

**PROTECTION OF PERSONS AND PROPERTY**

10.1 Safety Precautions and Programs

10.1.1 The contractor shall be solely responsible for initiating, maintaining and supervising all health and safety precautions and programs in connection with his operations and the Work of this Agreement. All health and safety requirements shall apply continuously and shall not be limited to normal working hours.

10.1.2 The right or duty of the Owner (or Architect/Engineer) to conduct inspections of the Work or construction review of Contractor's performance is not intended to include review of the adequacy or inadequacy of the Contractor's safety measures on or near the construction site, or elsewhere on the lands of the Owner. However, should Owner, in the course of his other activities, discover or observe any of Contractor's safety measures, or lack of them, which Owner believes are not in compliance with Contract requirements, he will notify Contractor of such deficiencies or discrepancies and Contractor shall promptly correct conditions to comply with all applicable requirements.

10.2 Safety of Persons and Property



## GENERAL CONDITIONS

- 10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
- A. all employees on the Work and all other persons who may be affected thereby;
  - B. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
  - C. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 10.2.2 All persons working at the job site shall conduct themselves in a manner appropriate to the academic community, and Contractor agrees to remove any worker deemed objectionable by Owner. Contractor shall prohibit the possession, use and being under the influence of any alcoholic beverage, illegal drug or any substance adversely affecting perception, judgment, ability or performance.
- 10.3 General and Public Safety
- 10.3.1 Contractor shall designate in writing a competent person from his organization as "Project Safety Representative" other than the Project Superintendent. The duties of Contractor's Project Safety Representative shall include project responsibility for implementation of the Contractor's safety program and inspecting the conditions of the jobsite and any other areas affected by Contractor's operations on a frequent and regular basis as necessary to insure compliance with all applicable safety standards, orders, and the requirements of the Contract Documents.
- 10.3.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the health and safety of persons and/or property or their protection from damage, injury or loss. Contractor shall promptly comply with all reasonable requests of the Owner and its agents relating to health, safety and protection of property at no additional expense to Owner.
- 10.3.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent facilities.
- 10.3.4 Traffic Control and Access
- A. The Contractor shall conduct his operations in a manner which causes the least possible obstruction and inconvenience to the safe flow of pedestrian and vehicular traffic.
  - B. The Contractor is responsible for coordinating and obtaining approvals of the location of temporary barricades and/or detours of traffic from the Police and Fire Departments.
  - C. The Contractor shall comply with Chapter 5, Caltrans Traffic Manual, "Manual of Warning Signs, Lights, and Devices for Use in Performance of Work upon Highways".
  - D. The Contractor shall maintain continued access to parking areas, roads, abutting properties, and other facilities which the construction will cross. Sequenced excavation and steel plate trench covers shall be used as necessary.
  - E. If traffic is reduced to one way, the Contractor shall provide flag-person(s), as required. A minimum of one lane shall be maintained open to traffic at all times, unless otherwise approved.
  - F. When entering or leaving roadways carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.
  - G. Cone placements for traffic detour channelization and signing shall conform to the 1980 Work Area Handbook (WATCH).
  - H. All traffic signs which fall within the line of construction or are obstructed by the Contractor's equipment or operations shall be temporarily relocated to an unobstructed area. At no time shall hospital "EMERGENCY" signs be obscured or removed. Temporarily relocated traffic signs shall be returned to their original location at the end of construction.
  - I. In addition to the necessary standard traffic signs (detour, road closed, keep right, etc.) the Contractor shall furnish a maximum of four (4) custom worded directional signs using 4" block stenciled letters on a 3' x 3' half-inch plywood painted white. Spray can lettering without the use of stencils shall not be used. The wording shall be as directed by the Owner.
  - J. Contractor shall at all times furnish and maintain adequate safety devices and/or personnel including, but not necessarily limited to, barricades, lights, signs, traffic cones, warning tape, temporary roads, flag-persons, etc., as necessary to direct pedestrian, vehicular and bicycle traffic safely through or around the area of Contractor's operations. All barricades remaining in pedestrian, bicycle or vehicular traffic areas between sunset and sunrise shall be equipped with approved and operating flashers. This paragraph is especially important because of the unique character of the University environment.
- 10.3.5 The use, storage, disposal or abandonment of explosives or other hazardous or toxic materials is not permitted on the lands of Owner, except as expressly authorized and permitted elsewhere in these Contract Documents. Should such materials be so authorized and permitted, Contractor shall submit detailed plans for their care, use and disposal for

## GENERAL CONDITIONS

- approval prior to commencing work and shall comply with the requirements of all public agencies having jurisdiction over their use.
- 10.3.6 The Contractor shall promptly remedy all damage or loss (other than damage or loss fully insured under Article 11) to any property referred to in Clauses 10.2.1.A and 10.2.1.B caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them who or for which they may be liable and for which the Contractor is responsible under Clauses 10.2.1.A and 10.2.1.B, except damage or loss attributable solely to the acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 11.3.
- 10.3.7 The Contractor shall not load or permit any part of the Work to be loaded unsafely.
- 10.3.8 In addition to any fencing shown or specified elsewhere in the Contract Documents, Contractor shall provide temporary fencing and gates around any laydown or storage area provided by Owner. Such fencing shall be of the temporary chain link type nominally six feet in height with locking gates. Such fencing shall be provided with reflectors, flashers, warning signs, danglers and/or barricades, both during construction and after completion until removal, as required by Owner. Contractor shall, on a daily basis, inspect, maintain, and repair, if necessary, all fencing erected by him. Contractor shall provide night lighting to the job site and immediate adjacent walkways as required by Project Manager.
- 10.3.9 Contractor shall exercise maximum effort to avoid disruption with the academic environment. This shall include, at a minimum, using all feasible methods and strict discipline to minimize danger, noise, vibration, fumes, duct and other pollution.
- 10.4 Protection of Work During Inclement Weather or Suspension of Construction: In the event of suspension of construction, or during inclement weather, or whenever the Owner shall direct, the Contractor will, and will cause his Subcontractors, to protect carefully his and their Work and materials against damage or injury from the weather. If, in the opinion of the Owner any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors to protect his or their Work, such Work or materials shall be removed and replaced at the expense of the Contractor.
- 10.5 Emergencies: In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.
- 10.6 Jobsite and Worker Safety
- 10.6.1 In addition to other safety requirements of Article 10, and as a minimum, Contractor shall comply with all applicable requirements of the latest or last effective edition of the State of California Construction Safety Orders, except where such orders are preempted by more stringent or directly conflicting Federal regulations, in which case the Federal regulations shall govern.
- 10.6.2 Contractor's Accident-Prevention Program and Code of Safe Practices as required by the applicable sections of the California Construction Safety Orders shall be submitted to the Owner prior to beginning field work as evidence of initial compliance with Subparagraph 10.6.1. Such Program and Code shall be subject to favorable review by Owner, however, such review shall not relieve Contractor of his sole responsibility for safety nor shall such a review be construed as limiting in any manner the Contractor's obligation to establish and maintain healthy and safe working conditions at the jobsite.
- 10.7 Archeological Sites
- 10.7.1 The lands of Owner contain a number of known archeological sites, and additional sites, as yet undiscovered, probably exist. Contractor understands and acknowledges that Owner considers these sites, and any artifacts or human remains contained therein, to be important and valuable academic assets. Contractor shall carefully avoid and protect all known and marked archeological sites near or adjacent to the Work. Where Work is to be performed on or in close proximity to a known site, Contractor shall proceed with extreme care in accordance with instructions provided by the Project Manager and/or the Campus Archeologist. At all times and locations, Contractor shall continuously monitor the Work for any evidence of historic or prehistoric human occupation, whether near a known or marked site or not. Should any such evidence be discovered, Contractor shall immediately notify the Construction Administrator. Any and all artifacts discovered shall remain the property of the Owner.
- 10.7.2 The Project Manager, the Campus Archeologist, and their designated representatives are authorized to stop the work in accordance with the provisions of Subparagraph 8.4 while evaluation of any evidence discovered takes place and until additional instructions are issued to Contractor. Contractor shall cooperate fully with any archeological contractor or consultants which may be hired by Owner to effect mitigation procedures.
- 10.8 Discovery of Asbestos or Other Hazardous Materials
- In the event that Contractor or any Subcontractor discovers asbestos or other hazardous materials at the job site, Contractor shall immediately stop the Work and notify Owner. Owner shall issue a written work order in accordance with Article 8.4 to confirm work stoppage resulting from the requirements of this subparagraph. Owner shall engage an appropriately licensed specialist to remove the hazardous materials.
- 10.9 Costs for Protection of Persons and Property

**GENERAL CONDITIONS**

- 10.9.1 Except as otherwise specified, all costs in connection with meeting the requirements of Article 10 shall be borne by Contractor. Failure of Contractor to comply with any health and/or safety requirements of the Contract Documents, including, but not necessarily limited to, traffic control items required under Subparagraph 10.2.4, shall be deemed sufficient cause for Owner to, without prior notice to Contractor, take whatever action is, in Owner's opinion, necessary to achieve compliance with such requirements. In lieu of direct reimbursement by Contractor, Owner may, at his option, deduct the costs of any such action by Owner from monies due Contractor. The Owner will notify Contractor of any action taken under the provisions of this subparagraph within five (5) working days.
- 10.9.2 In addition to other rights and remedies available to Owner, repeated or continued failure of Contractor to comply with any requirement of Article 10 of these General Conditions shall be deemed reasonable and sufficient cause for Owner to temporarily withhold monies due Contractor until compliance is achieved or to permanently deduct monies due Contractor for services required but not provided.

**ARTICLE 11**

**INSURANCE AND INDEMNITY**

**11.1 Contractor's Liability Insurance**

11.1.1 The Contractor shall not commence work under this Agreement until he has obtained all of the insurance required under this Paragraph, and such insurance has been approved by the Owner, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until the insurance required of the Subcontractor has been so obtained and approved. Insurance required under this paragraph is as follows:

- A. **Worker's Compensation Insurance:** The Contractor shall procure and maintain during the life of this Agreement Worker's Compensation Insurance as required by the laws and regulations of the State of California, as from time to time amended. Such insurance shall cover all persons who the Contractor may employ in connection with the Work. In case any of the Work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such sublet work, unless such Subcontractor's employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance. In the event any class of employees engaged in Work under this Agreement is not protected under the Contractor's Worker's Compensation Insurance, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such employees as are not otherwise protected.
- B. The Contractor shall procure and maintain during the life of this Agreement Contractor's Comprehensive General Liability (bodily injury, property damage and personal

injury) **and** Vehicle Liability Insurance, with a single limit of not less than the following for a General Liability single occurrence: **\$2,000,000** per occurrence combined for a single limit covering death, bodily injury, personal injury, property damage **and** "Any Auto" vehicle liability single occurrence: **\$1,000,000** per occurrence. Prior to commencement of work hereunder, Contractor shall furnish Owner certificates of such liability insurance.

Commercial General Liability **and** Automobile Liability insurance policies shall include the following provisions:

**B - 1 Additional Insureds:** The Board of Trustees of the Leland Stanford Junior University, its officers, agents, representatives, students, employees and volunteers, shall be included as additional insureds, by endorsement.

**B - 2 Primary Coverage:** Above insurance shall be primary as respects all other insurance or self-insurance in force. Owner's insurance or self-insurance shall be excess and noncontributory.

**B - 3 Cancellation Notice:** Thirty (30) days prior written notice of cancellation or material change in the insurance must be given to the Owner.

**B - 4 Waiver of Subrogation:** Contractor and Contractor's insurance companies waive their rights to subrogation against the above named insureds, by endorsement.

C. **Subcontractor's Commercial Liability Insurance.** The Contractor shall either (1) require each of his Subcontractors to procure and to maintain during the life of this subcontract, Subcontractor's Comprehensive Public Liability (Bodily Injury, Property Damage, and Personal Injury) and Vehicle Liability Insurance of the type specified above and satisfying the provisions of 11.1.1.D or (2) insure the activities of his Subcontractors in his policy, specified in the said Subparagraphs.

D. All insurance required under Paragraph 11.1.1.B and 11.1.1.C shall specifically cover Contractor's obligations to defend, indemnify and hold Owner harmless as provided in Paragraph 11.3, and shall name Owner as an additional insured. (See special definition of "Owner" in Paragraph 11.6.). Insurance required under this Paragraph shall include a Waiver of Subrogation.

E. **Evidence of Insurance:** Before beginning performance hereunder, Contractor shall furnish the Owner's Contracts Advisor, named in the Agreement, the insurance documents (certificates of insurance plus endorsement forms) for all insurance required in the preceding and following paragraphs, however endorsement forms are not required for the Professional Liability and Worker's Compensation policies. The Certificate Holder shall be shown as "The Board of Trustees of the Leland Stanford Junior University, University Hall, 485 Broadway Street Redwood City, CA 94063", on all insurance certificates required herein.

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In no event shall acceptance by Owner of any certificate or other document or information relating to insurance hereunder, nor any other act or omission of Owner in any way relieve Contractor from its obligations to defend, indemnify, and provide insurance as stated herein, unless specifically agreed in writing by Owner.

F. Professional Liability: If Contractor or any Subcontractor performs design-build work on the Project, then Contractor shall, and shall cause such Subcontractor to, provide and maintain professional liability insurance covering malpractice and negligence, errors and omissions, in an amount not less than \$1,000,000 per claim and in the aggregate and with a deductible acceptable to Owner. Insurance required under this Section F. shall be being written on a "claims made" basis. Contractor shall confirm to Owner's satisfaction that (a) any applicable retroactive date precedes the date the design-build services were first rendered on the Project and (b) continuous coverage will be maintained, or, if Owner so directs, an extended discovery period will be exercised, for a period of five years after the Final Completion and Acceptance Date (and for an additional five years thereafter if available on commercially reasonable terms).

G. Painting Liability Coverage: If Contractor or any Subcontractor provides painting services on the Project, then Contractor shall procure and maintain, during the life of this Agreement, a pollution liability policy as follows: Pollution/Environmental Impairment Liability insurance (including cleanup costs) with limits of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate for liability resulting in Bodily Injury or Property damage arising out of the work or services to be performed for Owner. Coverage shall be provided for both work performed on site, as well as during the transport of lead-based paint.

### 11.2 Owner's Casualty Insurance

11.2.1 Owner shall procure and maintain in effect at all times during construction a standard all-risk builders' risk insurance policy providing coverage for fire, explosion, vandalism, malicious mischief and collapse, to the maximum extent available at a cost considered reasonable by Owner. Earthquake and flood insurance may be included at Owner's option, exercised in its sole and absolute discretion. Such insurance shall be in an amount equal to the replacement cost of the completed Work (without deduction for depreciation), including the cost of excavations, grading and filling. This insurance, which may be subject to deductibles not to exceed **\$1,500,000** per occurrence, shall cover building materials to be incorporated into the Work that are stored on-Site, but shall not cover building materials that are off-Site or in transit, and shall not cover loss or damage to the tools, equipment, scaffolding, personal property or other items belonging to or rented by Contractor or any Subcontractor which are not to be incorporated into the Work. Contractor shall be responsible for the first **\$5,000** of any loss in which Contractor or a Subcontractor of any tier has an insurable interest.

11.2.2 The builder's risk policy shall name Contractor and the Subcontractors of all tiers as loss payees, as their interests may appear. All proceeds of the builder's risk policy shall be payable to Owner, who shall collect, adjust and distribute such proceeds, compromise any and all claims thereunder and apply the proceeds of such insurance to the repair, reconstruction or replacement of the Project.

11.2.3 The Contractor shall provide (and require subcontractors to provide) best efforts to protect the Project from loss or damage by, but not limited to, fire, theft, water, weather, earthquake and dust.

### 11.3 Indemnity

11.3.1 Contractor agrees to forever indemnify, defend and save harmless Owner from and against any and all claims, suits and demands of liability, loss or damage whatsoever, including attorney's fees, whether direct or consequential, on account of any loss, injury, death or damage to any person or persons or property (including without limitation all agents and employees of Contractor and Owner and all property owned by, leased to or used by either Contractor or Owner or both) or on account of any loss or damage to business or reputation or privacy of any person, arising in whole or in part or in any way from any act, omission or event in any way connected with this Agreement, any work thereunder, or the Project, or in any way related thereto, and regardless of whether such loss, injury, death or damage results in whole or in part from (a) the negligence or omission of Owner or (b) any product liability of Owner or any person or (c) any strict liability of Owner or any person or (d) failure by Owner to adhere to any governmental laws, standards or regulations or interpretations thereof or to any non-governmental standards or guidelines. The defense of any such claims, suits and demands shall be by attorneys acceptable to Owner, and the fees and expenses for such attorneys shall be paid by Contractor.

11.3.2 Infringement The Contractor shall defend, indemnify and save harmless the Owner and its trustees, officers, agents and employees from and against any and all claims and demands which may be made by reason of any infringement, or alleged infringement, of any patent rights, or claims or demands caused, or alleged to have been caused, by the use of any product, article, apparatus or appliance or portion thereof furnished or installed by the Contractor; and the Contractor shall, at his own cost, expense and risk, defend any and all actions, suits, or other legal proceedings that may be brought or instituted against the Owner or its trustees, officers, agents or employees on account of any such claim or demand, and pay and satisfy any judgment or decree that may be rendered or adjudged against the Owner or its trustees, officers, agents or employees in any such action, suit or legal proceeding; except that the Owner shall be responsible for any and all loss when the product, article, apparatus or appliance or portion thereof is particularly specified in the Contract Documents, but if the Contractor has information that the product, article, apparatus or appliance or portion thereof so specified infringes on any patent, he shall be responsible as set forth in the foregoing unless he promptly informs the Owner of such infringement.

## GENERAL CONDITIONS

11.4 **Waiver:** Contractor hereby waives any and all claims against Owner for damage to or loss of use of property, or loss of or damage to Contractor's business or reputation or privacy, or injury or death to persons (including without limitation all agents and employees of Contractor and all property owned by, leased to or used by Contractor) arising in whole or in part or in any way from any act, omission or event in any way connected with this Agreement, any work thereunder, or the Project, or in any way connected therewith or in any way related thereto, and regardless of whether such loss, injury, death or damage results in whole or in part from (a) the negligence or omission of Owner or (b) any product liability of Owner or any person or (c) any strict liability of Owner or any person or (d) failure by Owner to adhere to any governmental laws, standards or regulations or interpretations thereof or to any non-governmental standards or guidelines or (e) infringement of any United States or foreign patent, trademark, copyright, trade secret or other intellectual property right.

11.5 **Exclusions:** There are excluded from the indemnity provisions of 11.3.1, and the waiver provisions of 11.4, any such claims, suits and demands of liability, loss or damage resulting solely from Owner's active negligence or willful intent to cause injury.

11.6 **Special Definition of "Owner":** As used in this Article 11 (except Paragraph 11.5), and in any insurance required above, "Owner" shall be deemed to include its Trustees, officers, employees, faculty, students, agents, affiliated organizations and their insurance carriers, and those of the Stanford University Hospital and Clinics. As used in Paragraphs 11.3 and 11.4, "Contractor" shall be deemed to include all Subcontractors and Sub-subcontractors.

### ARTICLE 12

#### CHANGES IN THE WORK

##### 12.1 Change Order/Agreement Modification

12.1.1 A Change Order is a written order to the Contractor signed by the Owner and issued after execution of the Agreement directing a change in the Work, or a suspension of Work, or an adjustment in the Agreement Sum or the Contract Time. The Agreement Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Agreement Sum or the Contract Time.

12.1.2 The Owner, without invalidating the Agreement, may order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Agreement Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable provisions of the Contract Documents.

12.1.3 Charges or credits resulting from a Change in the Work shall be determined in one or more of the following ways:

- A. By mutual acceptance of a lump sum properly itemized in a format acceptable to the Owner, but as a minimum shall include legible, clear cost information which will allow calculation of unit costs for each of the various task components, expressed in units that are generally accepted

in the construction industry. Such cost information shall include:

1. Component labor, indicating man-hours and rates by skill, with appropriate fringe benefit rates;
  2. Component materials, with specific description, quantities, and costs of each type;
  3. Subcontractor's prices including specific description of subcontractor work;
  4. List of appropriate equipment rentals, tools and other charges;
  5. Overhead and profit (see 12.1.3.4)
  6. Itemized taxes, bonds, and any insurance premiums special and allocable to the change order work.
- B. By unit prices stated in the Contract Documents or subsequently agreed upon;
  - C. By the reasonable actual cost of the Change in the Work plus a reasonable fee, not to exceed a mutually agreed upon maximum price of \$10,000.00 or less. This method will be limited to Field Orders identified in paragraph 12.5 below.
  - D. The term "overhead and profit" shall mean the full amount of compensation (both direct and indirect) to be paid to Contractor for all costs and expenses not included in the cost of the extra work, whether or not such costs and expenses are specifically defined. Contractor's overhead and profit shall be as follows:
    - (a) General Conditions Costs expended or saved as a direct result of a Change in the Work;
    - (b) Direct Costs expended or saved as a direct result of the Change in the Work;
    - (c) An allowance for all overhead costs and profit, determined as follows:
      - (i) For Work performed by Contractor's own forces, Contractor shall be entitled to a fee equal to the Contractor's Fee applied against the increase in Direct Costs; and
      - (ii) For Work performed by Subcontractors, the maximum fee payable to Contractor shall not exceed the Contractor's Fee, and the maximum fee payable to Subcontractors of any tier shall not exceed 15%, of the aggregate increase or decrease in Direct Costs, and Contractor shall be solely responsible for allocating the overhead and profit to Contractor and all Subcontractors involved in the Change. As a further clarification, the agreed upon fee is intended to cover the same items as Contractor's Fee specified in Article 5 of the Agreement or Contractor's Proposal under Section 9.2 b. of the Agreement. The fee is specifically excluded from the portion of wage which comprises a shift differential or the overtime portion of the labor wage.

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- d) Overhead and profit shall NOT be calculated on taxes, bonds, permits, royalties, utility fees and any insurance premiums.

The cost of extra work shall **NOT** include any of the following:

- 1) Wages, salaries, fringe benefits and payroll taxes for Contractor's and all subcontractors' employees not directly employed at the project site or at fabrication sites off the project site in the performance of extra work
- 2) Wages, salaries, fringe benefits and payroll taxes for Contractor's and all subcontractors' employees supervisory and administrative personnel not directly employed at the project site in the performance of extra work.
- 3) Wages, salaries, fringe benefits and payroll taxes for Contractor's and all subcontractors' employees supervisory and administrative personnel directly employed at the project site in the performance of extra work, but only (i) if the extra work does not require direct supervision of overtime work and (ii) to the extent such personnel are not solely engaged in supervising and administering such extra work during an extension of the Contract time or periods of overtime.
- 4) Loss of efficiency or productivity, overhead, administrative or general expenses of any kind including data processing costs incurred in connection with extra work.

12.1.4 If none of the methods set forth above is agreed upon and;

- A. Immediate field conditions reveal a change in scope is necessary; which is estimated to exceed \$10,000.00.
- B. A work stoppage will be created if direction to proceed is delayed, e.g., no work-around plan is practical or feasible.
- C. The Construction Manager and Project Manager agree with the scope of the change and the dollar estimate of a Not-to-Exceed figure, proposed by the Contractor (maximum of \$25,000.00).

Then, the Contractor, provided he receives a written not-to-exceed Change Order signed by the Owner, shall promptly proceed with the change in the Work involved. However, he must submit a detailed cost proposal within fifteen calendar days after receipt of the Change Order outlining all costs expended to date plus a cost estimate of monies necessary to complete the work added by Change Order. As a minimum this will include items A thru F of Paragraph 12.1.3.1 above. An equitable Lump Sum adjustment shall then be negotiated between the Owner and the Contractor within the next 20 days. A superseding Change Order will then be issued reflecting the agreement between the two parties. Pending final determination of the cost or credit to the Owner, payments on account shall be made pursuant to Article 9. When both additions and credits covering related Work or

substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to the change.

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

12.2 Concealed Conditions: Should concealed and unforeseeable conditions be encountered in the performance of the Work below the surface of the ground or should concealed and unforeseeable conditions in an existing structure vary materially from conditions indicated by the Contract Documents, or be of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, then the Agreement Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty days after the first observance of the conditions. No increase in the Agreement sum shall be made, however, for any conditions (whether or not contradicted by the Contract Documents) ascertainable by a careful on-site inspection by the Contractor.

12.3 Claims for Additional Cost and/or Time

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum and/or time, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed. No such claim shall be valid unless so made. Any change in the Agreement Sum resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to any claim or dispute, (2) any order by the Owner to stop the Work, where the Contractor was not at fault, or (3) failure of payment by the Owner, the Contractor shall make such claim as provided in Subparagraph 12.3.1.

12.4 Agreement Modification Proposal: Requests for changes in the work will be submitted with a breakout of costs as identified in Paragraph 12.1.3.1 A through F above. Acceptance of the Contractor's Quotation Summary by the Project Manager or Construction Administrator shall not be binding on the Owner. Rather it is a recommendation for the work and cost to be included in a proposed subsequent Change Order. Agreement Modification Proposals may be initiated by the Contractor, the Architect or the Owner. These shall be sequentially numbered and controlled by the Owner.

12.5 Field Orders: In emergency situations, or to permit orderly progress of the Work, a Field Order may be issued by the Construction Manager. The Field Order may authorize work on a cost reimbursement basis in accordance with 12.1.3 and a not-to-exceed a given dollar estimate. Field Order authority is limited to \$10,000, and the work involved must be included in a Change Order as rapidly as

**GENERAL CONDITIONS**

possible. Cumulative Field Orders may not be issued to circumvent the \$10,000 limitation.

**ARTICLE 13**

**UNCOVERING AND CORRECTION OF WORK**

13.1 Uncovering of Work: If any portion of the Work should be covered contrary to the request of the Owner or his representative or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.2 Inspection, Testing, Rejection of Materials and Workmanship

13.2.1 The Contractor shall (1) maintain an adequate inspection system approved by the Owner and perform such inspections that will assure that the work performed under this Agreement conforms to Agreement requirements, and (2) maintain and make available to the Owner adequate records of such inspections, consistent with the test and inspection listed in Paragraph 8.2.1.F.

13.2.2 All work (which term includes but is not restricted to materials, workmanship, and manufacture and fabrications of components) shall be subject to inspection and test by the Owner at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of the Owner and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the Work strictly complies with the Agreement requirements. No inspection or test by the Owner shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance of the completed Work.

13.2.3 The Contractor shall, without charge, replace any material or correct any workmanship found by the Owner not to conform to the Agreement requirements, unless the Owner consents to accept such material or workmanship with an appropriate adjustment in Agreement Price. The Contractor shall promptly segregate and remove rejected material from the

13.2.4 If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Owner (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Agreement, and/or (2) may terminate the Contractor's right to proceed.

13.2.5 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, the Contractor shall give the Owner, timely notice of its readiness and of the date arranged so that Owner may observe such inspection, testing, or approval. Unless otherwise specified in the Contract Documents, the Owner shall select the testing agency or agencies for all test work performed at the job site (to include concrete batch plant work). The Owner shall pay for all testing services employing the Owner's selected testing agency or agencies unless

specifically noted as otherwise in the specifications. In all cases when testing reveals a failure of the work, retesting after correction of the work shall be paid for by the Contractor.

13.2.6 Should it be considered necessary or advisable by the Owner at any time before acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material. If such Work is found to be defective or non-conforming in any material respect, Contractor shall pay Owner all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Agreement, an equitable adjustment shall be made in the Agreement price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the Work has been delayed thereby, he shall, in addition, be granted a suitable extension of time. Owner shall not be liable for any failure to notify Contractor or any other person of any defective, dangerous or unsuitable Work observed by Owner or any agent or employee.

13.2.7 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Owner.

13.3 Correction of Work

13.3.1 The Contractor shall promptly correct all Work rejected by the Owner or the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Architect's additional services made necessary thereby.

13.3.2 If, within the later of one year after the Date of Substantial Completion of the Work or designated portion thereof or one year after acceptance by the Owner of designated equipment or such longer period of time as may be prescribed by law or by the terms of any applicable warranty, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt (whether or not after such time period) of a written notice from the Owner to do so unless the Owner has previously given the Contractor a specific written acceptance of such condition. This obligation shall survive termination of the Agreement. The Owner shall give such notice within 90 days after Owner's discovery of the condition.

13.3.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have been corrected under Subparagraphs 4.5.1, 13.2.1, and 13.2.2, unless removal is waived by the Owner.

13.3.4 If the Contractor fails to correct defective or non-conforming Work as provided in Subparagraphs 4.5.1, 13.3.1 and 13.3.2, the Owner may correct it in accordance with Paragraph 3.9.

13.3.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time

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fixed by written notice from the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, such materials and equipment shall be deemed abandoned and the Owner may upon ten additional days' written notice sell them at auction or at private sale or otherwise use or dispose of them and the proceeds thereof. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.3.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

13.3.7 Nothing contained in this Paragraph 13.3 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his 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 Contractors' liability with respect to his obligations other than specifically to correct the Work.

13.4 Acceptance of Defective or Non-Conforming Work If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Agreement Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### ARTICLE 14

#### TERMINATION OF THE AGREEMENT

##### 14.1 Termination for Convenience of the Owner

14.1.1 The performance of work under this Agreement may be terminated by the Owner in accordance with this clause in whole, or from time to time in part, whenever Owner determines that such termination is in its best interest. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective.

14.1.2 Upon receipt of a Notice of Termination, and except as otherwise directed, the Contractor shall,

- A. Stop work under the Agreement on the date and to the extent specified in the Notice of Termination;
- B. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Agreement as is not terminated;
- C. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- D. Assign to the Owner, in the manner, at the times, and to the extent directed, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- E. Reasonably settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval of the Owner to the extent it may require, which approval or ratification shall be final for all the purposes of this clause;
- F. Transfer title and deliver to the Owner, in the manner, at the times, and to the extent, if any, as directed (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the Agreement had been completed, would have been required to be furnished to the Owner;
- G. Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Owner, any property of the types referred to in F above; provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this Agreement or shall otherwise be credited to the price or cost of the Work covered by this Agreement or paid in such other manner as the Owner may direct;
- H. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
- I. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Contractor and in which the Owner has or may acquire an interest.
- J. At any time after taking action in G above the Contractor may submit to the Owner a list, certified as to quantity and



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quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Owner, and may request the Owner to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Owner will accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Owner upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

14.1.3 After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim, in the form and with certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than six (6) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner, upon request of the Contractor made in writing within such six (6) months period or authorized extension thereof. Any failure of the Contractor to submit his termination claim within the time allowed shall be deemed a waiver of all costs and compensation arising from termination.

14.1.4 Subject to the provisions of Paragraph 14.1.3, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Sum as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of work not terminated. The Agreement shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in Paragraph 14.1.5 of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this Paragraph 14.1.4.

14.1.5 In the event of the failure of the Contractor and the Owner to agree, as provided in Paragraph 14.1.4, upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Owner shall pay to the Contractor the amounts determined by the Owner as follows, but without duplication of any amounts agreed upon in accordance with Paragraph 14.1.4:

A. With respect to all Work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of

- (i) the cost of such Work;
- (ii) the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in Paragraph 14.1.2 E above, exclusive

of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination of Work under this Agreement, which amounts shall be included in the cost on account of which payment is made under (i) above; and

- (iii) a sum, as profit on the percentage of Work done as determined by the Owner to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated loss; and

B. The reasonable cost of the preservation and protection of property incurred pursuant to Paragraph 14.1.2 I; and any other reasonable cost incidental to termination of work under this Agreement, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Agreement.

The total sum to be paid to the Contractor under (1) above shall not exceed the total Agreement Sum as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed in writing the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Paragraph 14.1.2 G.

14.1.6 In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Agreement, (2) any claim which the Owner may have against the Contractor in connection with this Agreement, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Owner.

14.1.7 If the termination hereunder be partial, Contractor may file with the Owner a claim for an equitable adjustment of the price specified in the Agreement relating to the continued portion of the Agreement (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price. Any claim by the Contractor for equitable adjustment under this clause must be asserted within sixty (60) days from the effective date of the termination notice, unless an extension is granted in writing by the Owner.

14.1.8 The Owner may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Agreement

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whenever in the opinion of the Owner the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be paid by the Contractor to the Owner upon demand, together with interest computed at the rate established by the Bank of America, prime rate for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Owner; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Owner.

14.1.9 Unless otherwise provided for in this Agreement, or by applicable statute, the Contractor shall - from the effective date of termination until the expiration of three years after final settlement under this Agreement - preserve and make available to the Owner at all reasonable times at the office of the Contractor but without direct charge to the Owner, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Agreement and relating to the Work terminated hereunder.

### 14.2 Termination for Default

14.2.1 If the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers, equipment or materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise fails to comply with any provision of the Contract Documents, then the Owner, may, without prejudice to any right or remedy and after giving the Contractor and his surety, if any, thirty days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment.

14.2.2 If the costs of finishing the Work, including compensation for the Architect's additional services made necessary thereby, exceed the unpaid balance of the Agreement Sum, the Contractor promptly shall pay the difference to the Owner. The amount to be paid to the Owner shall be determined in the manner provided in Paragraph 14.1 and this obligation for payment shall survive the termination of the Agreement.

## END OF GENERAL CONDITIONS