



THE UNIVERSITY OF CHICAGO
Facilities Services

5555 ELLIS AVENUE CHICAGO • ILLINOIS 60637

GENERAL CONSTRUCTION SERVICES AGREEMENT
BETWEEN OWNER AND CONTRACTOR
(Where Basis of Payment is a Stipulated Sum)

KEY TERMS COVER SHEET

1. BASIC INFORMATION

- 1.1 Date of Agreement: xxxxxxxx 00, 200x
- 1.2 Owner: The University of Chicago
5801 S. Ellis Avenue
Chicago, Illinois 60637
- University Contact: xxxxxxxxxxx, Project Manager
University of Chicago - Facilities Services
5555 South Ellis Avenue
Chicago, IL 60637
Phone: 773 000-0000
Fax: 773-000-0000
Email: xxxxxx@uchicago.edu
- University Project Number: 00000000
- University Contract Number: F000000
- University 8-ledger Number: 8-00000
- 1.3 Project: [Insert Name and Location/Address of Project]
[Insert Brief Description of Project]
- 1.4 Contractor: [Insert Company],
[Insert Type/State of Business Organization (e.g. an Illinois corporation)]
Street Address
City, State, Zip
Contractor's Representative: xxxxxxxxx
Phone: 000-000-0000 Fax: 000-000-0000
Email: xxxxxxxxx.xxx
License No.: xxxxxxxxx
- 1.5 Architect of Record: Architect
Street Address
City, State, Zip
- 1.6 Owner's Representative (if any): Owner's Representative
Street Address
City, State, Zip

- 1.7 Individual(s) to Receive Notice: If to Owner:
 [Insert All Individuals/Addresses]
 If to Contractor:
 [Insert All Individuals/Addresses]

2. **CONTRACT TIME/DELAYS**

- 2.1 Date of Commencement: [Insert Date of Commencement]
 2.2 Date of Substantial Completion: xxx Days after the Date of Commencement
 2.3 Date of Final Completion: xxx Days after Substantial Completion
 2.4 Liquidated Damages:

Liquidated damages [shall][shall not] be assessed against Contractor for failure to achieve Substantial Completion of the Work, or designated portion of the Work (including any Milestone) within the Contract Time, as set forth in Article 3 of this Agreement. Therefore, Section 47 of the General Conditions [is][is not] incorporated into the terms of this Agreement. Liquidated damages, if any, shall be assessed in the amount(s) set forth below for each day of delay to the achievement of Substantial Completion of the entire Work, or of any designated portions of the Work (including any Milestone):

Substantial Completion: \$xxx/Calendar Day
 Final Completion: \$xxx/Calendar Day
 Milestone(s): per Exhibit H

2.5 Delays/Extensions of Time:

The parties acknowledge and agree that [Section 45A][Section 45B] of the General Conditions shall govern the Contractor’s rights and obligations with respect to delays and extensions of Contract Time and that, therefore, [Section 45A][Section 45B] of the General Conditions shall not apply to this Agreement. If Section 45B governs the Contractor’s rights and obligations with respect to delays and extensions of Contract Time, the parties agree that the Contractor’s Construction Schedule includes and anticipates lost work days as result of weather conditions in the aggregate amount of [xxx work days].

3. **CONTRACT PRICE TERMS**

- 3.1 Contract Sum: The Contract Sum shall be the fixed stipulated sum of xxxxxxxx Dollars (\$xxxxx.xx)
 3.2 Allowances: The Contract Sum includes the Allowances, if any, set forth in Exhibit E
 3.3 Alternates: The Contract Sum is based on the Alternates as set forth below
 and/or in Exhibit F:

Base Bid	\$xxxx.xx
Alternate 1	\$xxxx.xx
Alternate 2	\$xxxx.xx
Alternate 3	\$xxxx.xx

- 3.4 Allowable Contractor Change Order Mark-up (Self-Performed Work): Ten percent (10%)
- 3.5 Allowable Contractor Change Order Mark-up (Work Performed by Subcontractors): Five percent (5%)
- 3.6 Allowable Subcontractor Change Order Mark-ups (Self-Performed Work): Ten percent (10%)
- 3.7 Allowable Subcontractor Change Order Mark-ups (Work Performed by Sub-Subcontractors): Five percent (5%)

4. **OTHER KEY TERMS**

4.1 Correction Period Start Date:

Pursuant to Article 20, Section 20.1, the one-year correction of Work period shall commence upon [the date Contractor achieves Substantial Completion of the Work] [the date Contractor achieves Final Completion of the Work] [the date the applicable Governmental Authority issues a final Certificate of Occupancy for the entire Work].

4.2 LEED® Certification: [Insert Required Rating (e.g., Silver, Gold, etc.), if any]

4.3 Performance and Payment Bonds:

Performance and payment bonds [will][will not] be required to be procured by Contractor in accordance with Section 53 of the General Conditions. If not required at the time of execution of this Agreement, Owner retains the right to require the Contractor and/or its Subcontractor(s) to procure performance and payment bonds after execution of this Agreement, subject to the terms of Section 53 of the General Conditions.

**GENERAL CONSTRUCTION SERVICES AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

This Agreement is made as of the date set forth in the Section 1.1 of the Key Terms Cover Sheet between the University of Chicago (“**Owner**”) and the entity listed at Section 1.4 of the Key Terms Cover Sheet (“**Contractor**”), for construction services in connection with the project identified and/or described in Section 1.3 of the Key Terms Cover Sheet (the “**Project**”) for whom the entity set forth in Section 1.5 of the Key Terms Cover Sheet (“**Architect**”) shall act as Architect.

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

ARTICLE 1
GENERAL PROVISIONS/STANDARD OF CARE

1.1 The Key Terms Cover Sheet and all of the terms and information set forth therein are an integral part of this Agreement and are hereby incorporated into the body of this Agreement, as though fully set forth herein.

1.2 Capitalized terms in this Agreement, if not otherwise stated herein, shall have the meaning set forth in Section 1 of the General Conditions.

1.3 Contractor acknowledges and accepts the relationship of trust and confidence with the Owner established by this Agreement and covenants with the Owner to expeditiously and efficiently perform the services and Work of this Agreement in accordance with the interests and goals of the Owner, exercising the degree of skill, care and judgment set forth in Paragraph 1.4 below. Contractor agrees to cooperate with the Architect, Owner, and any other Project consultants, contractors and vendors of the Owner.

1.4 The Contractor and its Subcontractors shall be held to a standard of care as evaluated in comparison to general contractors and subcontractors of similar experience, qualification and reputation on projects of similar scope, cost and complexity, providing the highest quality of services, in and around the locality.

ARTICLE 2
SCOPE OF THE WORK

The Contractor shall furnish all of the materials and perform all of the Work described in, and reasonably inferable from, the Contract Documents, including, without limitation the scope of Work set forth in **Exhibit C**, and shall do everything required by the Agreement and the Contract Documents.

ARTICLE 3
CONTRACT TIME

3.1 The Work to be performed under this Agreement shall commence on the date fixed in a written notice to proceed issued by the Owner, unless a date is set forth in Section 2.1 of the Key Terms Cover Sheet (the “**Date of Commencement**”). The Contract Time(s) shall be measured from the applicable Date of Commencement. Contract Time(s) allowed for the Substantial Completion of the Work, Final Completion of the Work and/or any Milestones required by the Agreement shall be as set forth in Paragraphs 3.1.1 through 3.1.3 below, which times shall not be modified except as provided for by the express terms of this Agreement.

- 3.1.1 The Contractor shall achieve Substantial Completion of the Work, in full accordance with the requirements of the Contract Documents, within the timeframe set forth in Section 2.2 of the Key Terms Cover Sheet.
- 3.1.2 The Contractor shall achieve Final Completion of the entire Work, in full accordance with requirements of the Contract Documents within the timeframe set forth in Section 2.3 of the Key Terms Cover Sheet.

- 3.1.3 The Contractor shall achieve completion of any Milestones in accordance with the Construction Schedule and as may be set forth in **Exhibit H** hereto.

ARTICLE 4
CONTRACT SUM

The Owner shall pay the Contractor and the Contractor shall accept as full and complete payment for timely performance of this Agreement in current funds the lump sum amount set forth in Section 3.1 of the Key Terms Cover Sheet (the “**Contract Sum**”). The Contract Sum shall not be modified except by change order as provided in the General Conditions. The Contract Sum is determined on the basis of the base bid and alternates as set forth in Section 3.1 of the Key Terms Cover Sheet. Owner shall make progress payments and final payment on account of the Contract Sum to the Contractor as provided in the General Conditions to this Agreement.

ARTICLE 5
CONTRACT DOCUMENTS

The “**Contract Documents**” consist of this construction agreement between Owner and Contractor and its Exhibits (as enumerated below), including, without limitation, the “**General Conditions**” attached as **Exhibit A** (hereinafter collectively referred to as the “**Agreement**”), Drawings, Specifications, Addenda issued prior to execution of the Agreement (Drawings, Specifications and Addenda are listed in **Exhibit C**), other documents listed in the Agreement (excluding any Owner provided information), approved Submittals and Change Orders or other written Modifications issued after execution of the Agreement. In the event of any conflict or inconsistency between any of the Contract Documents, or their respective provisions, or in any standard specification, manual, code or Laws, the provision granting greater rights or remedies to Owner, as determined by Owner; and/or providing for a higher level or quality of service or Work, as determined by Owner; and/or imposing the greater duty, standard, responsibility or obligation on the Contractor, as determined by Owner, shall govern and control.

The Exhibits to the Agreement are as follows:

Exhibit A	General Conditions of the Agreement
Exhibit B	Key Personnel, Staffing Organization Chart and List of Direct Personnel Expenses
Exhibit C	Scope of Work (List of Drawings, Specifications and Addenda)
Exhibit D	Construction Schedule
Exhibit E	Allowances
Exhibit F	Alternates
Exhibit G	Economic Impact Program
Exhibit H	Schedule of Milestones/Liquidated Damages
Exhibit I	Labor Rate Form and Instructions

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement and do hereby warrant that their respective signatory, whose signature appears below, has been and is on the date of this Agreement duly authorized to execute this Agreement.

CONTRACTOR:

OWNER:

THE UNIVERSITY OF CHICAGO

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Federal ID No.: _____

EXHIBIT A

GENERAL CONDITIONS OF THE AGREEMENT

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1. DEFINITIONS

Wherever used in any of the Contract Documents, the following meanings shall be given to the terms herein defined:

1.1 “**Addenda**” means the documents containing additions, changes, corrections or modifications to the Contract Documents (as hereinafter defined) issued by the Architect during the bidding period or prior to the award of contract. Addenda become part of the Contract Documents.

1.2 “**As-Built Information**” means all changes, including, without limitation, changes to the Construction Documents issued by Architect, as well as Field Changes made during construction and installation of the Work, that are reflected in the Contractor’s set of field Drawings and Specifications to show the full extent of the Work that was performed and the materials installed by the Contractor and all of its Subcontractors of every tier.

1.3 “**Bidder(s)**” refers to any individual(s) or entity(ies) submitting an approved proposal for Work.

1.4 “**Change Order**” means a written order to the Contractor signed by the Owner, issued after the execution of the Agreement, authorizing an extra or a change in the Work or an adjustment in the Contract Sum, Construction Schedule or Contract Time.

1.5 “**Construction Schedule**” shall have the meaning set forth in Section 44 of the General Conditions.

1.6 “**Contract Sum**” shall have the meaning set forth in Article 4 of the Agreement.

1.7 “**Contract Time**” means the number of calendar days allowed or the date stated in the Agreement and Construction Schedule for the Substantial Completion and Final Completion of the Work, or any parts thereof, to the extent designated as Milestones in the Agreement or Construction Schedule and as further set forth in Article 3 of the Agreement. All time limits stated in the Contract Documents are of the essence.

1.8 “**Contractor’s Representative**” means the individual(s) designated in Section 1.4 of the Key Terms Cover Sheet who shall receive all communications under the Contract Documents and shall have the authority to bind the Contractor with respect to decisions made and actions taken pursuant to the Contract Documents.

1.9 “**Date of Final Completion**” means the date on which the Contractor is required to achieve Final Completion as set forth in Article 3 of the Agreement, as may be modified pursuant to the terms of the Agreement.

1.10 “**Date of Substantial Completion**” means the date on which the Contractor is required to achieve Substantial Completion as set forth in Article 3 of the Agreement, as may be modified pursuant to the terms of the Agreement.

1.11 “**Drawings**” means the graphic and pictorial portions of the Contract Documents, showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details schedules and diagrams.

1.12 “**Excusable Events of Delays**” shall have the meaning as set forth in Section 45 of the General Conditions.

1.13 “**Field Changes**” means any and all deviations and discrepancies in the Work from that indicated in the Contract Documents, including, without limitation, the quantities, locations, lengths and dimensions of mechanical, electrical, plumbing, HVAC or other portions of the Work that are shown diagrammatically in the Drawings.

1.14 “**Final Completion**” or “**Finally Complete**” means the point in time when the Work and services of this Agreement is fully complete in accordance with the Contract Documents, all Punchlists have been completed and the Contractor has fulfilled all of the requirements of Section 39 of the General Conditions.

1.15 “**Final Payment**” shall mean the final payment to be made by Owner to Contractor pursuant to Section 35 of the General Conditions.

1.16 “**Governmental Authorities**” means the United States, the State, County and City in which the Project is located, and any other local, regional, state or federal political subdivision, authority, agency, department, commission, board,

bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over the Project, Work, Project Site, Contractor or Owner, including, without limitation, any Governmental Authorities having jurisdiction to review and approve or reject the Contract Documents or the Work based on compliance or non-compliance with applicable Laws.

1.17 “**Hazardous Material(s)**” means any hazardous, toxic, flammable, or explosive substance, material, or waste materials, which is or becomes regulated by any local Public Agency, the State or the United States Government. The term “Hazardous Material,” as defined in the Glossary, is by this clause extended to include, without limitation, any material or substance which is designated as (a) a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1317); (b) a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 et seq.); (c) a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. Section 9601 et seq.); or (d) a “hazardous” or “toxic” substance in any Law similar to, or in any amendment of, any of the Laws cited in this clause.

1.18 “**Law(s)**” means any and all applicable laws, rules, regulations, ordinances, codes, and/or orders, judgments or decrees of federal, state, department, city or local governments, courts or tribunals and any other Governmental Authority having jurisdiction over the Project or over the Project Site in force at the time the Agreement is executed and as amended to the extent that such amendment was reasonably foreseeable to the Contractor at the time the Agreement was executed. Laws shall specifically include the Chicago Energy Code.

1.19 “**Milestone(s)**” means the date or time frame for achievement of Substantial Completion and Final Completion of the Work or completion of a major task(s) or portion(s) of the Work as designated in the Construction Schedule and/or **Exhibit H** to the Agreement.

1.20 “**Modification**” means (1) a written amendment to the Agreement signed by both parties; (2) a Change Order executed in accordance with the requirements of the Contract Documents; or (3) a written order directing minor changes in the Work.

1.21 “**OAC Meetings**” shall have the meaning as set forth in Section 25 of the General Conditions.

1.22 “**Progress Schedule(s)**” shall have the meaning as set forth in Section 44 of the General Conditions.

1.23 “**Punchlist(s)**” means a list or lists of items within the Project that remain to be replaced or completed in accordance with the requirements of the Contract Documents at the time of Substantial Completion (as hereinafter defined) of the Work or designated portion thereof.

1.24 “**Record Documents**” means the in progress and final set of record documents (in hard-copy and electronic record format, such as CAD or BIM) for the Project showing the condition of the Work as actually built based on the As-Built Information.

1.25 “**Schedule Float**” means the number of days an activity can be delayed beyond its schedule completion without delaying a succeeding or related activity or restricting the schedule of a preceding activity in the Construction Schedule, with a critical path activity having no Schedule Float.

1.26 “**Schedule of Values**” means a listing of elements, systems, items or subdivisions of the Work, establishing the value for each, the total of which equals the sum to be paid to the Contractor. The Schedule of Values is used for establishing the cash flow for the Project and is further defined in Section 32 of the General Conditions.

1.27 “**Shop Drawings**” means the drawings created by Subcontractor, supplier, manufacturer or other entity that illustrate constructions, materials, dimensions, installations and other pertinent information for the incorporation of an element or item into the Work and shall be deemed to include catalog costs, brochures, illustrations, material lists or submittals, equipment lists or submittals, performance data, diagrams, schedules and other data specifically prepared for the Work.

1.28 “**Similar**” shall be considered as meaning that items in each case are to be separately designed, furnished and/or installed to suit conditions in a manner like or similar in all material respects to the example referred to and is not to be construed as meaning identical.

1.29 “**Site**” or “**Project Site**” means the space available to the Contractor for performance of the Work, either exclusively or in conjunction with others performing other Work as part of the Project. The extent of the Project Site is shown on the Drawings.

1.30 “**Specifications**” means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.31 “**Subcontract**” shall have the meaning as set forth in Section 55 of the General Conditions.

1.32 “**Subcontractor**” means a person or entity that has an agreement (written or oral) within the Contractor to perform any portion of the Work.

1.33 “**Substantial Completion**” or “**Substantially Complete**” means the point in time when: (a) the progress of the Work, or designated portion of the Work, is fully complete and functional in accordance with the requirements of the Contract Documents such that only items listed in the Punchlist remain and the Work, or designated portion thereof, is ready to be occupied and/or utilized for its intended purpose; (b) the applicable Governmental Authorities have issued a certificate of occupancy (or where Substantial Completion only applies to a designated portion of the Work, a temporary certificate of occupancy) and/or any other applicable approvals, licenses, certifications or other written evidence from the applicable Governmental Authority that said Work, or designated portion of the Work, has been completed to such authority’s satisfaction and is ready to be occupied and/or used for its intended purpose; (c) the Architect has issued an Owner approved certificate of Substantial Completion for the Work, or designated portion of the Work, in accordance with the terms of the Contract Documents; (d) Warranty Binders, reviewed and approved by the Architect, have been submitted to Owner; and (e) with respect to all of the Project’s building systems, including, without limitation, any mechanical and HVAC systems, (i) the Work, or designated portion of the Work, is fully commissioned, balanced, tested and operational in compliance with the Contract Documents and applicable Laws (“**Systems Commissioning**”); and (ii) all required initial and follow-up orientation and training has been accomplished in accordance with the requirements of the Contract Documents (“**Systems Training**”).

1.34 “**Work**” means the construction and services required by, and reasonably inferable from, the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Contractor shall perform the Work together with certain on-site infrastructure, improvements and appurtenances to be constructed and installed in connection therewith, and certain off-site infrastructure, improvements and appurtenances, in order to provide fully functional facilities, including all demolition and construction services, supervision, administration services, coordination of all Subcontractors, tests, inspections, and other items that are necessary and appropriate for the finishing, equipping and functioning of the facilities and structures, together with all additional, collateral and incidental work and services required for completion of the Work. As part of the Work, Contractor shall furnish and assume full responsibility for everything required for the orderly progress and proper execution and completion of the Work in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated into the Work including, but not limited to, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, transportation, telephone, water, sanitary facilities, temporary facilities, utilities and all other facilities and incidentals. With respect to temporary or permanent utilities, Contractor shall contact, coordinate and cooperate with any applicable public or private utility companies in the location and, if necessary, upgrading of such utilities.

2. INTENT AND INTERPRETATION

With respect to the intent and interpretation of the Contract Documents, the Owner and Contractor agree as follows:

2.1 The Contract Documents taken together constitute the entire and exclusive agreements between the parties with reference to the Project, and supersede any and all prior discussions, communications, representations, understandings, negotiations, or agreements.

2.2 The Contract Documents are complementary, and what is called for by any one shall be binding as if called for by all. The intention of the Contract Documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work and completion of the Project. Anything that may be required, reasonably implied or inferred by the Contract Documents that make up this Agreement, or any one or more of them, shall be provided by the Contractor for the Contract Sum.

2.3 When a word, term, or phrase is used in the Contract Documents, it shall be interpreted or construed first, as defined in the Contract Documents; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

2.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Agreement shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Agreement.

2.5 The organization of the Specifications into divisions, sections, and/or articles and the arrangement of the Drawings shall not dictate to the Contractor in any way how the Work is to be divided among Subcontractors or establish the extent of Work to be performed by any trade.

2.6 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up the Contract Documents, Shop Drawings, and other submittals and shall give written notice to the Owner and the Architect of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with services and any affected Work. The express or implied approval by the Owner or the Architect of any Shop Drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with the Contract Documents. The Owner has requested the Architect to prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction.

2.7 Reference in the Contract Documents to any article, device, product, material, fixture, form, process or type construction by name, make, type or style shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition. However, Substitutions will only be considered as set forth in Section 15 of the General Conditions.

2.8 Where only one such name, make, type or style is specified in any instance, whether or not followed by the phrase "or other approved," "or equal" or other words to that effect, the Contractor's proposed installation shall be based on the name, make, type, or style so specified; and

2.8.1 Where the Contract Documents mention more than one name of Subcontractor, supplier or process, or more than one name, make, type or style of article, material or equipment item, the Contractor's proposal shall be based on one of the named makes, types or styles; and

2.8.2 The Contractor's proposal shall clearly state, the names, makes, types or styles which the Contractor may propose, other than those designated in the Contract Documents together with the proposed cost adjustments, if any.

3. PROFESSIONAL SERVICES

The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor has specifically agreed in writing to provide such services. In such event, the Contractor shall cause such services to be performed by appropriate licensed professionals whose signature and seal shall appear on all drawings, calculations, specifications, certifications or other documentation (including, without limitation, any Shop Drawings in accordance with Section 9.9 of the General Conditions) prepared by such professional(s) for this Project. The Contractor shall maintain, or shall require that the applicable design professionals maintain, the appropriate insurance coverage and limits, including, without limitation, professional liability insurance.

4. ROUTINE OF BUSINESS

4.1 All business relating to the Work shall be transacted with or through the Owner or, if provided by the Contract Documents or required by the Owner, through the Architect.

4.2 At the initial meeting between Owner, Architect and Contractor, all personnel authorized to represent the Owner, Contractor, and the Architect, will be identified. Contractor's Key Personnel shall also be identified and the limits of authority of each member of the Contractor's Key Personnel (as that term is defined in Section 25 below) shall be identified.

4.3 Contractor will reimburse Owner those costs incurred in responding to a Contractor request for information or interpretation that is answered by reference to an unambiguous provision of the Contract Documents as determined by the Owner.

4.4 The Architect shall furnish, with reasonable promptness, additional clarifications/instructions, if required, by means of Drawings or otherwise, necessary for the proper execution of the Work.

4.5 The Contractor shall perform the Work in accordance with the Contract Documents and additional clarifications/instructions and submittals reviewed in accordance with the Contract Documents and that which is reasonably inferable from the Contract Documents as necessary or appropriate to provide the results described in the Contract Documents.

4.6 No approvals, orders, instructions, or similar directions concerning the Project shall be valid unless given in writing by an authorized representative of the Architect or Owner, as the case may be.

5. OWNERSHIP OF DOCUMENTS

The Contract Documents, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner and Owner shall retain all rights thereto, including copyright. The Contractor shall have the right to keep one copy of the Contract Documents upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used the Contract Documents, or any portion thereof, without the Owner's prior written authorization.

6. OWNER'S RESPONSIBILITIES

6.1 The Owner shall provide, in a timely manner, information necessary for the proper performance of the Work by the Contractor. Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, electronic CAD files with all applicable Drawings and Specifications for use by all trades, subject to any reasonable qualifications or conditions imposed by the Architect or Owner. The Contractor shall distribute the electronic CAD files of such Drawings and Specifications to the Subcontractors.

6.2 The Owner designates the individual listed in Section 1.2 of the Key Terms Cover Sheet as Owner's "**Project Manager**." The Project Manager shall have express authority to bind the Owner, with respect to all matters requiring the Owner's approval or authorization. The Project Manager shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall tender such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor.

6.3. The Owner shall retain an Architect to provide Project architectural services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The Owner shall authorize and cause the Architect to provide such other services that must necessarily be provided by the Architect during construction of the Work.

6.4. Owner designates the individual, if any, listed in Section 1.6 of the Key Terms Cover Sheet as the "**Owner's Representative**" to periodically act as an extension of Owner's staff to assist it with the administration and oversight of this Agreement to the extent noted in the Contract Documents and in the Owner-Owner Representative agreement, if any.

6.4.1 Unless expressly provided otherwise in writing, Owner's Representative, if any, is not and shall not be considered an agent of the Owner, and nothing contained in the Contract Documents will in any manner authorize, empower, or

constitute the Owner's Representative to act as agents of the Owner. The Contractor acknowledges that nothing contained in the Contract Documents will in any manner authorize or empower the Owner's Representative to make or create any obligation, covenant, representation, or warranty or to assume any responsibility whatsoever, express or implied on behalf of, or in the name of, the Owner.

7. COMMENCEMENT OF CONSTRUCTION SERVICES

The Contractor shall not commence the Work unless and until: (1) the Construction Schedule has been accepted in accordance with the requirements of the Agreement; and (2) the Contractor has obtained the insurance required by the terms of this Agreement subject to, and in accordance with Section 51 of the General Conditions. To the extent a delay in any of the foregoing events is the result of the fault or negligence of the Construction Manger, there shall be no adjustment in the Contract Time or Construction Schedule.

8. RECORD DOCUMENTS, DRAWINGS, MANUALS, AND INSTRUCTIONS

8.1 The Contractor shall keep an updated copy of the Contract Documents and Record Documents (as hereinafter defined), including any approved Shop Drawings and other submittals, at the Project Site, which documents shall be available at all times for Owner's and/or Architect's review.

8.2 Throughout the execution of the Work, the Contractor shall maintain and shall keep current detailed notes of any and all As-Built Information. The As-Built Information shall be made available by Contractor to the Architect and Owner for review on a monthly basis along with each Application for Payment. The Contractor shall prepare and assemble a final set of Record Documents (in hard-copy, electronic or other format as required by Owner) for the Project, as finally reviewed by the Architect, with modifications indicated by the Architect subsequent thereto, showing the condition of the Work as actually built based on the As-Built Information.

8.3 The submission of final accurate Record Documents is a condition precedent to the Contractor receiving Final Payment.

8.4 The Contractor shall organize, index, bind and turn over to the Owner four (4) sets of each and every manufacturers' warranty required by the Contract Documents ("**Warranty Binders**"), as well as four (4) sets of operating and/or maintenance manuals, instructions or schedules for all equipment and special materials requiring them (the "**O&M Manual Binders**"). The O&M Manuals will clearly categorize and index each piece of equipment and material included, and shall be clearly marked noting "project specific" equipment, model numbers, and equipment cut sheets, value tag charts, electrical panel charts and other applicable information. The Warranty Binders shall clearly indicate the names, addresses and telephone numbers of personnel to contact for service and/or information. The O&M Manuals will be collected and organized by the Contractor and shall be provided to the Owner in a single submission, which has been reviewed by the Architect, no later than 50% completion of the Work. Unless otherwise agreed to by Owner, the timely submission of the O&M Manuals shall be a condition precedent to payment for any Application for Payment submitted subsequent to 50% completion of the Work.

8.5 Unless otherwise agreed to by Owner, the Contractor shall use the Owner's internet-based project reporting and management system for maintaining the Record Documents and other submittals required by the Contract Documents ("**Project Control System**").

9. SHOP DRAWINGS

9.1 The Contractor shall furnish to the Owner (but only to the extent requested by Owner) and to the Architect all Contractor's, Subcontractors', sub-subcontractors', and suppliers' Shop Drawings, which may be required by the Contract Documents, requested by the Architect or the Owner, or otherwise necessary for the proper execution of the Work. The Contractor shall submit all Shop Drawings, in the manner hereinafter described, in sufficient time to prevent delays in delivery of materials or in the progress or completion of the Work, and to assure the prompt and proper delivery of materials and/or equipment to the Project Site at the time required for the proper and timely execution of the Work. Shop Drawings for critical material deliveries shall indicate the reasonable date by which the Contractor requests them to be reviewed and returned by the Architect or Owner.

9.2 Shop Drawings, catalog cuts, brochures, performance data, and other submittals describing manufactured equipment must be specific to the Project, clearly marked, fully defining the intended model number, configuration, and other applicable product information.

9.3 All Shop Drawings shall first be sent directly to the Contractor, who shall keep a record of the Shop Drawings and dates of receipt. The Contractor shall thoroughly check all Shop Drawings, including those prepared by the Contractor, with respect to measurements, sizes and numbers of materials and all other details, to assure that they conform to the Contract Documents, and shall promptly return to the Subcontractors and/or suppliers, for correction, any Shop Drawing found to be inaccurate or otherwise in error. After the Contractor has checked and reviewed the Shop Drawings, the Contractor shall place thereon the date of review and the legible printed name and signature of the individual who reviewed the Shop Drawings and shall then submit them to the Architect for review. The Architect shall not be required to check or review any Shop Drawings that are not submitted in compliance with these requirements.

9.4 By reviewing and submitting Shop Drawings, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related thereto.

9.5 The Architect will check and review the Contractor's, Subcontractors', and suppliers' Shop Drawings within a reasonable time after receipt thereof and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Architect, may be necessary to meet the requirements of the Contract Documents. Contractor shall review the notations, instructions, or directions of the Architect, and if the Contractor concurs, shall make or have made the corrections, and shall, when noted on the Shop Drawings or requested by the Architect, resubmit corrected Shop Drawings to the Architect as soon as possible, for final check and review. The final check and review by the Architect of Shop Drawings will be limited to the corrections only, and the Contractor, by re-submission, shall be held to have represented that the Shop Drawings contain no other alterations, additions, or deletions unless the Contractor, in writing, directs the Architect's specific attention to them. Should the Contractor question, or dissent from such notations, instructions, or directions, the Contractor shall seek further clarification from the Architect before re-submitting them. Corrections or changes indicated on Shop Drawings shall not be construed as an order to perform extra Work.

9.6 Contractor will reimburse Owner for any costs incurred by Owner as a result of resubmittal related charges of Architect after the first submission of a particular Shop Drawing, except in the event Owner concludes that resubmission is reasonable under the circumstances. Any additional services or cost incurred by Contractor in connection with resubmittal of a Shop Drawing will not justify an increase in Contract Time and/or Contract Sum.

9.7 Each Shop Drawing, which details, by original line drawings, Work to be fabricated for the job, shall be submitted in a form suitable for reproduction. A clear space of 8 inch x 8 inch shall be allowed on the Shop Drawings in the lower right hand corner for the placement of review and date stamps. After review, the Architect shall obtain copies of the Shop Drawings as required for use and will return the reviewed and noted, or corrected, original to the Contractor and shall, upon request, provide a copy to the Owner. If a Shop Drawing is returned for resubmission, the Contractor shall be required to correct the original Shop Drawing and submit a new corrected copy to the Architect. These procedures shall be followed until the Architect's review is final. The Contractor shall obtain and provide that number of copies of the final original Shop Drawing which carry the Architect's stamp, as may be required for distribution. This shall include the forwarding of one copy to the Architect (and, if requested, to the Owner), for record, and any additional quantity of copies as may be reasonably requested by Owner.

9.8 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner or the Architect will specify the general performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided in accordance with Section 3 of the General Conditions. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear the professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the design professionals.

9.9 All printed matter referred to in this Section 9 shall be submitted in quantities of not less than three (3) hard copies and one (1) electronic copy using the Owner's Project Control System, unless otherwise set forth in the Contract Documents.

9.10 The review of the Contractor's, Subcontractors', and suppliers' Shop Drawings by the Architect is for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The review of Shop Drawings is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation of equipment or systems, all of which remain the responsibility of the Contractor under the requirements of the Contract Documents. The Architect is not responsible to the Contractor and does not thereby assume responsibility to the Contractor for inaccuracies, deviations or other errors contained in the Shop Drawings. Any inaccuracies, deviations or other errors contained in the Shop Drawings must be corrected by the Contractor, irrespective of the receipt, review and acceptance of the Shop Drawings by the Architect, and even though the Work is done in accordance with the Shop Drawings, unless the inaccuracies, deviations or other errors contained in the Shop Drawings are specifically called to the Architect's attention by the Contractor in a separate written letter of communication at the time of submittal, and the Architect has given written approval of the inaccuracies, deviations or other errors. The review and subsequent approval of Shop Drawings by the Architect shall not in any event constitute approval of the Contractor's safety precautions or construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

10. CONTRACTOR'S SAMPLES

10.1 The Contractor shall furnish to the Architect for review, when requested, or when required by the Contract Documents, samples of all materials and finishes to be used in the execution of the Work. The samples shall be of sufficient size to be representative and shall be submitted in numbers as required before the Work is commenced and in ample time to permit examination thereof. All materials furnished and finishes applied to the Work shall be fully equal to the submitted samples.

10.2 Unless otherwise directed, samples shall be submitted in triplicate, boxed or wrapped properly, each uniquely labeled with the name, type, or brand of the materials, its place of origin, names of producer, and Contractor, and name of the project for which the material is intended. All samples shall be forwarded to the Architect with all shipping charges prepaid.

10.3 The review of samples is generally directed towards establishing quality, color and finish criteria, and does not modify the requirements of the Contract Documents as to dimensions or design.

11. WORKING WITHOUT SUBMITTAL APPROVAL

If a Shop Drawing, sample or other submittal is required by the Specifications or any other provision of this Agreement, any related Work performed before Architect's review of the pertinent Shop Drawing, sample or other submittal will be at Contractor's sole risk, expense and responsibility.

12. ACCESS; USE OF PROJECT SITE

12.1 At all times, Contractor shall permit and shall not interfere with or impede Owner's access or the access of Owner's authorized designees to the Project Site, nor interfere with or impede access to the Project Site by all Federal, State, Department, City and local safety, regulatory and inspection personnel, having jurisdiction over the Work and the Project Site.

12.2 Contractor shall provide on-site office space and facilities to the Architect and Owner (or its designee(s)) as well as the City of Chicago's regulatory and inspection personnel and shall allow the City personnel to participate in any employee training programs offered at the Project Site.

12.3 Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers only to portions of the Project Site as is reasonably necessary and shall limit the use of the Project Site or modify its

use of the Project Site as directed by Owner. The Contractor shall perform Work only within locations allowed by the Contract Documents, applicable permits and applicable Law.

12.4 Contractor shall not unreasonably encumber the Project Site with construction equipment or any other equipment or materials.

13. ARCHITECT'S STATUS

13.1 The Architect will assist the Owner in the general administration of the Agreement between the Contractor and the Owner, acting in any and all of the various capacities assigned in the agreement between the Architect and the Owner and as established by the Contract Documents. The Architect and its representatives shall have access to the Work at all times. The Architect, or the Owner (or its authorized designee) shall have the right to reject all materials furnished and/or Work performed that, in either or both of their judgment, do not meet the requirements of the Contract Documents.

13.2 The Architect may assign a field representative to assist in carrying out the responsibilities of the Architect. The name, duties, responsibilities and limits of authority of the representative may be established at the initial meeting between Owner, Architect and Contractor pursuant to Section 4.2 of the General Conditions.

13.3 The Architect's decisions in matters relating to aesthetic effect shall be final if consistent with the terms and intent of the Contract Documents.

14. SUBSTITUTIONS

14.1 A Substitution is any variance from the strict compliance with the Contract Documents. Contractor shall identify, in writing, to Owner any and all Substitutions that Contractor may propose and shall provide to Owner, in connection therewith, the following:

- i. A complete written description of the Substitution, including, as appropriate, Drawings, Specifications or submittals;
- ii. A written description of how the proposed Substitution affects other portions of the Work;
- iii. How the Substitution will affect and impact the cost of the maintenance or long-term use and operation of the Project;
- iv. Identification of all direct and indirect costs of making the Substitution;
- v. Identification of the benefits to the Work or the Project; and
- vi. A written description of how making the Substitution will affect the Construction Schedule or the Date of Substantial Completion.

14.2 Owner, with the assistance of the Architect, will be the sole judge of the acceptability of the Substitution. Contractor shall be responsible for all direct or indirect expenses: (i) incurred by Owner to evaluate the Substitution; and (ii) attributable to the Change Order incorporating the Substitution, in the event that Owner approves the Substitution.

14.3 Contractor shall certify, notwithstanding its acceptance by Owner, that the Substitution: (i) will meet or exceed quality (or other requirements) of the item being substituted, (ii) is in compliance with Laws; and (iii) will not result in an increase in costs or additional time. The Contractor will be responsible for any costs and damages incurred by Owner in the event any of the foregoing certifications prove incorrect.

14.4 A Substitution resulting, in the Architect's and/or Owner's judgment, in a net positive deduct to the Contract Sum, while not increasing Contract Time may be considered acceptable by the Owner. A net positive deduct means that the proposed deduct in Contract Sum afforded to the Owner as a result of the Substitution exceeds all Owner's direct, indirect and consequential costs and any damages attributable to that proposed Substitution.

14.5 Unless and until any such Contractor recommended Substitution is approved by Change Order, Contractor will furnish and perform the Work in accordance with the Contract Documents.

14.6 The Contract Sum shall be decreased by one hundred percent (100%) of the savings accrued as a result of the Substitution.

15. WARRANTY

Contractor warrants to the Owner that materials and equipment furnished pursuant to the Contract Documents will be of quality equal to or higher than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including Substitutions properly approved and authorized, may be considered defective. The Contractor shall require all of its Subcontractors and suppliers to provide written warranties in a form acceptable to Owner that shall run to the benefit of the Owner, as well as the Contractor. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

16. QUALITY CONTROL

Pursuant to, but not exhaustive of its obligations set forth in this Section 16, Contractor agrees to maintain a quality control and quality assurance program for itself and each Subcontractor that will include and require at a minimum, the following (the “**Quality Assurance and Quality Control Program**” or “**QA/QCP**”):

16.1 Prior to the commencement of Construction Services, the Contractor shall submit, for Owner’s review and approval, the Contractor’s written quality control and quality assurance policy/plan to complete the Work in strict accordance with the Contract Documents. The plan/policy shall include, without limitation, the Contractor’s water infiltration/mitigation plan and plan to address the Agreement’s Punchlist requirements.

16.2 The employment by the Contractor on the Project Site of an individual who shall be responsible for designing, implementing and monitoring the QA/QCP for the Project (“**QA/QACP Professional**”). The identity of the QA/QC Professional shall be provided to the Owner prior to the commencement of Construction Services and shall be subject to the Owner’s review and approval. Although the QA/QCP Professional is part of the Project team, such person will work for and report to the president of the Contractor. The QA/QCP Professional will attend the weekly OAC Meetings and report on the status of job quality and will provide a monthly QA/QCP Professional report to the Contractor’s President, the Architect and the Owner.

16.3 Confirmation that the Work conforms to applicable Contract Documents, including, without limitation, the requirements of the Drawings and Specifications with respect to product, workmanship, construction, maintenance while idle, finish, functional performance and identification. Such confirmation shall include, without limitation:

- i. A careful study/comparison of the Contract Documents with each other, other known information and manufacturers’ recommendations for installation and handling before undertaking any Work;
- ii. Maintenance of records of key Project elevations including, without limitation, the elevations of bottoms of footings, floor levels, and approaches made as the Work progresses;
- iii. Checking, approval and coordination of submittals and surveillance of tests; and
- iv. Before undertaking any installation or Work, verification of Project Site conditions, taking of field measurements, rechecking of other measurements and coordination of location, dimensions, access, fit, completeness, class and code of dependent Work.

16.4 Sufficient supervision, examination, inspection and testing of the Work at appropriate intervals, including the Work of Subcontractors and suppliers.

16.5 Verification and inspection of Work that, once completed, cannot be located and inspected without it’s uncovering. Data obtained under this Section 16.5 will be accurately annotated on the Record Documents pursuant to Section 8 of the General Conditions.

16.6 The rejection or disapproval by the QA/QCP Professional of material prior to installation or of Work he/she deems defective, and the documentation of the non-conformance and the corrective action taken. A log of non-conformances (“**NCR Log**”), however discovered, will be attached to each Application for Payment.

16.7 Contractor’s compliance with recognized workmanship quality standards within the industry as applicable to each unit of Work. All references to standards, whether for materials, processes, assemblies, workmanship, performance, or similar purpose, shall mean, unless otherwise noted, the most recent available published version of such standard as of the

date of the execution of the Agreement. When reference is made to standards, the standards are to be made a part of the Contract Documents, and shall have the same effect as if fully reproduced herein. It is a requirement that each category of tradesperson or installer performing the Work be prequalified, to the extent of being familiar with applicable and recognized quality standards for that category of Work, and being capable of workmanship complying with those standards.

16.8 The Contractor shall handle, store, and protect materials and products, including fabricated components, by methods and means which will prevent damage, deterioration, and losses including theft and resulting delays, thereby ensuring the highest quality results as performance of the Work progresses. The Contractor shall control delivery schedules so as to minimize unnecessary long-term storage at the Project Site prior to installation.

16.9 Well in advance of the installation of every major unit of Work which requires coordination with other Work, the Contractor shall meet at the Project Site with the installers and representatives of the suppliers who are involved in or affected by the unit of Work, or in its coordination or integration with other Work which has preceded or will follow. The Contractor shall record significant discussions of each conference and agreements and disagreements along with the final plan of action to be taken. The Contractor shall distribute records of each meeting promptly to everyone concerned, including the Architect and the Owner. The Contractor shall not proceed with a specific component of the Work if the associated pre-installation conference cannot be concluded successfully. If required, the Contractor shall implement actions to resolve impediments to the performance of the Work, and shall reconvene the pre-installation conference at the earliest date feasible.

16.10 The Contractor shall require the installer of each major unit of Work to inspect that portion of the Project to receive the Work, and conditions under which the Work will be performed, and to report any unsatisfactory conditions, in writing, to the Contractor, the Architect and the Owner. The Contractor shall provide copies of each such report to the Architect and the Owner. The installer shall not proceed with the Work until all unsatisfactory conditions have been corrected in a manner acceptable to the installer.

16.11 Where installations include manufactured products, the Contractor shall comply with the manufacturer's applicable instructions and recommendations for installation. To the extent the manufacturers' instructions are more explicit than applicable requirements found in the Contract Documents, the manufacturers' instructions and recommendations shall govern.

16.12 The Contractor shall provide attachment and connection devices and methods for securing Work properly as it is installed, true to alignment and elevation, and within recognized industry tolerances, if not otherwise indicated. As necessary, the Contractor shall allow for expansions and building movements, provide uniform joint widths in exposed Work, and organize Work for best possible visual effect, provided such organization is acceptable to the Architect.

16.13 The Contractor shall install Work during conditions of temperature, humidity, exposure, forecasted weather, and status of Project completion that will ensure the best possible results and highest quality for each unit of Work and in coordination with the entire Work. The Contractor shall isolate each unit of Work from non-compatible Work, as required, to prevent deterioration.

16.14 Except as otherwise indicated, the Contractor shall mount individual units of Work at industry recognized standard mounting heights for applications indicated and in compliance with the Contractor's obligations to observe the standards required by Laws. The Contractor shall refer mounting heights that it discovers to be: (i) not at industry recognized standard mounting heights for applications indicated; (ii) not in compliance with the standards required by Law and/or (iii) not indicated in the Contract Documents, to the Architect and the Owner for clarification and final decision. In the event the Contractor fails to request a clarification and/or final decision for mounting heights to the Owner or Architect, as required by this Section, the Contractor shall be responsible for any and all costs and expenses resulting from the mounting of individual units of Work at incorrect or non-compliant heights.

16.15 The Contractor shall, on a daily basis, collect and maintain all testing and inspection tickets, results, reports, certificates or other documentation prepared and issued by any testing and inspection consultants/agency for the Work in accordance with Section 18 of the General Conditions (the "**Testing/Inspection Reports**") and shall review such information for compliance with the Contract Documents.

16.16 The Contractor shall, without limitation, adjust, clean, lubricate, restore marred finishes and protect installed Work to ensure that it will remain without damage or deterioration during the remainder of the construction period. All Work is to be thoroughly cleaned prior to its being turned over to the Owner pursuant to Section 31 of the General Conditions.

17. COMMISSIONING/LEED®

17.1 The Owner may employ a commissioning agent (“**Commissioning Agent**”) to prepare a Commissioning Plan (the “**Commissioning Plan**”) that evaluates and documents the installation, start up and operation of the HVAC systems, chilled water and steam systems, lighting, fire alarm, smoke detection, security, lab systems, communications and other systems critical to the operation of the building (the “**Key Systems**”). The Commissioning Plan will provide direction, involvement, schedule, pre-functional and functional test protocols and management protocols for the Key Systems.

17.2 The Contractor and applicable Subcontractors will be responsible for participating in the commissioning process and following the Commissioning Plan which will include, but shall not be limited to: attending meetings called by the Commissioning Agent, following the pre-functional check lists prepared by the Commissioning Agent, attending the functional performance test(s), following an equipment training schedule and providing the specified test report documentation. The Contractor will coordinate the participation of the responsible Subcontractors in the commissioning activities.

17.3 The commissioning process will rely on the Specifications for the identification of the required testing, documentation, demonstration, training, cleaning and other procedures related to the Key Systems.

17.4 **LEED® Certification.** The Contractor acknowledges that Owner has elected, or is required, to integrate into the Project, building materials, methods and systems that promote environmentally friendly and sustainable construction and operations. Therefore, in accordance with the requirements and guidelines of the U.S. Green Building Council and the LEED® Green Building Rating System, the Contractor agrees to comply with all LEED requirements set forth in the Contract Documents and to use best efforts to perform the Work of this Agreement so that the Project and its facilities achieve, at a minimum, the LEED® rating set forth in Section 4.2 of the Key Terms Cover Sheet (the “**LEED® Certification**”). In the event the Owner hires a LEED® certification consultant (“**LEED® Consultant**”) to assist in the achievement of the Owner’s objectives related to sustainability issues and registration of the Project for LEED® Certification, the Contractor shall cooperate with the Owner and any LEED® Consultant, as well as coordinate its Work and services with the LEED® Consultant and Owner, as necessary, including the provision of any requested documentation or information, including reports, drawings, and specifications requested by the LEED® Consultant.

18. TESTING AND INSPECTION OF WORK

18.1 All Work shall be subject to tests and inspections at all reasonable times and at all places prior to acceptance. The Contractor shall afford safe access to the Work upon reasonable request by the Owner, Architect or any Governmental Authority to perform tests, inspections or observations. Any such inspection or test shall be for the sole benefit of the Owner and shall not relieve the Contractor of the responsibility of assuring that the Work strictly complies with the Contract Documents. Inspections and tests shall not be construed as constituting or implying acceptance of Work unless explicitly accepted by the Architect and the Owner, in writing.

18.2 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by Laws or orders of public authorities having jurisdiction shall be made at an appropriate time. The Contractor shall engage a testing consultant or agency from a list of Owner approved testing agencies provided by Owner. The Contractor shall coordinate and manage the testing consultant/agency and shall bear all related costs of tests, inspections and approvals and shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so the Architect and Owner may observe such procedures.

18.3 If the Architect, Owner or public authority having jurisdiction determines that portions of the Work require additional testing, inspection or approval not included under Section 18.2 above, the Owner or Architect, upon written authorization from the Owner, will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and Owner of when and where tests and inspections are to be made so the Architect and Owner may observe such procedures.

18.4 If such procedures for testing, inspection or approval under Section 18.1 and 18.2 above, reveal failure of portions of the Work to comply with requirements established by the Contract Documents, or if not expressly established by such requirements, by failure to comply with industry standards, the Contractor shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for Architect's and Owner's services and expenses. If any portion of the Work is covered prior to the Contractor having obtained the approval of the Architect and Owner, it must, if required by the Owner, be uncovered for the Architect's and Owner's observation and be replaced at the Contractor's expense without change in the Contract Time or Construction Schedule.

18.5 The Contractor shall collect, maintain and provide copies of all Testing/Inspection Reports to the Architect and Owner for review. If Testing/Inspection Reports are required by Laws or Governmental Authorities, the Contractor shall provide additional copies as required, and where required, shall send copies directly to the proper Governmental Authorities.

18.6 No extension to the Contract Time or Construction Schedule will be allowed in connection with the Contractor's correction of Work, which Work was not performed in accordance with the requirements of the Contract Documents.

19. CORRECTION OF WORK

19.1 The Contractor shall promptly remove from the Project Site all materials or Work rejected by the Architect or the Owner as failing to conform to the requirements of the Contract Documents, whether incorporated into the Work or not. The Contractor shall promptly replace and re-execute the Work in accordance with the requirements of the Contract Documents without expense to the Owner and shall bear the expense of correcting all work of other separate contractors destroyed or damaged by such removal or replacement.

19.2 If the Contractor fails to correct Work which has been rejected or which otherwise does not conform to the requirements of the Contract Documents or fails to remove such Work from the Project Site and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without having to first notify Contractor's surety and without prejudice to other remedies the Owner may have, may correct and/or carry out the Work. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

19.3 If the Owner accepts any portion of the Work that is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, the Owner may do so without having to first notify Contractor's surety, in which case the Contract Sum will be reduced as appropriate and equitable. Any adjustment required hereunder shall be effected whether or not Final Payment has been made.

19.4 If the Contractor does not remove any rejected Work, materials and/or equipment within a reasonable time, fixed by written notice, the Owner may without having to first notify Contractor's surety, remove it and may store or dispose of the materials and equipment at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten (10) business days thereafter, the Owner may, without having to first notify Contractor's surety, upon ten (10) business days written notice to Contractor, sell such materials and equipment at auction or at sale and shall account for the net proceeds thereof, after deducting all costs and expenses that should have been borne by the Contractor, including (without limitation) all costs associated with sale, attorney's fees, and all costs associated with removing and replacing such Work. If the proceeds, after deductions, do not cover all the costs which are the responsibility of the Contractor, a deductive Change Order will be executed; if the remaining balance of the Contract Sum is not sufficient to cover the remaining costs, the Contractor shall pay the difference to the Owner within ten (10) business days of receipt of the Owner's invoice. The Owner's right to store and sell such materials and equipment shall not give rise to a duty to do so. The Owner may, without having to first notify Contractor's surety, simply dispose of such materials and equipment, as Owner sees fit; the costs of disposal shall be borne by the Contractor.

20. ONE YEAR CORRECTION OF THE WORK PERIOD

20.1 Neither the final certification of the Contractor's Application for Payment, nor Final Payment by the Owner to the Contractor, nor the issuance of the certificate of Substantial Completion, nor any provision in the Contract Documents shall

relieve the Contractor of the responsibility of completing the Work in accordance with the requirements of the Contract Documents. The Contractor shall remedy any Work that is found not to be in accordance with the requirements of the Contract Documents, and pay for any damage to other Work resulting from such failure, which shall appear within a one-year period from the point in time or particular event set forth in Section 4.1 of the Key Terms Cover Sheet (the “**Correction Period Start Date**”).

20.2 The Contractor shall schedule, coordinate, and participate in a walk through inspection of the Work to determine if there are defects or failures which require correction one (1) month prior to the expiration of the one year correction period. Contractor shall notify the Owner and Architect and any necessary Subcontractors and suppliers of the date of the inspection and request their participation.

20.3 The correction period for defective Work discovered within the last three (3) months of the one-year correction period of this Agreement will be extended by an additional six (6) months, starting on the date such Work was made non-defective, as determined in writing by Owner.

20.4 Notwithstanding the foregoing, if the terms of any specific warranty for materials or Work required by any of the Contract Documents stipulate a longer time period, the longer time period shall govern. The Contractor shall remedy such non-conforming Work promptly upon notice from the Owner. For Work not completed until after the Correction Period Start Date, the applicable time period will begin at the time the Work is completed.

20.5 The establishment of a one year time period, or longer periods as may be stipulated by specific warranties, relates only to the specific obligation of the Contractor to remedy the Work, and has no relationship to the time within which the Contractor's obligation to comply with the requirements of the Contract Documents may be sought to be enforced by the Owner, nor to the time within which proceedings may legally be commenced to establish the Contractor's liability with respect to the Contractor's contractual obligation.

21. PERFORMANCE AND PROJECT SITE SAFETY; PROTECTION OF THE WORK

21.1 Contractor shall be ultimately responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. The obligations of the Contractor set forth in this Section 21 are illustrative, but not exhaustive, of the Contractor's on-going duty to initiate, maintain, and supervise safety programs and precautions.

21.2 Contractor shall take all necessary precautions for the safety of employees and visitors on the Project Site and shall comply with applicable provisions of all Laws to prevent accidents or injury to persons on, about, or adjacent to the Project Site where the Work is being performed. In furtherance of its responsibilities, the Contractor will create a safety plan that will ensure: (i) Contractor complies with the applicable provisions of the University's Project Safety and Accident Prevention Plan and IOSHA requirements as the minimum safety and health requirements for the Project Site; (ii) that all Work is planned to minimize the risk of personal injury, property damage and loss of productive time; (iii) compliance with all Laws of Federal, State and local public agencies with jurisdiction over the safety of people or property; (4) prompt detection and correction of unsafe practices or conditions; (5) the occurrence of safety meetings, safety training programs, and the distribution of educational materials to stimulate and maintain the interest and cooperation of all employees of Contractor and Subcontractors; (6) prompt investigation of all incidents and near misses to determine causes and to identify corrective action; and (7) appropriate emergency and crisis management procedures (the “**Safety Plan**”).

21.3 Contractor will assign to the Project Site a safety director responsible for administering the Safety Plan and ensuring Contractor and Subcontractors (at all tiers) comply with the Safety Plan (the “**Safety Director**”). The Safety Director will possess no less than five (5) prior years of extensive construction safety experience. Owner will have the opportunity to interview and approve the candidate for the position and reserves the right to reject any candidate. If replacement of the Safety Director is necessary, advance written notification will be sent to Owner.

21.4 Contractor shall ensure all Subcontractors, at every tier, are required to comply with Contractor's Safety Plan, and that the Safety Director, in furtherance of that responsibility has the authority necessary to enforce the Safety Plan with respect to the Subcontractors, including, but not limited to, authority to stop their Work in whole or in part, or terminate an offending Subcontractor for cause.

21.5 Owner will have the right, but not the obligation, to monitor the Contractor's discharge of its safety responsibilities. Neither Contractor nor any Subcontractor or any third party may rely, directly or indirectly, upon Owner to provide quality control or quality assurance of Contractor's safety efforts. Failure by Owner, its employees and/or representatives to disapprove any conduct of Contractor, or its employees or representatives, or the employees or representatives of any Subcontractor will not be deemed approval of such conduct. The fact that Architect, Owner or its employees or representatives may be present or observing the Work will not be deemed evidence that the Owner was aware of, or otherwise sanctioned, any unsafe behavior or equipment.

21.6 Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public. The Contractor shall post danger signs warning against the hazards created by construction features, including, without limitation, protruding nails, hoists, holes, elevator hatchways, scaffolding, window openings, stairways and falling material.

21.7 The Work shall be executed in a manner that will cause as little inconvenience as reasonably possible to the Owner in the Owner's use of the property and existing facilities and structures. Where indicated or specified in the Contract Documents or as directed by Owner, the Contractor shall provide and maintain adequate, dust tight, protective coverings, enclosures and barricades about the Work and shall keep the same in repair throughout the entire Work. Enclosures of appropriate fire rated construction shall be installed by the Contractor, where necessary to divide the Work area from the Owner's occupied areas, all as a part of the requirements of this Agreement. The Contractor shall take every precaution not to negatively impact adjacent or nearby research, education, or other University of Chicago business, and or private businesses or residents by noise, vibration, dust, or other means, and in all events, the vibration and noise shall be in compliance with the parameters established by the Contract Documents. When required by Owner, the Contractor shall monitor and record the vibration and settlement of adjacent structures.

21.8 Should any room or part of an existing building or facility be temporarily used by the Contractor as a shop, storeroom, locker room, an office, or for any other purpose, such room or part shall, prior to completion and when so directed, be thoroughly cleaned and returned to its original condition. All damage to any such room or part of an existing building or facility arising therefrom shall be corrected, and the whole left in a condition acceptable to the Owner by the Contractor. No room or part of an existing structure shall be so used without the written consent of the Owner.

21.9 No explosives will be permitted on the Owner's premises, unless written permission is given by the Owner, not less than seventy-two hours in advance of the time of delivery of such explosives. All risks, regardless of the Owner's approval, associated with the storage, handling and use of explosives are solely borne by the Contractor, as are any costs associated with damages, injuries or losses arising out of the use of such explosives.

21.10 The Contractor shall enforce the Owner's and Architect's instructions regarding signs, advertisements, fires, and smoking. No smoking will be permitted inside any buildings or within twenty-five feet (25') of any entrance(s).

21.11 Contractor will protect and restore to pre-existing conditions any extension of a system or assembly not designated for alteration by the Contract Documents, if any required Work on other parts of such existing system or assembly causes damage or imbalance to such extension otherwise not designated for alteration.

21.12 Contractor will protect and promptly restore to pre-existing conditions any existing system or assembly not designated for alteration by the Contract Documents, if any Work otherwise causes damage to or imbalance in any such existing system or assembly.

21.13 Contractor will not obstruct access to municipal structures, hydrants, valves, manholes, fire alarms and related items.

21.14 Contractor is responsible for maintaining surface and subsurface drainage conditions in all areas along the Work, unless to do so will endanger any Work or any adjacent property, or interrupt, restrict or interfere with their use. In that event, Contractor is responsible for pumping, draining and controlling surface water and groundwater so as to not endanger any Work or adjacent property, or interrupt, restrict or interfere with their use.

21.15 Contractor, as directed by the Owner, will provide either guardhouses or multiple padlock chain locking systems for construction gates to all fenced sites. Separate padlocks with keys for Owner will be required if locking systems are

provided. Contractor will provide a temporary lockable gate for access during Construction if existing gates are inadequate or are not made available to Contractor. As a condition of Substantial Completion, temporary construction gates will be removed and any original fence restored to pre-existing conditions.

21.16 If at any time it becomes necessary to move material or equipment that has been temporarily located or stored by the Contractor on the Project Site during construction, the Contractor shall, when directed, move them to another location without charge to the Owner.

21.17 Contractor, before excavation, will locate and protect all underground utilities, maintain flagmen and other precautions to avoid interruption of service or damage to underground utilities. Contractor will immediately notify the Owner of any underground utilities inaccurately identified or located on the Drawings. Contractor will maintain a record of the location of all valves, fittings and related items.

21.18 Drainage ditches for which the Contractor obtains reasonable use will be kept free of concrete and any other deleterious substances, and their use may be banned at the discretion of the Owner.

22. USE OF PREMISES; UTILITY DISRUPTION

22.1 The Contractor shall avoid disruption to the Owner's utility services and is not permitted to connect, disconnect, turn on, or turn off any utility services in any building or facility owned or occupied by the Owner without the Owner's permission and without first securing necessary approvals and permits from all concerned parties. The Contractor shall give notice of the need for a utility service shutdown to the Owner in a timely manner so as to avoid delays to the Project's progress, but in no event shall the Contractor provide less than ten (10) business days advance notice.

22.2 Contractor, if required to tap into an existing system, will be responsible for restoring the existing system and any extensions of the system to pre-existing service condition.

23. HAZARDOUS MATERIALS

23.1 Contractor will not, at any time, cause or permit any Hazardous Materials to be brought upon, stored, manufactured, blended, handled, or used in, on, or about the Project or the Project Site for any purpose except as lawful and necessary and in accordance with the Contract Documents. Contractor will not cause or permit Hazardous Materials to be brought on Project Site unless they have been specifically pre-identified by Contractor, and approved in writing in advance by Owner.

23.2 Contractor, to the fullest extent permitted by Law, except as provided otherwise in Section 23.4 herein, will defend, save, indemnify and hold the Indemnified Parties harmless from and against all claims which arise at any time during or after the completion of the Work as a result of or in connection with: (1) Contractor's breach of any prohibition or requirements set forth in this Section 23; and (2) any Hazardous Materials discharged, released, deposited or introduced in the soil or surface or groundwater in, on, under, or about the Project, Project Site or other properties as a result of the activities of Contractor, its agents, employees, consultants, Subcontractors and their respective agents and employees.

23.3 Whenever during the course of doing the Work, the Contractor, Subcontractors, sub-subcontractors or suppliers encounter material reasonably believed to be asbestos, lead, or any other Hazardous Materials, the Contractor shall immediately notify the Architect and the Owner and shall take appropriate health and safety precautions. To the extent such materials and their remediation were not contemplated as part of their Work, the Contractor will suspend Work in the areas where the assumed Hazardous Materials are encountered until such conditions are either determined to be not hazardous or until the conditions are remediated or otherwise resolved by Owner, or alternatively, the Owner terminates the affected Work.

23.4 The Owner shall indemnify and hold harmless the Contractor and its agents and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of its services in an area affected by Hazardous Materials, provided that such claim, damage, loss or expense is attributable to the Hazardous Materials and results in bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused by negligent acts or negligent omissions of the Owner, anyone directly or indirectly employed by the Owner or

anyone for whose acts the Owner may be liable, and provided that no party shall be indemnified for its own negligence. This indemnity shall not apply to any Work performed by the Contractor that involves the removal or remediation of Hazardous Materials, nor shall it be applicable to claims, damages, losses and expenses arising out of or resulting from the Contractor's improper performance of Work in connection with Hazardous Materials.

24. FIRE PRECAUTIONS

24.1 The items set forth in this Section 24 are illustrative of, but not exhaustive of, the Contractor's obligation to safeguard against fire.

24.2 The Contractor, Subcontractors, and sub-subcontractors shall take all reasonable precautions to guard against possible fire hazards and to prevent fire damage to any Work, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private. The Contractor, Subcontractors, sub-subcontractors and suppliers shall immediately correct any hazardous conditions resulting from their operations when brought to their attention.

24.3 Materials and/or equipment stored in cardboard cartons, wood crates, or other combustible containers, shall be stored in an orderly manner and shall be readily accessible.

24.4 Before starting Work, the Contractor shall consult with the Owner's Safety Office regarding established rules and regulations relative to fire protection requirements and procedures governing any welding and cutting operations, including obtaining hot work permits in advance. The Contractor shall strictly conform to such rules and regulations in carrying out the Work. No such operations shall be carried out without proper safeguards for fire safety.

24.5 No open fires will be permitted. No tar or other melting kettles will be allowed within fifty feet (50) of any building.

24.6 The Contractor shall provide necessary personnel and fire-fighting equipment to effectively control fires resulting from welding, flame cutting, or other operations involving the use of flame, sparks, or sparking devices. During such operations, all highly combustible or flammable materials shall be removed from the immediate working area. If removal is impossible, the same shall be protected with fire blankets or suitable non-combustible shields. In addition, the Contractor shall provide "fire watch" personnel, as necessary, in order to detect any fires early so that they can be extinguished quickly and damage to land and/or property can be minimized or prevented, in particular, during periods when, and in locations where, the Contractor is not performing operations.

24.7 Not more than one day's supply of flammable liquids, such as oil, gasoline, solvent, or roofing materials, shall be brought into any building at any one time. All flammable liquids having a flash point of 110 degrees F, or below, which must be brought into any building, shall be confined to Underwriters Laboratories labeled safety cans. The bulk supply of any flammable liquid shall be stored at a sufficiently safe distance from any building and from yard storage of building materials. Spigots on drums containing flammable liquids are prohibited on the Project Site. Drums are to be equipped with approved vented pumps.

24.8 Only a reasonable working supply of flammable building materials shall be located inside of or on the roof of any building.

24.9 All tarpaulins used during the course of the Work shall be of flameproof type, secured in place against damage or flapping from wind.

24.10 All oil soaked rags, papers, and other similar combustible material shall be removed from any building at the close of each day's Work, or more often if necessary, and placed in metal containers with self-closing lids.

24.11 Gasoline, benzene, or like combustible material shall not be poured into sewers, manholes, or traps, but shall be disposed of, together with all flammable or waste material subject to spontaneous combustion, consistent with Laws and in a manner to avoid hazard or damage to persons or property.

24.12 All heating devices in connection with temporary heating facilities shall be of the least hazardous type, shall have all proper safety provisions and shall be installed at such locations and in such manner as will minimize the hazard. Oil

fired stoves, gas fired heaters, and heating units shall be of types approved by Underwriters Laboratories and shall have proper safety combustion controls. Oil fired heaters shall have integral fuel tanks not to exceed fifteen gallons capacity for each unit. No more than one day's supply of fuel shall be permitted to each heater that is inside of the building or facility.

24.13 Temporary heating facilities shall be inspected regularly to assure that they are in a safe and proper operating condition at all times. The Contractor shall provide, continuously during operation, properly trained personnel for said inspections.

24.14 The Contractor's temporary structures of combustible construction shall not be placed inside of any structure. Such temporary structures shall be detached at a sufficiently safe distance from any building. Totally non-combustible temporary structures may, if necessary and feasible, be located inside of the structure.

24.15 Heaters and/or stoves installed in field offices or storage structures shall have fire resistant material underneath and at all sides, partitions and walls. Pipe sleeves shall be used where stove pipes run through walls or roof.

24.16 The Contractor shall maintain free access to the building areas for fire-fighting equipment and shall at no time block off main roadways or fire aisles without providing adequate auxiliary roadways and means of entrance for fire fighting equipment, including heavy fire department trucks, where applicable.

24.17 The Contractor shall at all times cooperate with the Owner and keep the municipal fire department informed of the means of entrance and changes to roadways or fire aisles as needed to provide fire department access to or around to Project Site.

24.18 The Contractor shall, during the entire construction period and until the completion of the Work, provide and maintain all material, equipment and services necessary for an adequate fire protection system, which shall meet the approval of the Owner and/or the Architect. The system shall, at a minimum, meet the requirements necessary for adequate protection in all areas of the Project and shall not be reduced prior to the completion of the Work without the written approval of the Owner.

24.19 The Contractor shall maintain during construction an appropriate number of fire extinguishers to meet City of Chicago and NFPA requirements. Fire extinguishers shall be in good working order, conveniently located, clearly visible, and readily accessible for proper protection of the Work. In the event of any code or rules conflict, the Contractor will observe the more stringent requirements.

24.20 Fire extinguishers shall be an approved type, equivalent to 2-1/2 gallon water pressurized, suitable for the hazards to be encountered. In areas of flammable liquid, asphalt, or electrical hazards, fire extinguishers shall be equivalent to the carbon dioxide type or dry chemical type. During freezing weather, extinguishers shall be enclosed in heated cabinets or be of an antifreeze type.

24.21 The Contractor, Subcontractors, sub-subcontractors and other parties with temporary structures on the Project shall provide and maintain fire extinguishers in each of the temporary structures.

25. PERSONNEL, MEETINGS, SUPERVISION, DAILY PROGRESS LOG, MONTHLY REPORTS AND COOPERATION

25.1 Contractor represents that the construction personnel set forth on **Exhibit B** are Contractor's key personnel with respect to the services to be provided hereunder ("**Key Personnel**"). Key Personnel shall not be changed, nor shall their duties, level of effort, or responsibilities with respect to the Project be changed or diminished without the consent of Owner, unless such person leaves the employ of Contractor, in which event the substitute must first be approved, in writing, by Owner. Without limitation to the foregoing, Contractor agrees that Contractor will change any of the members of its staff or personnel at the request of Owner if, in Owner's reasonable determination, such person's performance is unsatisfactory. The Key Personnel's respective direct personnel expense rates, as well as the direct personnel expense rates of other Contractor staff and personnel, shall be as set forth on **Exhibit B**.

25.2 The Contractor shall schedule and conduct weekly meetings at which the Owner, Architect, Contractor and those Subcontractors relevant to the subject matter of the meeting can discuss, among other matters, the status of the Work

("OAC Meetings"). Contractor acknowledges and agrees that any personnel of the Contractor that attend the OAC Meetings will be deemed to have authority to sign documents on behalf of, and otherwise bind, the Contractor. The Contractor shall prepare and promptly distribute meeting minutes of the OAC Meetings.

25.3 Contractor shall strictly supervise, manage, coordinate and direct the Work as competently and efficiently as necessary to perform the Work in accordance with the Contract Documents, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor. The Contractor shall at all times enforce strict discipline and good conduct among all employees engaged, directly or indirectly by Contractor, to perform portions of the Work, and shall not allow on the Work any unfit person or anyone not skilled in the Work assigned. The Contractor, in all cases, shall be responsible for the actions, inactions, and omissions of all employees engaged, directly or indirectly, to perform portions of the Work.

25.4 The Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.

25.5 The Contractor shall keep and forward, via the Project Control System, a report of daily progress to the Architect and the Owner (the "**Daily Progress Log**"). The Daily Progress Log shall include, but not be limited to, the number of workers by trade and/or Subcontractor or sub-subcontractor on the Project, indicating where on the Project each was working and what Work activity was performed. The Daily Progress Log will also address and record the delivery of major materials and equipment to the Project Site, accidents of any nature and the severity of each occurring on the Project, the daily temperature and weather, the occurrence of any lost work days resulting from weather conditions, visitors to the Project Site, and inspectors, testing agencies or other authorities on the Project Site. The Contractor's Daily Progress Log will also note any variances between the requirements of the Contract Documents and the actual construction of the Work.

25.6 **Contractor's Monthly Progress Reports.** Along with each Application for Payment, the Contractor shall submit to the Owner monthly progress reports on the status of construction ("**Monthly Progress Reports**"). The Monthly Progress Report shall be submitted to the Owner on a form provided by the Owner or other form approved in advance by the Owner. Monthly Progress Reports shall include, without limitation: (i) documentation of the results of the OAC Meetings and the assessment of the Work; (ii) an Application for Payment prepared on an AIA G702 form (or other form required by Owner); (iii) an executive summary, including, without limitation, a description of the current progress of the Work, any problems and disputes arising in connection with the execution of the Work (including potential delays, availability of materials and supplies and similar items) and a statement indicating methods of overcoming any delay; (iv) a Contract Sum budget summary report; (v) a Change Order log; (vi) a change proposal request log; (vii) a report of all Subcontractor change orders and pending claims; (viii) a RFI log; (ix) a Submittal log; (x) a non-conformance report (NCR) log; (xi) Project schedules, including, the current version of the updated Construction Schedule in CPM format with progress bars, as well as any applicable Special Project Delay Reports; (xii) cash flow and manpower projections; (xiii) digital photographs showing the progress of the Work to date; and (xiv) such other documentation or information as may reasonably be requested by Owner.

25.7 At all times during the progress of the Work, the Contractor shall keep on the Project a competent full time Superintendent and any necessary assistants. The Superintendent shall be located at the Project Site, unless otherwise approved by the Owner. The Superintendent shall represent the Contractor and all directions, directives, notices and other communications given by or to the Superintendent shall be as binding as if given by or to the Contractor. The Superintendent shall remain on-site daily until Substantial Completion of the entire Work.

25.8 If the Superintendent and/or any assistants or employees prove unsatisfactory to the Owner, the Owner shall provide the Contractor with written notification of such concern. If the unsatisfactory behavior has not been corrected to the Owner's satisfaction within seven (7) days from receipt of written notice, the Owner may direct that the Superintendent and/or any assistants or employees be immediately removed from the Project and promptly replaced by the Contractor. If, in the reasonable opinion of Owner, the behavior at issue places people or property at risk or cannot be satisfactorily corrected, the Owner may direct the Contractor to remove such employee(s) immediately, without the aforementioned cure period.

25.9 The Contractor shall at all times enforce proper discipline and decorum among all Subcontractors and laborers on the Project and shall control: (i) noise, including music; (ii) the use of offensive language; and (iii) the transportation of Hazardous Materials, and shall prohibit: (i) drinking of alcoholic beverages on the Project Site; (ii) carrying of firearms; (iii)

the use of tobacco products on Project Site (including, without limitation, cigarettes, cigars and smokeless tobacco); (iv) physical violence; (v) illegal drug use; and (vi) thievery. If Owner determines, in its sole discretion, that any Subcontractor, laborer or worker needs to be removed due to its, his or her failure to comply with the terms of this provision, the Contractor will remove such Subcontractor, laborer or worker from the Project Site immediately. All Subcontractors, laborers and workers, while working in and around the Project Site, shall act in a professional manner.

26. SURVEYS AND PERMITS

26.1 The Owner, where applicable, shall furnish surveys describing physical characteristics of the Project Site. The Contractor shall be responsible for and shall pay for all surveys required to establish building alignment and elevations. The Architect, or the Owner, shall either provide or direct the Contractor to reference points in order to establish required alignment and elevations. The Contractor shall verify their correctness and be responsible for protecting and preserving these reference points.

26.2 When the Contract Documents require the Work or any part of the Work to be done on public or private property, other than the Owner's property, the Contractor shall secure a permit, license, or temporary easement and give adequate notice to the municipality and/or any other agency having jurisdiction over it. The Work shall be carried out in accordance with the Laws and to the satisfaction of each municipality, agency, or department having jurisdiction. If the Contractor observes that the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner, in writing, and shall not proceed with the affected Work until receiving further direction from the Owner. If the Contractor performs any Work that it knows or reasonably should know to be contrary to such Laws without such notice to the Architect and Owner, the Contractor shall bear all costs and expenses arising therefrom.

26.3 The Contractor shall obtain and pay for all required permits, fees, approvals and licenses necessary for the performance of the Work.

27. ADA AND EBA COMPLIANCE

The Contractor shall inform the Owner of any deviations in the Contract Documents from the requirements of the applicable provisions of: (i) the Americans with Disabilities Act of 1990, as now or hereafter amended (the “**ADA**”), (ii) the ADA Accessibility Guidelines (the “**ADAAG**”), (iii) any other applicable Laws relating to facilities for the handicapped or accessibility; (iv) the Federal Fair Housing Act, including, without limitation any and all FHA “safe harbors” (“**FHA**”); and (v) the Illinois Environmental Barriers Act (the “**EBA**”) as now or hereafter amended, about which Contractor knows or reasonably should have known.

28. GROUNDS; STAGING AREA; AND RESTORATION

28.1 The Contractor will consult with the Owner, and shall obtain the Owner's prior written approval, concerning any necessary Contractor operations at the Project Site, including staging area limits, office or storage trailer locations, dumpster operations, equipment and material deliveries and hoisting areas.

28.2 The Contractor shall locate all underground utilities and lawn irrigation piping prior to driving fence posts, or digging.

28.3 Materials, equipment, trailers, vehicles and all other Contractor operations shall not be located under or within the drip line of trees without the Owner's prior written approval. Construction, staging or storage operations in flower and shrub plantings and beds are not permitted without Owner's prior written approval.

28.4 Driving of vehicles on lawn areas is strictly prohibited.

28.5 Any tree trimming or tree root disturbances required by the Contractor's operations shall be performed only after consultation and inspection by the Owner and receipt of Owner's prior written approval.

28.6 All existing traffic control devices, such as bollards, chain and posts, building signs, or traffic signs shall not be removed without specific approval from the Owner.

28.7 Unless stated otherwise in the Contract Documents, the Contractor will be responsible to restore, to the Owner's satisfaction, all disturbed areas caused by the Contractor's operations.

28.8 All lawn, shrub and tree restoration work, including soil aerification, tree trimming and plant material replacements shall be performed by a qualified landscape contractor.

28.9 The Contractor shall repair streets, drives, sidewalks, walls, lights, signs, fences, poles and the like where disturbed or damaged by the Contractor's operations, and shall leave them in the same condition after completion of the Work as before operations started.

28.10 The Contractor shall provide and maintain pedestrian walkways and other means of access to and from any building or facility requiring such as a result of the Contractor's execution of the Work. Such means of access shall be as required by the Contract Documents and/or the Owner's directions.

28.11 During the performance of the Work, Contractor shall, at all times, keep the Project Site, and the streets, highways, and roads, and properties, which Contractor may utilize, free from waste materials, debris and/or rubbish and shall employ adequate dust control measures. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard, or is otherwise objectionable in any way, as reasonably determined by Owner, Contractor shall promptly remove them. If any claim, demand, suit, losses, or action be brought by a person affected by the transportation of materials, equipment, goods or wastes to and from the Project Site, Contractor shall defend, indemnify and hold harmless all Indemnified Parties (as that term is defined in Section 50 of the General Conditions).

28.12 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure nor shall Contractor subject any adjacent property to stresses or pressures that will endanger it.

28.13 Contractor shall give all notices, make such informational filings or obtain any permits required by Laws relating to adjacent properties affected by the Work or roads, highways or streets and waterways affected by the delivery of materials, equipment, goods or wastes, to or from the Project Site.

28.14 All landscaping and trees designated by the Owner to remain shall be protected by fencing at the drip line, as approved by the Owner.

29. TEMPORARY USE OF NEW OR EXISTING ELEVATOR DURING CONSTRUCTION

29.1 When the Work has progressed sufficiently to permit the installation of new elevators, and after the enclosing walls of the elevator shaft have been built, or when the Contractor intends to use an existing elevator for temporary use, the Contractor shall, at the Contractor's expense, make arrangements with the elevator Subcontractor to provide, install, and/or maintain one elevator for temporary use. Elevator service shall be furnished free of charge to the Owner, Architect, employees of the same, and all other persons or parties performing services for the Owner. All labor for loading and unloading of materials, shall be by the party using the elevator.

29.2 Before temporary use of the elevator, the Contractor shall protect the elevator cab with a metal screen ceiling below the permanent ceiling. Padding and a substantial wood lining to protect the walls and floor against damage shall also be installed. During the temporary use, the elevator shall be equipped with electric lights and car gates, and the shaft opening shall be protected with temporary gates as required for safety and by Laws.

29.3 Temporary wiring to elevator machinery for temporary use shall be provided by the Contractor. The Contractor shall furnish, at the Contractor's expense, the services of competent elevator operators during the entire time that elevators are used for construction purposes.

29.4 At the completion of the Work the Contractor shall turn over the elevator used on a temporary basis to the Owner in a first class condition, as determined by Owner or Owner's elevator consultant. The Contractor shall pay the costs of all refurbishing or repairs, required to satisfy this requirement.

30. CUTTING, PATCHING AND DIGGING

30.1 The Contractor shall do all cutting, fitting or patching on the Work that may be required to make its several parts come together properly and fit the Work to receive or be received by work of other Contractors shown by, or reasonably implied by, the Contract Documents for the completed Project. The Contractor shall repair or otherwise make good all such cutting, fitting, or patching after the required Work has been completed as the Architect may direct.

30.2 The Contractor shall not endanger any Work by cutting, digging, or performing other similar activities, and shall not cut or alter the Work of any other Contractor without the written consent of the Architect and the Contractor of such Work.

30.3 The Contractor shall notify the municipality, public utilities, agencies and the Owner, in a timely manner so as to allow reasonable response time, before digging any tunnels or similar underground work; and shall protect all existing utilities, sidewalks, streets, facilities and similar improvements while performing the Work.

31. CLEANING

31.1 As set forth in more detail in this Section 31, the Contractor shall clean, on a daily basis, all interior and exterior areas, including those that are visible from outside the Project Site and shall at all times during the course of the Project and through Final Completion keep the premises free from accumulations of waste material or rubbish caused by the Work. At all times, the Project Site and Contractor's tools, construction equipment and materials will be maintained in a neat and orderly condition. If the Project and Project Site are not maintained properly or if Contractor fails to clean up as required by the Contract Documents, the Owner may do so, and the costs associated with such cleanup shall be charged to the Contractor.

31.2 All crates, cartons and other flammable waste materials or trash shall be removed from the Work areas at the end of each working day. Contractor shall arrange and pay for the general cleaning and maintenance of the Project Site and for the coordination and direction of the cleanup work of all trades. Contractor shall, and shall require all Subcontractors to, clean and maintain their respective portions of the Work as required herein and as directed by Owner and/or Contractor.

31.3 Elevator shafts, electrical closets, pipe and duct shafts, chases, furred spaces and similar spaces which are generally unfinished, shall be cleaned by Contractor and left free from rubbish, loose plaster, mortar drippings, extraneous construction materials, dirt and dust before preliminary inspection of the Work.

31.4 All areas of the Project in which painting, wall covering, flooring, carpeting and other finish work ("**Finish Work**") is to be performed shall be thoroughly cleaned prior to the start of the Finish Work and shall be maintained in satisfactory condition to receive the Finish Work. Such cleaning shall include, without limitation, the removal of trash and rubbish from such areas; broom cleaning of floors; and the removal of any plaster, mortar, dust and other extraneous materials from all surfaces, including, but not limited to, all exposed structural steel, miscellaneous metal, woodwork, plaster, masonry, concrete, mechanical and electrical equipment, piping, duct work, conduit, and all surfaces visible after permanent fixtures, induction unit covers, convactor covers, covers for finned tube radiation, grilles, registers, and other such fixtures or devices are in place.

31.5 Trucks hauling loose material to and from the site will be tight and have trimmed loads with wheels, tires, and vehicle bodies cleaned to prevent spillage and/or tracking of traveled roadways.

31.6 In addition to all cleaning specified herein and elsewhere in the Contract Documents, the Contractor shall perform a final cleaning of the Work, or designated portion of the Work, prior to turning the Work, or designated portion of the Work, over to the Owner, including, without limitation: (i) washing or cleaning of all surfaces on which dirt or dust has collected; (ii) the removal of marks, stains, fingerprints and other soil or dirt from painted, decorated, and natural-finished woodwork and other Work; (iii) the removal of spots, mortar, plaster, soil and paint from ceramic tile, marble, and other finish materials and the washing or wiping clean of such materials; (iv) the cleaning of fixtures, cabinetwork and equipment, removing stains, paint, dirt, and dust and leaving in undamaged, new condition; (v) the cleaning of aluminum in accordance with recommendations of the manufacturer; and (vi) the cleaning of resilient floors thoroughly with a well-rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen. Where there is exterior glass, the Contractor shall have all interior surfaces of such glass cleaned by professional window washers. Care shall be taken not to scratch any glass. Acid or other cleaning material that will injure or mar the surface or adjacent Work will not be allowed. Any damage resulting from glass cleaning shall be corrected by the Contractor,

including the furnishing of new glass of same character and quality or the replacement of other Work damaged or disturbed. Contractor shall, at Owner's request, delay such washing of exterior surfaces to such time as requested by Owner. All equipment shall be new, in an undamaged, bright clean condition. Re-cleaning will not be required after the Work has been inspected and accepted unless later operations of Contractor, in the opinion of Owner, make re-cleaning of certain portions necessary.

31.7 As soon as practical before Final Completion of the Work, or completion of a designated portion of the Work, the Contractor shall dismantle all temporary facilities and remove from the Project Site all construction and installation equipment, fences, scaffolding, surplus materials and rubbish of every kind and supplies and the like belonging to Contractor or Subcontractors associated with such Work or designated portion of the Work.

32. SCHEDULE OF VALUES

In the event a Schedule of Values is requested by Owner from the Contractor, the Contractor shall provide a Schedule of Values which shall allocate, in detail, the Contract Sum among the various portions of the Work. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This Schedule of Values, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Schedule of Values, including individual line items, shall not be changed except by a Change Order fully executed by the Owner.

33. PARKING, PROJECT SITE ACCESS, AND ROUTING OF TRAFFIC

33.1 The Contractor shall consult with the Owner to determine authorized parking locations and access to the Project Site, including the routing of the Contractor's, Subcontractors' and the sub-subcontractors' vehicles during construction, and the Contractor shall organize the Work in relation thereto. For any other parking or routing of traffic on property, other than the Owner's, the Contractor shall contact the municipality or other agency having jurisdiction over such property for instructions. Notwithstanding anything contained herein to the contrary, there shall be no parking of automobiles, or other vehicles, of personnel on the Project Site.

33.2 It shall be the Contractor's and the Subcontractors' respective responsibilities to arrange for and pay for all parking and to otherwise comply with all requirements of the Owner's Parking Policy as set forth on the University of Chicago Parking Services Office website. To arrange for parking on the Owner's property, the Contractor shall contact the University of Chicago Parking Services Office.

33.3 No road, highway, or bridge will be closed by Contractor without prior written permission of the appropriate Public Agency and the Owner. Contractor, if a road, highway, or bridge is closed, will maintain traffic through or divert traffic around the Work, supporting the maximum practical convenience for the public. If roads are not available for use as detours, all traffic will be permitted to pass through or around the Work. In such cases, to prevent the public's vehicles from being unduly delayed for the convenience of Contractor, unless express written permission otherwise is furnished by Owner, vehicles of the public will have precedence over Contractor's vehicles. Contractor will provide flagmen, signs and warning devices required by the Governmental Authority with jurisdiction for the sole purpose of directing and controlling the movement of traffic, either through or around the Project Site.

34. COMPUTATION OF CONTRACT PROGRESS PAYMENTS

Provided that the Contractor has satisfied the requirements of the Contract Documents, including, without limitation, this Section 34 and Section 36 of the General Conditions, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided herein and in Section 36 of the General Conditions.

34.1 At the last OAC Meeting of each month (if applicable), but in no event later than the 25th day of each month, the Architect, Owner and Contractor will review a pencil draft of the Contractor's proposed Application for Payment along with supporting documentation, with the Architect having primary responsibility for assessing the quality and conformance of the Work to the Contract Documents, and the Owner assessing percentage of Work completed and monies owed accordingly to Contractor. Owner will evaluate the Work and proposed Application for Payment to ensure correctness of amounts requested, current payment withholdings, retainage withheld and other relevant payment related issues. At the meeting, Contractor will provide certification that the Work has progressed to the point indicated, the quality of Work is in

accordance with the Contract Documents and that monies previously invoiced and received for Subcontractors, sub-subcontractors and suppliers have been paid from payments received. At the subsequent OAC Meeting (if applicable), but in no event later than five (5) working days after the last OAC Meeting (if applicable) or the 25th day of the month, Contractor will submit to Owner and Architect, a formal Application for Payment prepared on an AIA G702 form, which incorporates any revisions required by Owner in the last OAC Meeting, along with all supporting documentation required by Section 36.6 of the General Conditions below. The formal Application for Payment shall be submitted as part of the Contractor's Monthly Progress Report pursuant to Section 25.6 of the General Conditions.

34.2 Based upon the invoice review meeting and any other documentation thereafter submitted by Contractor, and subject to Contractor complying with the requirements of this Section 34, Owner will approve the progress payment amount it determines to be due on account of the Contract Sum, within five (5) business days after receipt of the Contractor's formal Application for Payment, or return the formal Application for Payment to Contractor, indicating the reasons for withholding approval in whole or in part, and requesting an appropriate resubmission with documentation that satisfactorily supports the Application.

34.3 The period covered by each Application for Payment shall be a calendar month ending on the last day of the month. Provided an accurate, complete and acceptable Application for Payment is received by the Owner and subject to Owner's right to withhold or set-off against amounts set forth in the Application for Payment in accordance with the terms of this Agreement, including, without limitation, Section 36.8 below, the Owner shall make payment of approved amounts to the Contractor no later than thirty (30) days following receipt by Owner of the formal Application for Payment. If an Application for Payment is not submitted by Contractor within the timeframes required by Section 34.1 above, which thereby results in the missing of Owner's processing of monthly draws period, the Application for Payment shall not be processed until the subsequent month's draw, unless otherwise permitted by Owner. Each Application for Payment shall be based upon the approved Schedule of Values submitted by the Contractor in accordance with the Contract Documents, and each Application for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. If any portion of the Work is funded by a federal or State agency, the Owner will have fifteen (15) days after receiving those funds in which to make payment. This provision shall take effect only after the thirty (30) day period following approval by Owner of payment in accordance with this Agreement has expired.

34.4 Assuming compliance with other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage ten percent (10%);
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);
- .3 Subtract the aggregate of previous payments made by Owner;
- .4 Subtract amount, if any, for which the Owner or Architect has withheld or nullified a Certificate for Payment or otherwise.
- .5 If, after the Contractor has achieved fifty percent (50%) completion of the Work, the Owner determines, in its sole reasonable discretion, that the Work has been performed in accordance with the Agreement and is in full compliance with the Construction Schedule attached hereto, then no further retention shall be withheld from payments made to the Contractor. However, the Owner shall have the right to reinstate the ten percent (10%) retention in the event of a subsequent default by the Contractor.

34.5 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made

examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

35. FINAL PAYMENT

35.1 Final Payment shall be made by the Owner to the Contractor when: (1) the requirements of this Agreement and General Conditions, including, without limitation, all requirements set forth in Section 39 of the General Conditions, have been satisfied and fully performed by the Contractor, except for the Contractor's responsibility to correct nonconforming Work during the one year correction of the Work period, and to satisfy other requirements, if any, which necessarily survive Final Payment; (2) a final Application for Payment has been submitted by the Contractor, reviewed and approved by the Owner, and (3) a final Certificate for Payment has then been signed by the Architect. Final Payment shall be issued by the Owner not more than 30 days after all of the foregoing conditions have been satisfied by the Contractor.

35.2 The amount of the Final Payment shall be calculated as follows:

- .1 Take the entire Contract Sum.
- .2 Subtract amounts, if any, for which the Architect or Owner withholds, in whole or in part, Final Payment as provided for by the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

35.3 If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the Owner.

36. CONTRACT PAYMENT GENERAL PROVISIONS

36.1 If payments are requested for materials and equipment not incorporated in the Work but delivered and suitably stored on the Project Site, the Contractor's Application for Payment will be accompanied by, and payment for such stored materials and equipment will be conditioned upon, submission by the Contractor of bills of sale invoices or other documentation that will establish the Owner's clear and unencumbered title to such, free and clear of all liens, charges and security interests.

36.2 The Owner, at the Owner's sole discretion, may pay for materials and equipment not incorporated in the Work but delivered and suitably stored at another location other than the Project Site. In this case, the Contractor's payment is conditioned on the same provisions as outlined in Section 36.1 above and verification that the materials or equipment have been delivered and are suitably stored, insured and protected. Contractor shall have full responsibility for securing off-site materials and shall replace any damaged or stolen materials at its own expense.

36.3 The Contractor shall not be relieved of the responsibility for loss and damages to stored materials or equipment while stored or in transport to the Project Site. Any loss or damage shall be remedied at the Contractor's expense.

36.4 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated into the Work or not, will pass to the Owner no later than the time of payment, free and clear of all encumbrances, liens, charges, and security interests.

36.5 When payment is received from the Owner, the Contractor shall immediately pay all Subcontractors, laborers, and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder, naming the Contractor and any such Subcontractor, material-person, laborer, or supplier as joint payees. This joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

36.6 Each Application for Payment shall be accompanied by:

- .1 A sworn Contractor's statement in compliance with the mechanics lien statutes and laws of the state, province, region and/or country in which the Project is located (as applicable), including, but not limited to, a list identifying all Subcontractors, the total amounts of Subcontracts let or to be let, the amount previously paid to each Subcontractor, the amount to be paid to each Subcontractor from the Application for Payment, and the amount to become due to each through completion of the Subcontract. Contractor shall also submit sworn statements from each Subcontractor listing the same information regarding their sub-subcontractors as required of Contractor;
- .2 A waiver of mechanics lien from the Contractor covering the amount for which the current payment is being requested under the Application for Payment that establishes to the reasonable satisfaction of Owner, with respect to such payment, that no liens, nor any rights to file any liens, exist against the Work, the Project Site or any funds held by Owner, in favor of any person whatsoever for or by reason of any materials, equipment or supplies furnished, labor performed or other things done in connection with the performance of the Work. If at any time any notice of any lien is filed, Contractor shall promptly discharge, remove, bond over or otherwise dispose of the lien and shall be responsible for the costs incurred in discharging, removing or otherwise disposing of the lien, including any attorneys' fees incurred by Contractor by reason thereof. The Owner shall be entitled to withhold from payment to the Contractor the stated amount of any lien;
- .3 "Trailing" waivers of mechanics liens from each of the Subcontractors and suppliers covering the amounts requested for payment for each Subcontractor and supplier pursuant to the immediately preceding Application for Payment that establishes to the reasonable satisfaction of Owner, with respect to such payment, that no liens, nor any rights to file any liens, exist against the Work, the Project Site or any funds held by Owner, in favor of any person whatsoever for or by reason of any materials, equipment or supplies furnished, labor performed or other things done in connection with the performance of the Work;
- .4 Evidence of insurance against loss or casualty of any goods or materials stored off-site for which Contractor seeks compensation, if any;
- .5 A written Monthly Progress Report pursuant to Section 25.6 of the General Conditions, which shall include, without limitation, a NCR Log pursuant to Section 16.6 of the General Conditions;
- .6 Any other information or documentation as required by terms of this Agreement or as may be reasonably required by Owner.

36.7 No Application for Payment shall include any request for payment for Work performed by a Subcontractor of amounts that Contractor does not intend to pay to that Subcontractor within thirty (30) days after submission of the Application for Payment because of a dispute or for any other reason. Contractor shall pay each Subcontractor, except for payments already made directly by Contractor, promptly out of the amount paid to Contractor on account of the Subcontractor's work, goods or materials, the amount to which the Subcontractor is entitled in accordance with the terms of its Subcontract. Contractor shall, in each Subcontract, require each Subcontractor or to make payments to its sub-subcontractors in a similar manner.

36.8 The Owner shall have the right to withhold or refuse to make payment (or any portion of a payment) and, if necessary, may demand the return of a portion of, or the entire amount previously paid to the Contractor due to:

- i. The quality of a portion or all of the Contractor's Work not being in accordance with the requirements of this Agreement or the Contract Documents;
- ii. The quantity of the Contractor's Work not being as represented in the Contractor's payment request, or otherwise;
- iii. The Contractor's rate of progress being such that, in the Owner's opinion, Substantial Completion or Final Completion, or both, may be inexcusably delayed;
- iv. The Contractor's failure to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment suppliers;

- v. Claims made, or likely to be made, against the Owner or its property;
- vi. Loss caused by the Contractor; or
- vii. The Contractor's failure or refusal to perform any of its obligations to the Owner.

36.9 In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner, the Contractor shall promptly comply with such demand.

36.10 Waiver of Rights under Applicable Prompt Payment Statutes.

THE CONTRACTOR AGREES THAT THE TERMS OF THIS AGREEMENT SHALL GOVERN AND CONTROL THE RIGHTS AND OBLIGATIONS OF THE PARTIES WITH RESPECT TO PAYMENT AND, THEREFORE, THE CONTRACTOR HEREBY WAIVES ANY AND ALL RIGHTS AND PROTECTIONS AFFORDED BY THE PROVISIONS OF ANY APPLICABLE PROMPT PAYMENT STATUTE, INCLUDING, BUT NOT LIMITED TO, THE ILLINOIS CONTRACTOR PROMPT PAYMENT ACT, 815 ILCS 603/1 ET. SEQ., TO THE EXTENT INCONSISTENT WITH THE TERMS OF THIS AGREEMENT.

37. ALLOWANCES AND ALTERNATES

37.1 **Allowances.** If the Owner and Contractor agree that the costs of certain portions of the Work can not or need not be established by competitive bidding prior to the establishment of the Contract Sum, the Contractor and the Owner shall agree on a reasonable estimate of the cost for such Work based upon available information. Such estimates are herein called “**Allowances**” and all such Allowances are identified both by type and associated cost estimate in **Exhibit E**, attached hereto. The Contract Sum shall include all Allowances stated in the Contract Documents. Whenever the actual costs to perform the scope of Work associated with an Allowance exceeds the amount of the Allowance, Owner shall have no obligation to pay Contractor an amount in excess of such Allowance unless and until a Change Order has been approved and executed by Owner. The amount of any such Change Order shall reflect the difference between the associated actual costs and the Allowance. Whenever the actual costs to perform the scope of Work associated with an Allowance is less than the amount of the Allowance, the Contract Sum shall be adjusted accordingly by a deductive Change Order. The amount of any such Change Order shall reflect the difference between the associated actual costs and the Allowance. The Allowance amounts set forth herein shall include all costs and expenses associated with the Work of such Allowance, including, without limitation all costs of labor, material, mark-up, fees, profit and overhead.

37.2 **Alternates.** The Owner may, in its sole discretion, exercise its right to modify the scope of the Work by invoking an Alternate and by providing the Contractor with written notice thereof. In such case, there shall be no adjustment to the Contract Sum, other than as may be set forth in the Alternates, if any. Contractor acknowledges and represents that Contractor can perform any and all of the Alternates as part of the Work without requiring any extension of the Contract Time, including, without limitation, the Date of Substantial Completion, the Date of Final Completion and any Milestones, unless indicated otherwise in the Alternate. Alternates, and any associated adjustment in the Contract Sum, if any, are set forth in Section 3.3 of the Key Terms Cover Sheet and/or in **Exhibit F**.

38. SUBSTANTIAL COMPLETION

38.1 When the Contractor considers the entire Work or any portion thereof Substantially Complete, the Contractor shall notify the Architect and Owner of such condition and request that a certificate of Substantial Completion be issued. Accompanying this notification, the Contractor shall submit a list of all Work not completed or Work that the Contractor believes to be not completed in accordance with requirements of the Contract Documents (the “**Work Completion List**”). Prior to Substantial Completion and prior to a certificate of Substantial Completion being issued, the Contractor shall complete all training of Owner personnel required by the Contract Documents. The Owner may elect at its sole discretion, in writing, to exempt certain portions of the Work from Substantial Completion. If any element is approved for such exemption by the Owner, the Contractor must nonetheless satisfactorily complete this item as a condition for Final Payment. The Owner is not obligated to exempt any elements of the Work.

38.2 Within a reasonable time after being notified, the Architect will review the list of Work not complete and with the Owner, make a preliminary inspection of the Work Completion List and the Work to determine if the list is complete and if

the Work is Substantially Complete (the “**Preliminary Inspection**”). If, in the opinion of the Owner and/or Architect, the Work is not Substantially Complete, the Contractor will be notified of such conditions and will be required to bring the Work to a state of Substantial Completion before a final inspection takes place, at no additional cost to Owner.

38.3 If, after the Preliminary Inspection and joint consultation by and between the Architect and the Owner, in the opinion of the Owner and the Architect the Work is Substantially Complete, the Architect will issue a certificate of Substantial Completion and prepare a punchlist of any Work that it concludes is not in compliance with the requirements of the Contract Documents (the “**Punchlist**”). The Contractor shall be responsible for completing or correcting all items contained on the Work Completion List as well as the Architect’s Punchlist.

38.4 Upon the issuance of the certificate of Substantial Completion of the entire Work, or a portion thereof, the Owner shall assume responsibility from Contractor for security, maintenance, utility costs, and operations of the facility, or that portion of the facility for which Substantial Completion has been granted. The Contractor, however, shall be responsible for any damages caused by the Contractor's efforts to fully complete the Work, including any clean up costs. The Contractor's insurance will remain in force until the Final Completion of the Work. The Contractor shall remain responsible for any safety precautions associated with the Contractor's completion of any Work.

38.5 If the Architect, through its inspection, finds that the Contractor has failed to achieve Substantial Completion, and is required to repeat all or any portion of its Substantial Completion inspection, and provided such failure was not caused by the improper actions of the Owner: (i) the Contractor will bear the cost of the repeat inspection(s), which costs shall be deducted from any payment then or thereafter due to the Contractor; and (ii) the Contractor shall not be entitled to additional Contract Time resulting therefrom.

38.6 Guarantees and equipment warranties required by Section 8 of these General Conditions shall commence on the date the Contractor achieves Substantial Completion of the Work or the Correction Period Start Date, whichever is later.

39. FINAL COMPLETION

39.1 When the Contractor considers that the Work is Finally Complete and the Contractor is ready for a final inspection, Contractor shall notify the Owner and the Architect in writing. The Architect and Owner will then perform a final inspection of the Project and Work. If the Architect, after consulting with the Owner, confirms that the Work is Finally Complete, in full accordance with this Agreement, and that the Contractor has performed all of its obligations to the Owner, the Architect will furnish a final certificate for payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled, upon submission of its final, correct and completed Application for Payment, to the remainder of the unpaid Contract Sum, less any amount withheld pursuant to this Agreement. If the Architect is unable to issue its final certificate for payment and is required to repeat its final inspection of the Project, the Contractor, provided such failure was not the result of the improper actions of the Owner: (i) the Contractor will bear the cost of the repeat inspection(s), which costs shall be deducted by the Owner from the Contractor's Final Payment, and (ii) the Contractor shall not be entitled to additional Contract Time resulting therefrom.

39.2 Prior to being entitled to receive Final Payment and as a condition precedent thereto, the Contractor shall furnish or provide evidence to the Owner, in the form and manner required by Owner, of the following:

- i. An affidavit from Contractor stating that all of the Contractor's obligations to Subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
- ii. Separate releases of lien or lien waivers from each Subcontractor, lower tier Subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
- iii. If applicable, consent(s) of surety to Final Payment;
- iv. Satisfactory completion of all Punchlist items (including the Work Completion List and Architect's Punchlist);
- v. Submission of all final waivers of lien; and
- vi. Submission of any other close-out documentation reasonably required by Owner.

39.3 If any lien remains unsatisfied after all payments are made, the Contractor shall promptly refund to the Owner all sums that the Owner may be compelled to pay in discharging the lien, including all costs and reasonable attorney's fees.

Neither the right to require that lien waivers or sworn statements be furnished by the Contractor, Subcontractors, sub-subcontractors and suppliers, nor a decision made in good faith to exercise or not exercise this right shall give rise to any duty or responsibility of the Architect or the Owner to the Contractor, any Subcontractor, any sub-subcontractor, any supplier, any other person or organization performing any of the Work, or to any surety, to do so.

39.4 The acceptance of Final Payment shall constitute a waiver of all claims by Contractor against the Indemnified Parties (as that term is defined in Section 50 of these General Conditions), except insofar as Contractor has previously timely and properly notified Owner in writing. The making of Final Payment shall not constitute acceptance of the Work or of any goods or materials provided under the Agreement nor shall it constitute a waiver of any rights or claims of Owner.

40. PARTIAL OCCUPANCY

40.1 The Owner, at its election, may from time to time make use of or occupy any portion of the Project as the Work in connection therewith is completed, provided that the Owner determines that such portion of the Project is ready for the Owner's intended use. Owner shall undertake all reasonable efforts to prevent any such partial occupancy from interfering with the Contractor's Work. Prior to any partial occupancy, the Owner will give notice to the Contractor and such occupancy shall be upon the following terms:

- .1 The one-year correction of the Work period, as outlined in Section 20 of the General Conditions, and other warranties or guarantees required by the Contract Documents shall not begin to run until the Correction Period Start Date and any additional costs to extend such correction period from the date of any such partial occupancy shall be the responsibility of Contractor unless the intent to take partial occupancy is issued after the Agreement has been executed;
- .2 Occupancy shall not constitute an acceptance of Work or relieve the Contractor of the liability to perform any Work required by the Contract Documents and the Contractor will be afforded reasonable access to complete or correct the Work;
- .3 The Contractor shall be relieved of all maintenance costs on the portions partially occupied;
- .4 The Contractor shall not be responsible for the wear and tear or damage resulting from such occupancy; and
- .5 The Contractor shall not be required to furnish heat, light, water, or other services used in the portions occupied without proper remuneration thereof.

41. CONCEALED CONDITIONS

41.1 In the event conditions are encountered at the Project Site, which the Contractor pursuant to its responsibilities set forth in Section 56 of the General Conditions, did not discover and in accordance with the Standard of Care set forth in Paragraph 1.4 of the Agreement could not have discovered, and which are: (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents; or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by Contractor shall be given to Owner before conditions are disturbed, but in no event later than twenty-four (24) hours after such conditions are first observed, or should reasonably have been observed. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, Owner will make an adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the Project Site are not materially different from those indicated in the Contract Documents and that no adjustment is justified, the Owner shall notify the Contractor in writing, stating the reasons therefor. If Contractor disagrees with Owner's determination, Contractor may submit a Claim in accordance with the procedures and requirements contained in Section 60 of the General Conditions. Unless the Owner expressly agrees otherwise, no increase in Contract Time shall be made for any suspension(s) in Work resulting from a concealed condition if the suspension(s) of Work lasts less than ten (10) working days in the aggregate.

41.2 No Claim for an increase in the Contract Sum and/or the Contract Time by the Contractor, or Subcontractor, due to differing site conditions shall be allowed: (i) if the Contractor, or Subcontractor, knew of its existence before submitting its agreement to perform the Work or if those conditions could have been discovered by any reasonable examinations for which the Contractor or Subcontractor, was made responsible under the Agreement, bid proposal or bidding requirements for the performance of the Work, or portion thereof; and/or (ii) unless the Contractor provides a proper and timely Claim for an increase in the Contract Sum pursuant to Section 42 of the General Conditions and/or an increase in the Contract Time pursuant to Section 45 of the General Conditions.

42. EXTRA WORK OR CHANGES IN THE WORK

42.1 The Owner, without invalidating this Agreement and without notice to any surety, may at any time order extra Work or make changes by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such extra or changed Work shall be authorized by a written Change Order from the Owner. Upon receipt of such an order, the Contractor shall promptly proceed with such extra or changed Work involved and such extra or changed Work will constitute a portion of the Work.

42.2 When directed by the Owner or when the Contractor knows or should have known of a potential Claim for a Change Order for extra Work or changes in the Work, the Contractor shall promptly submit notice to the Owner of its intention to file a Claim. Thereafter, within fourteen (14) calendar days of receiving such direction or from the time when Contractor knew or should have known of a potential Claim, Contractor shall submit an itemized estimate and a proposal, or unit prices and a proposal, for performing or deleting such extra or changed Work. Failure of the Contractor to submit a Claim for extra Work or changes in the Work to the Owner within such fourteen (14) calendar day time period shall constitute a full and final waiver of any and all Claims that could have been presented for such extra work or change in the Work. Any extensions or reductions of the Contract Time associated with extra or changed Work shall be identified at the time the Contractor submits its proposal, and the proposal must be in conformance with Section 45 of the General Conditions.

42.3 The Cost of the Extra or Changed Work (as defined in Section 42.5 below) shall be calculated using one of the following methods and in the following order of priority:

- (i) Method No. 1: By unit prices stated by the Contractor and subsequently agreed upon, subject to the provisions contained in Section 42.8 below;
- (ii) Method No. 2: By mutual acceptance of a lump sum proposal, including overhead and profit, itemized and supported by sufficient substantiating data to permit evaluation;
- (iii) Method No. 3: By mutual acceptance of a proposal for the performance of any changed Work on a time and materials basis with a “not to exceed” price, itemized and supported by sufficient substantiating data to permit evaluation; or
- (iv) Method No. 4: On a time and materials basis to the extent provided for in Sections 42.4 and 42.5 hereof. The Contractor shall keep and present in a form as the Architect or the Owner may direct, an itemized accounting, together with supporting data and vouchers, of all costs associated with extra or changed Work.

42.4 In the event that the Owner and the Contractor are unable to agree on the Cost of the Extra or Changed Work (as that term is defined in Section 42.5 below), the Contractor, upon written direction from the Owner, shall proceed with the Work as ordered in Section 42.1 hereof; in such case the Cost of the Extra or Changed Work shall be made in accordance with Method No. 4 above. The Contractor, upon receipt of such a directive, shall promptly proceed to carry out the extra or changed Work.

42.5 The term “**Cost of the Extra or Changed Work**” means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of extra or changed Work. All such Cost of the Extra or Changed Work shall be in amount no higher than prevailing in the locality of the Project. The following costs shall constitute the recoverable Cost of the Extra or Changed Work to which the Contractor is entitled when performing extra or changed Work, or making any

other Claim for a Contract Sum adjustment. Only the costs described at Sections 42.5(iii) and 42.7(i) below are recoverable when associated with acceleration of the Contract Time as set forth at Section 46 of the General Conditions.

- .1 **Payroll Costs for Employees of the Contractor Directly Employed in the Physical Performance of the Extra or Changed Work.** Payroll costs for employees not directly employed in the physical performance of extra or changed Work, such as superintendents and foremen, are not recoverable. Percentage add-ons, or other costs, for employees not directly employed in the physical performance of the extra or changed Work shall not be allowed. Payroll costs shall include salaries or wages paid plus the cost of itemized fringe benefits, and any applicable union wage/fringe benefits, including social security contributions, unemployment and worker's compensation insurance. The payroll costs associated with premiums paid for performing extra or changed Work after regular hours or on weekends or holidays shall be allowed only to the extent that they are previously authorized by the Owner.
- .2 **Costs of All Materials and Equipment Furnished and Incorporated Into Extra or Changed Work by the Contractor, Including Costs of Transportation and Storage, Where Applicable.** All trade discounts, rebates and refunds and all returns from sales of surplus materials and equipment shall accrue to the benefit of the Owner.
- .3 **Payments Made by the Contractor to the Subcontractors for Subcontractor's Costs Incurred.** Subcontractor's costs shall be determined in the same manner as the Contractor's but payroll costs of foremen shall be recoverable by Subcontractors. If required by the Owner, the Contractor shall obtain bids from Subcontractors acceptable to the Contractor and the Owner and the Contractor will subcontract with those accepted by the Owner.
- .4 **Construction Equipment Costs of the Contractor's Equipment or Rental Costs from Others.** Hourly, daily, weekly or monthly rates will be applied where appropriate.
- .5 Other supplemental costs which are substantiated by the Contractor as specifically being required for the proper execution of the extra or changed Work, unless specifically prohibited by Section 42.6 hereof.

42.6 The Contractor's recoverable Cost of the Extra or Changed Work shall not include any of the following costs when performing extra or changed work, or in making any other Claim for a Contract Sum adjustment:

- .1 Payroll costs and other compensation of the Contractor's officers, executives, principals, general managers, project managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing or contracting agents, expeditors, clerks, or any other employees or agents who are not specifically employed full-time on the Project. Those employees or agents not employed full-time on the Project are to be considered as administrative costs that are covered by the Contract Sum. Exceptions to this requirement will only be made on a case-by-case basis, each of which shall require prior Owner authorization and approval.
- .2 Expenses of the Contractor's principal and branch offices other than the Contractor's office located on the Project Site.
- .3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.
- .4 Costs associated with extra or changed Work arising from the one (1) year correction of the Work period, warranties, or guaranties that are required by the Contract Documents.
- .5 Any other supplemental costs that are not substantiated by the Contractor as specifically being required for the proper execution of extra or changed Work.
- .6 Costs arising from events which are not Excusable Events of Delay, disruptions, hindrances, interferences or rescheduling.

42.7 When using Methods 3 and 4 set forth in Section 42.3 above, the Contractor's and Subcontractors' mark-up for overhead and profit on the Cost of the Extra or Changed Work shall be limited as follows:

- .1 The Contractor agrees to charge, and accept, as payment for overhead and profit the percentage set forth in Section 3.4 of the Key Terms Cover Sheet for Extra or Changed Work by the Contractor that is self-performed and the percentage set forth in Section 3.5 of the Key Terms Cover Sheet for Extra or Changed Work by the Subcontractors.
- .2 For Extra or Changed Work as described above that will be executed by Subcontractors, it is agreed that the Subcontractors will be permitted to charge the percentage set forth in Section 3.6 of the Key Terms Cover Sheet for Extra or Changed Work by the Subcontractor that is self-performed and the percentage set forth in Section 3.7 of the Key Terms Cover Sheet for Extra or Changed Work by sub-subcontractors.
- .3 The Contractor and the Subcontractors will not be allowed a fee or mark-up for overhead and profit on the premium time wages paid for overtime, shift time or other similar types of work conditions for which premium time wages may be paid. The Contractor and Subcontractor fees shall apply to the base wage only.

42.8 Actual quantities and classifications of unit price Work shall be submitted by the Contractor to the Architect and the Owner. All such quantities and classifications shall be subject to review and approval by the Architect and the Owner. Each unit price will be deemed to include, in addition to the Cost of the Extra or Changed Work, all supervision labor, materials, equipment, engineering, delivery charges, applicable taxes, hoisting, insurance, overhead and profit, all preparatory and other activities of the Contractor necessary to coordinate and make such items compatible with the other Work performed by the Contractor and the work performed by other contractors, and all other services and charges attributable to such Work, and shall be based upon all Work complete in place, in accordance with the Contract Documents.

42.9 If notice of any extra or changed Work affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions of any bond, to be given to any surety issuing such bonds, the giving of any such notice shall be the Contractor's sole responsibility.

42.10 The Architect shall have authority to order minor changes in the Work not involving adjustments to the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such instructions shall be given in writing. The Contractor shall carry out such written orders promptly.

42.11 The Contract Sum may only be adjusted by a written Change Order executed by both Contractor and Owner. No claim for adjustments to the Contract Sum will be valid unless documented by written Change Order.

42.12 Agreement on any Change Order shall constitute a final settlement of all of Contractor's claims for more time and money or other matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with the change in the Work and any and all adjustments to the Contract Sum and the Contract Time.

43. DEFECTIVE COST AND PRICING DATA

43.1 If at any time during the prosecution of the Work, there is good cause to doubt the Contractor's compliance with the Defective Cost and Pricing Data requirements of this Section 43, the Owner shall be entitled to make an appropriate withholding from any payment otherwise owed to the Contractor.

43.2 Whenever the Contractor signs a proposal for a Contract Sum or Contract Time adjustment, a Change Order or a claim settlement, the Contractor will be deemed to have certified, to the Contractor's best knowledge and belief, that the representations made and data submitted in pricing and negotiating the cost of the work involved in that price proposal, Change Order, or claim settlement: (i) were made in good faith and are consistent with the facts; and (ii) are complete, accurate and current as of the date agreement was reached on the corresponding adjustments in Contract Sum and/or Contract Time. This certification shall apply in each and every respect to any Subcontractor and supplier who signs any cost and pricing data attached to any such proposal for a Contract Sum or Contract Time adjustment, Change Order or claim settlement.

43.3 If after reasonable opportunity to review, Owner determines that any adjustment in Contract Sum or Contract Time made by any Change Order, Claim or dispute settlement was increased by a material and significant amount because the Contractor, or any Subcontractor or supplier, at any tier, made representations or furnished cost or pricing data of any kind that were false, contained math errors or were incomplete, or otherwise in conflict with the Agreement, the Contract Sum shall be correspondingly reduced by Change Order. Owner may as a result therefore withhold an appropriate amount of payment otherwise owed to Contractor, or if no money is owed Contractor, will immediately pay Owner the amount determined in good faith by Owner to have been wrongfully paid.

43.4 Owner will be entitled to withhold an appropriate amount from any payment otherwise owed to Contractor, if, at any time after the pricing at issue is accepted, but before Final Payment, there is reasonable cause to question compliance with this defective pricing clause.

44. CONSTRUCTION SCHEDULE; PROGRESS SCHEDULES

44.1 Contractor shall prepare for Owner's review, a construction schedule, which shall be based upon and consistent with Owner's schedule requirements (the "**Construction Schedule**"). The Construction Schedule shall utilize critical path methodology with a computerized data base and production program; identify Milestones with a Milestone established no less frequently than monthly; identify separately all tasks of Subcontractors identified in the Schedule of Values with durations greater than ten (10) days; identify Schedule Float (as that term is defined in Section 1.25 of the General Conditions) in activities or tasks; identify dates for the preparation and delivery of Shop Drawings and Submittals; identify manpower loading, as well as include a monthly cash flow schedule of anticipated program payments and necessary schedules for Subcontractors' Work and suppliers' deliveries and set forth any portions of the Project having occupancy priority. The Construction Schedule shall allow for and reflect all issues that may affect the schedule, including, without limitation:

- .1 local weather conditions;
- .2 local jurisdictional or other restrictions;
- .3 time for needed approvals by the Owner, Architect or other agency or authority;
- .4 Owner, Architect or other agency or authority inspections and/or tests when required by the Contract Documents;
- .5 the work of separate contractors and consultants retained by the Owner;
- .6 coordination of Work with ongoing operations;
- .7 other information that may be provided by the Architect or the Owner.

A copy of the initial Construction Schedule is attached hereto as **Exhibit D**. The Contractor shall complete the Work in accordance with the Construction Schedule, including the Milestones, as modified in accordance with the terms of this Agreement; otherwise it shall be a material breach of the Agreement. The Construction Schedule may be modified only as specifically set forth in the Contract Documents.

44.2 Contractor shall update the Construction Schedule on a monthly basis ("**Progress Schedule(s)**") and such update shall be submitted with the Contractor's Applications for Payment. When events of delay have impacted tasks or activities not on the critical path for completion of the Work by a Milestone or by the Scheduled Date of Substantial Completion as shown on the prior month's updated Construction Schedule, changes shall be shown accordingly. Any change to the Construction Schedule ordered by Change Order shall also be shown. Any change of the Construction Schedule's critical path for completion of the Work in compliance with any Milestone or the Scheduled Date of Substantial Completion shall be shown in a contrasting color and is not approved unless and until a Change Order is issued.

45A. CHANGES IN THE CONSTRUCTION SCHEDULE AND CONTRACT TIMES

45.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect or of any employee of either acting within their limits of authority, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by strikes, lockouts, fire, unavoidable casualties or any similar causes beyond the Contractor's control ("**Excusable Events of Delay**"), then the Contract Time shall be adjusted by Change Order for such reasonable time as the Architect may determine. The Contract Time may be changed by Change Order. Nothing contained in this Section shall be interpreted as limiting the Contractor's continuing duty to

read, examine, review, compare, and contrast each of the Contract Documents, as set forth in Section 56 of these General Conditions.

45.2 The Contractor shall take all reasonable efforts to minimize the effect of any delay to the Work.

45.3 Any claim for an adjustment to the Contract Time by the Contractor must be made in writing to the Architect and the Owner promptly, and in no case later than twenty-one (21) calendar days after the occurrence of the event giving rise to the claim. Notice of the extent of the claim and supporting data shall be submitted within thirty (30) calendar days of the event giving rise to the claim. In the case of a continuing delay, only one claim is necessary. In the case of a recurrence of a delay of similar nature after a Change Order has been issued, consideration for time extensions will be given only if additional time extensions are requested in accordance with the requirements of this Section 45. No claim for an adjustment to the Contract Time will be considered as valid if not submitted in accordance with the requirements of this Section 45.

45B. CHANGES IN THE CONSTRUCTION SCHEDULE AND CONTRACT TIMES

45.1 There shall be no changes in the Construction Schedule, Milestones, Date of Substantial Completion or Date of Final Completion other than by means of a Change Order. No such Change Order shall be issued unless the Contractor strictly complies with this Section 45 and other terms and conditions of this Agreement.

45.2 Within ten (10) days of any event for which a Special Project Delay Report (as that term is defined in Section 45.4 below) is required, as described below, Contractor shall submit a written report to Owner and the Architect properly labeled as a Special Project Delay Report. Such timely submission shall be a prerequisite to any changes in the Construction Schedule, Milestones, Date of Substantial Completion or Date of Final Completion. The Contractor's failure to submit a Special Project Delay Report in a timely manner in accordance with this Section 45 shall constitute a full and final waiver of any and all rights whatsoever to a change in the Construction Schedule, Milestones, Date of Substantial Completion or Date of Final Completion for such delay event. The required Progress Schedule, meeting minutes, Monthly Progress Reports or any other form of communication or notice, other than a Special Progress Delay Report, shall not satisfy this obligation.

45.3 A Special Project Delay Report shall be required when:

- .1 The commencement, performance or completion of any task or activity necessary to achieve any Milestone, Date of Substantial Completion or Date of Final Completion, is either delayed or reasonably anticipated to be delayed by more than ten (10) days and the Contractor intends to request a change to the Construction Schedule, the Milestone, Date of Substantial Completion or the Date of Final Completion; or
- .2 The Contractor reasonably anticipates that it may not be able to complete the Work on or before the Milestone, Date of Substantial Completion or the Date of Final Completion.

45.4 **Special Project Delay Report.** Each "**Special Project Delay Report**" shall set forth a detailed explanation for the delay and shall set forth the Contractor's programs for accelerating the Work sufficiently to overcome the delay in a manner that mitigates any adverse effects on the Project (the "**Recovery Plan**"). Each Special Project Delay Report shall also indicate whether Contractor considers the delay to constitute an Excusable Event of Delay as defined in Section 45.10 below. To the extent the delay at issue constitutes an Excusable Event of Delay, in whole or in part, the Special Project Delay Report shall indicate the costs associated with the components of the Recovery Plan related to any Excusable Events of Delay, which costs shall be determined in accordance with Section 46.2 of the General Conditions below (the "**Recovery Costs**"). The Special Project Delay Report shall also identify, in lieu of the Recovery Plan, any modification requested by the Contractor to the Milestones, Date of Substantial Completion or the Date of Final Completion, in the event the Recovery Plan is not approved by the Owner. Any claim for an adjustment of the Construction Schedule or Contract Time must be made through a timely Special Project Delay Report. If the Contractor shall fail to make a timely Special Project Delay Report, it shall not be entitled to any relief or any modifications to the Construction Schedule or Contract Time.

45.5 The Owner shall review each Special Project Delay Report in a timely manner to determine if it fulfills the requirements of the Agreement and shall determine, in its sole discretion, whether: (i) the delay specified (or any part

thereof) is an Excusable Event of Delay; and (ii) to approve, in whole or in part, the Recovery Plan and associated Recovery Costs. If the Owner approves the Recovery Plan, in whole or in part, the Owner may direct the Contractor to accelerate the Work in accordance with such plan and the Contractor shall be entitled to request a Change Order, pursuant to the terms of this Agreement, for the balance of the Recovery Costs.

45.6 In the event of a delay to the Work, however caused, the Contractor shall have the right to submit a Special Project Delay Report described in this Agreement to the Owner. If the event(s) of delay shall be an Excusable Event of Delay, the Construction Schedule, Milestone, Date of Substantial Completion or the Date of Final Completion, as applicable, shall be modified by Change Order by the number of days which such events actually caused such dates or schedule to be extended after taking into consideration Schedule Float with respect to impacted activities and tasks on the most recent updated Construction Schedule.

45.7 In the event of an Owner Caused Delay (as defined in Section 45.10.2 of the General Conditions) to the progress of the Work and subject to the Contractor's compliance with the terms of this Section 45, Contractor may, in addition to an extension of time, be entitled to a Change Order for its actual additional general conditions costs which are directly related to such delay (the "**Extended General Conditions Costs**"), but only to the extent there is no concurrently caused delay that is the result of the fault or neglect of the Contractor, in which event, Contractor shall be entitled to an extension of time only in accordance with the terms of this Agreement.

45.8 In the event of an Excusable Event of Delay to the progress of the Work, excluding an Owner Caused Delay, and subject to the Contractor's compliance with the terms of this Section, Contractor shall, in addition to an extension of time, be entitled to recover its Extended General Conditions Costs by Change Order pursuant to the terms of this Agreement, but only to the extent there is no concurrently caused delay that is the result of the fault or neglect of the Contractor, in which event, Contractor shall be entitled to an extension of time only in accordance with the terms of this Agreement.

45.9 Other than as set forth herein, the Contractor shall not be entitled to any increase in the Contract Sum or to any other compensation, fees, reimbursements, profits, damages, losses or costs which may result from, or shall be on account of any delay, disruption, hindrance or interference however caused, and Contractor waives its rights, if any, at law or equity to claim any compensation, fees, reimbursements, profits, damages, losses or costs from or against Owner or any person or entity which may result from or shall be on account of any delay, hindrance or interference, however caused.

45.10 **Excusable Events of Delay.** To the extent that any of the following events results in an actual and reasonable delay in the progress of the Work, such delay(s) shall, subject to compliance with the other applicable provisions of the Agreement, constitute an "**Excusable Event(s) of Delay**":

- .1 Acts (including delays in acting or failure to act) of the State, or the City or of any other Governmental Authority that are not the result of any fault or negligence of Contractor or its Subcontractors ("**Regulatory Delays**");
- .2 Acts (including delays in acting or failure to act) of the Owner, Architect, or of any employee of either, or of a separate contractor employed by the Owner (an "**Owner Caused Delay**"), provided Contractor has given Owner two separate written notices to cure, the first of which informs the Owner precisely what actions it must take and which provides the Owner twenty-one (21) days within which to do so, and the second, not to be delivered until the twenty-one (21) day period in the first notice has elapsed, providing Owner with seven additional days to effectuate a cure. Contractor's notice obligations set forth herein shall be modified in the event that Contractor was not and reasonably could not have been apprised of the need to notify Owner at least twenty-eight days (28) in advance of any resulting delay. In such case, Contractor shall provide Owner with notice as soon as Contractor is aware of the Owner's delay in acting or failure to act in accordance with this Agreement, however, in no case shall Contractor give Owner less than fourteen (14) days notice to effectuate a cure before availing itself of the remedies set forth herein;
- .3 Restraints or injunctions issued by a judicial body requiring that the Work or any portion thereof shall be halted ("**Judicial Delays**");

- .4 Changes in Laws, other than those that could have been reasonably anticipated at the time of execution of the Agreement;
- .5 Fires, floods, earthquakes, civil disturbances, wars, acts of terror, insurrections, riots or sabotage;
- .6 Strikes, involuntary work stoppages, labor disputes, lockouts not resulting from any fault of the Contractor or its Subcontractors;
- .7 A reasonably unanticipated concealed condition is encountered as described by Section 41 of the General Conditions, provided the Contractor has complied with the requirements of that Section 41; and
- .8 Weather conditions, subject to terms and conditions set forth in Section 45.11 below.

45.11 The Contractor's Construction Schedule includes and anticipates lost work days as result of weather conditions in the aggregate amount set forth in Section 2.5 of the Key Terms Cover Sheet. If the number of actual lost work days resulting from weather conditions exceeds the number of lost work days set forth in Section 2.5 of the Key Terms Cover Sheet by more than 125% (the "**Minimum Weather Delays**"), then the Contractor shall be entitled to an extension of the Contract Time for each day above and beyond the Minimum Weather Delays. The Contractor shall, from the Date of Commencement and continuing thereafter through Final Completion, keep track of and record on the Daily Progress Log the occurrence of each lost work day resulting from weather conditions and the resultant impact to the scheduled Work taking into consideration Schedule Float. The Contractor shall report to the Owner the occurrence of each lost working day resulting from weather conditions at each weekly OAC Meeting.

46. ACCELERATION OF THE WORK

46.1 If Contractor's rate of progress is such that the total amount of Work and/or the degree of completion of the Work accomplished by Contractor and its Subcontractors within any time period required by the Construction Schedule or the Contract Documents is less than the amount therein specified to be completed within such time, and it reasonably appears that Contractor and its Subcontractors will be unable to achieve completion of Milestones by the dates set forth in the Construction Schedule or Substantial Completion of the Work by the Date of Substantial Completion, Owner may notify Contractor of the same and, in such event, Contractor shall have the duty to demonstrate to Owner that, based upon its estimate of the remainder of the Construction Schedule and potential for early completion of portions of the Work, Contractor will be able to achieve completion of Construction Schedule, Milestone(s) and Substantial Completion of the Work on or before the Date of Substantial Completion. If Owner, acting reasonably, does not agree that Contractor has demonstrated its ability to achieve completion of Construction Schedule, Milestone(s) or Substantial Completion of the Work on or before the Date of Substantial Completion, Owner may direct Contractor to accelerate the Work by issuing a notice to Contractor pursuant to this Section 46. Upon such direction, Contractor shall be obligated to employ such extraordinary measures as necessary to bring the Work into conformity with the Construction Schedule. If the anticipated delay results from an Excusable Event of Delay under the Agreement, Contractor will be entitled to compensation for costs actually incurred as a direct result of such acceleration.

46.2 In addition to Owner's right to accelerate the Work pursuant to Section 46.1, Owner may direct Contractor to accelerate the Work without cause by issuing a written notice to Contractor requesting such acceleration. If the Owner directs acceleration pursuant to this Section and that acceleration causes Contractor to incur additional costs, Contractor expressly agrees that its sole and exclusive remedy for such acceleration shall be an adjustment of the Contract Sum by Change Order equal to the actual costs reasonably incurred directly by reason of the acceleration less any reduction in costs due to the shorter overall Construction Schedule. Owner shall not be required to pay any costs incurred pursuant to this Section 48 and Contractor shall be deemed to have waived its right to recover any such costs, unless such costs are incurred in response to a written directive from Owner to Contractor that authorizes Contractor to incur such costs and explicitly acknowledges that Owner will pay such costs.

47. LIQUIDATED DAMAGES

47.1 Contractor acknowledges that the Contract Time, as set forth in Paragraph 3.1 of this Agreement and in the Construction Schedule are of the essence and that in the event Contractor fails to complete the Work as set forth in Paragraph 3.1 of the Agreement and the Construction Schedule, subject to any adjustments as provided herein, Owner will

suffer costs and incur substantial damages, the extent of which shall be impossible or very difficult to accurately measure. Accordingly, if Contractor fails, neglects or refuses to complete all or any designated part of the Work within the specified Contract Time, the Owner shall be entitled to assess liquidated damages. The parties acknowledge that as of the date of this Agreement, the amount of liquidated damages set forth herein represents a good faith estimate on the part of the parties as to the damages that would be incurred by the Owner as a result of late completion. The amount of such liquidated damages does not include any penalty.

47.1.1 Liquidated damages for the number of calendar days that Substantial Completion of the Work is inexcusably delayed by Contractor will be the per diem amount set forth in Section 2.4 of the Key Terms Cover Sheet.

47.1.2 Liquidated damages for the number of calendar days that Final Completion is inexcusably delayed by Contractor will be the per diem amount set forth in Section 2.4 of the Key Terms Cover Sheet.

47.1.3 Liquidated damages for the number of calendar days that a Milestone is inexcusably delayed by Contractor will be the per diem amount set forth in Section 2.4 of the Key Terms Cover Sheet.

47.2 Liquidated damages will be cumulative and will be assessed when incurred or when the most current Progress Schedule indicates that the Contractor will not achieve a particular Milestone, Substantial Completion or Final Completion of the Work in accordance with the Construction Schedule, as modified to reflect any excusable delay. In such case, liquidated damages shall be reflected as a deduction from any amounts due under any Applications for Payment pending at such time or, at Owner's sole discretion, the Owner may issue a Change Order reducing the Contract Sum by the amount of liquidated damages assessed pursuant to this Agreement. All liquidated damages that have not been deducted from previous payments or that have not been applied to the reduction of the Contract Sum by Change Order shall be deducted from the Final Payment. In the event the amount of Final Payment is insufficient to cover the amount of liquidated damages incurred, the Contractor shall promptly pay to the Owner any difference.

47.3 In the event liquidated damages are assessed and collected from monies owed the Contractor as a result of an anticipated inexcusable delay to a Milestone, Substantial Completion and/or Final Completion as reflected in a Progress Schedule, yet the Contractor nonetheless achieves the applicable Milestone, Substantial Completion or Final Completion in accordance with the Project Schedule, the Contractor, as its sole and exclusive remedy, will be entitled to payment of ninety percent (90%) of all such amounts previously assessed, without interest or penalty, at such time as Final Completion is achieved.

47.4 The liquidated damages set forth herein pertain only to the Owner's remedy for damages associated with delays to the completion of the Work and Owner hereby retains any and all other rights and remedies Owner has under the terms of this Agreement and applicable laws, including, without limitation, Owner's rights of termination hereunder.

48. OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE AND PERFORM WORK

48.1 The Owner shall have the right at any time to direct the Contractor, in writing, to suspend Contractor's performance, or any designated part thereof, for any reason whatsoever, or without reason, for such period of time as Owner may determine. If any such suspension is directed by the Owner, the Contractor shall immediately comply with such directive. The Contractor shall continue to perform Work on other portions of the Project if and to the extent directed by Owner. If the Work, or any part of the Work, is suspended, the Contractor will make every reasonable attempt to mitigate its costs and an adjustment will be made in the Contract Sum and Contract Time to the extent such adjustment is otherwise provided for in this Agreement. However, no increase in Contract Sum will be made to the extent that performance of the Work is or would have been suspended by another cause that the Contractor has or had control over.

48.2 In the event the Owner directs a suspension of performance under this Section 48 in excess of fifteen (15) days, through no fault of the Contractor, and the suspension materially increases costs to complete the Work (or component of the Work), the Owner shall pay the Contractor, as full compensation therefor, the Subcontractor's reasonable costs, but not in excess to that actually incurred and paid, as a result of:

- i. Demobilization and remobilization, including such costs paid to Subcontractor;
- ii. Preserving and protecting Work in place;
- iii. Storage of materials or equipment purchased for the Project, including insurance thereon;

- iv. Performing in a later, or during a longer, time frame than that contemplated by this Agreement; and
- v. The Contractor's reassignment of supervisory personnel, such costs to be limited to the actual wages and benefits for such supervisory personnel for a period not to exceed two weeks or \$10,000, whichever shall be less.

48.3 In the event the Owner directs a suspension of performance under this Section due to the Contractor's failure or refusal to perform the Work as required by the Contract Documents, Contractor shall provide assurances adequate to the Owner that the cause of such suspension has been eliminated or corrected, within seven (7) days of the date of receipt of such direction to suspend performance. If Contractor fails to provide such adequate assurances in a form acceptable to Owner, Owner shall have the right, but not the obligation to carry out the Work with its own forces or with forces of another contractor, and Contractor shall be fully responsible and liable for any additional costs of performing such Work incurred by the Owner. The rights set forth in this Section 48.3 are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

49. SEPARATE CONTRACTS

49.1 The Owner reserves the right to enter into other separate contracts in connection with the Project or perform portions of the Project with the Owner's own forces. The Contractor shall afford such contractors or the Owner's forces, as the case may be, reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their work. The Contractor shall properly connect and coordinate the Contractor's Work with the work of separate contractors or work of the Owner.

49.2 If any part of the Contractor's Work depends, for proper execution or results, upon the work of any other separate contractor or the Owner's work, the Contractor shall inspect and promptly report to the Architect and Owner, any defects in such work that render it unsuitable for such proper execution and results. Contractor's failure to inspect and report such defects shall constitute an acceptance of the work and any costs and liability arising therefrom.

49.3 When the Contractor's Work is dependent upon the work of the Owner or the Owner's separate contractors, the Contractor shall notify the Owner of such condition in ample time to prevent any delays to the progress of the Work.

49.4 Owner shall make all reasonable efforts to cause any separate contractors retained by Owner to cooperate with Contractor and to not to cause any labor disruptions or delays to the Work.

50. INDEMNIFICATION

50.1 To the fullest extent permitted by law, the Contractor will protect, indemnify, defend and hold the Owner, University of Chicago Medical Center, their respective trustees, individually and collectively, affiliates, officers, agents and employees and the Architect and its officers, employees, and agents (the "**Indemnified Parties**") free and harmless from any and all claims and actions for injuries to persons or for damage to property (excluding the Work) and for all liabilities, claims, demands, actions, costs, suits or matters in connection therewith (including, without limitation, reasonable attorneys' fees, expert fees, court costs and expenses), if caused by reason of or as a result of the performance of the Work, whether based upon or claimed to be based upon statutory, contractual, tort or other liability hereunder.

50.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Indemnified Parties from all liabilities, claims, demands, actions, suits and costs (including, without limitation, reasonable attorneys' fees, expert fees, court costs and expenses), if caused by reason of or as result of the Contractor's breach of this Agreement or failure to perform in accordance with the Contract Documents, including, without limitation, any failure to comply with Laws.

50.3 The Contractor shall: (i) to the fullest extent permitted by law, defend, indemnify and hold the Indemnified Parties harmless from and against any and all liability, loss, suits, claims, actions, causes of action, proceedings, demands, costs, penalties, fines and expenses (including, without limitation, reasonable attorneys' fees, expert fees, court costs and expenses), and clean-up costs, if caused by reason of or as result of the generation, storage, treatment, handling, transportation, disposal or release by the Contractor or any entity for whom the Contractor is responsible of any Hazardous Material brought onto the Project Site by the Contractor, its Subcontractors, sub-subcontractors or anyone for whom the Contractor is legally liable other than to the extent explicitly required by the Contract Documents; and (ii) with reasonable

promptness, remove or cause the removal of such Hazardous Materials from the Project Site or otherwise remediate such condition, in each case in accordance with applicable Laws.

50.4 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Indemnified Parties from all liabilities, claims, demands, actions, suits and costs (including, without limitation, reasonable attorneys' fees, expert fees, court costs and expenses) if caused by reason of or as result of a notice of lien, claim for lien, lien, or suit to foreclose a lien filed, given, made or maintained by a Subcontractor, sub-subcontractor or supplier, provided that the Contractor has received undisputed payments due to date pursuant to the terms of this Agreement.

50.5 In the event that any equipment, process or procedure employed by the Contractor or any Subcontractor during the performance of this Agreement is held to constitute an infringement of any claim of any United States or foreign patent, trademark, trade name, copyright or similar right, or its use enjoined, the Contractor shall, at its option and without compensation: (i) procure for the Owner the right to continue using said equipment, processes or procedures; (ii) replace it with a substantially equivalent non-infringing, equipment, process or procedure; or (iii) promptly modify the equipment, process or procedure so that it becomes non-infringing. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Indemnified Parties from all liabilities, claims, demands, actions, suits and costs (including, without limitation, reasonable attorneys' fees, expert fees, court costs and expenses), if caused by reason of or as result of an infringement of any claim of any United States or foreign patent, trademark, trade name, copyright or similar right. Notwithstanding the foregoing, Contractor shall not be responsible for such defense or loss under such paragraphs when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Document, unless Contractor has reason to believe that the required design, process or product at issue is an infringement of a patent, or copyright. In such event, the Contractor shall be responsible for such claims and losses unless such information is promptly furnished by Contractor to the Architect or the Owner.

50.6 The Owner, on behalf of the Indemnified Parties, shall have the right to approve legal counsel selected by Contractor to defend the Indemnified Parties in any action for which Contractor owes a defense obligation under this Section 50. The Contractor shall not settle any liabilities, claims, demands or actions for which Contractor has an obligation to defend and indemnify any or all of the Indemnified Parties under the terms of this Section 50, or elsewhere in the Agreement, without the Owner's prior written approval.

50.7 In claims against any person or entity indemnified under this Section 50 by an employee of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 50 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

50.8 To the extent prohibited by applicable laws, no person or entity indemnified under the terms of this Section 49, or by any other provision in this Agreement, shall be indemnified for claims to the extent arising from such person's or entity's own negligence, and the provisions of this Section 50 shall not be construed to require the Contractor to indemnify any person or entity indemnified hereunder to the extent of such person's or entity's own negligence or to require any indemnification which would make the provisions of this Section 50 void or unenforceable. The obligations of the Contractor pursuant to this Section 50 are not to be construed to negate or reduce any other right or obligation of indemnification which would otherwise exist as to any party or person described in this Section 50.

50.9 All provisions of this Agreement that require the Contractor to insure, defend or indemnify the Owner shall survive any termination or completion of this Agreement or completion of the Project.

51. CONTRACTOR'S LIABILITY INSURANCE

51.1 Except in the event the Owner, at its option, as set forth in the Contract Documents, has secured an Owner Controlled Insurance Program, Contractor shall purchase and maintain at Contractor's sole expense such insurance as shall protect Contractor and any Subcontractor performing Work covered by this Agreement from claims for damages for personal injury, including death, resulting therefrom as well as for property damage, which may arise from operations under this Agreement, whether such operations be by Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. Contractor shall maintain such insurance without interruption from the date of commencement

of the Work until the date of Final Payment or termination of any coverage required to be maintained after Final Payment. The cost of such insurance shall be included in the Contractor's bid.

51.2 Coverage shall be at least as broad as:

- .1 Commercial General Liability insurance coverage on an "occurrence basis" insuring all operations by or on behalf of the Contractor and including coverage for:
 - (a) premises and operations,
 - (b) products and completed operations which Contractor shall maintain for at least three (3) years after Final Payment,
 - (c) contractual liability insuring the obligations assumed by the Contractor under this agreement,
 - (d) personal injury liability with employee and contractual exclusions voided,
 - (e) broad form property damage, and
 - (f) explosion, collapse, and underground ("XCU").
- .2 Automotive Liability insurance on an ISO Business Auto Policy form or equivalent covering all owned, hired and non-owned vehicles, and shall include coverage for the Automobile Contractual Liability.
- .3 Workers' Compensation insurance as required by applicable law or regulations or statutes and Employer's Liability insurance.
- .4 Professional Liability insurance (E&O) covering claims arising out of the performance of any design, engineering, or professional services performed or furnished in connection with the Contractor's Work caused by any negligent act, error or omission for which Contractor may be liable including the Work performed by any Subcontractor.

51.3 Contractor shall maintain limits of liability of at least:

- .1 Commercial General Liability policy form, limits to apply exclusively to this Project:
 - \$5,000,000 each occurrence bodily injury and property damage,
 - \$5,000,000 personal and advertising injury,
 - \$5,000,000 products and completed operations aggregate,
 - \$5,000,000 general aggregate.
- .2 Automobile Liability
 - \$1,000,000 combined single limit per accident for bodily injury and property damage.
- .3 Workers Compensation:
 - Coverage as required by law.
- .4 Employer's liability:
 - \$500,000 bodily injury by accident
 - \$500,000 Disease-Each Employee
 - \$500,000 Disease Aggregate
- .5 Professional Liability insurance:
 - \$5,000,000 per claim
 - \$5,000,000 annual aggregate
- .6 Contractor may substitute lower limits for any of the policies listed above provided that Contractor maintains umbrella or excess liability policy or policies which provide at total minimum limit of

\$1,000,000 for automobile liability and \$5,000,000 for general liability and that all other requirements of this insurance clause are satisfied by such umbrella or excess policy or policies. The Contractor, at their own expense, may obtain other coverages or higher limits.

51.4 Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either: i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, the University of Chicago Medical Center, their respective affiliates, officers, directors, trustees, agents, volunteers and employees (the “**Additional Insureds**”); or ii) the Contractor shall procure a bond guaranteeing payment of losses and defense costs.

51.5 The Professional Liability insurance shall provide coverage as follows: Prior Acts Coverage which covers any such negligent acts, errors or omissions which occurred prior to the effective date of such policy at least from the effective date of this Agreement. This coverage shall be maintained for a minimum of six (6) years after Final Payment; if the coverage ends before six (6) years, Contractor shall purchase “tail” or “extended reporting” insurance such that claims that are reported after the coverage period to six years after final payment are covered.

51.6 The Additional Insureds shall be named as additional insureds on all policies of insurance required by this Section 51. The Additional Insureds shall be named as Additional Insureds under the Commercial General Liability policy and the automobile liability policy. General Liability coverage maintained by contractors and Subcontractors shall contain Additional Insured endorsement CG 2010 07/04 and CG 2037 07/04 or equivalent. The Commercial General Liability policy or policies and any excess or umbrella liability policy shall stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance carried by the Additional Insureds will be excess only and will not contribute with Contractor's insurance. The Commercial General Liability and any excess or umbrella liability policies shall contain the usual cross liability wording indicating that except for limits of liability, the policies shall operate as though separate policies were issued to each insured.

51.7 Each insurance policy required by this insurance clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty days prior written notice by certified mail, return receipt requested, has been given to the Owner.

51.8 Insurance shall be placed with insurers which have an A.M. Best's rating of A- or higher and financial size category of VII or higher or which the Owner deems in writing to be acceptable to the Owner.

51.9 Contractor shall furnish the Owner and the Architect with certificates of insurance before any Work is done and any materials are delivered to the job site. Insurance certificates shall clearly identify:

- i. Project number and name, and
- ii. All insurance coverages and special conditions as required by this insurance clause. The certificates are to be signed by a person authorized by the insurer to bind coverage on its behalf. The Owner reserves the right to require certified copies of endorsements affecting coverage required by this insurance clause. Failure of the Owner to require such Certificates of Insurance shall not relieve the Contractor from the responsibility to provide the specified insurance coverages.
- iii. If any part of the Work is subcontracted, Contractor shall require all Subcontractors to furnish separate certificates for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein except that Commercial General Liability and excess or umbrella liability limits for each Subcontractor shall total at least \$5,000,000 per occurrence and annual aggregate. The Contractor shall not allow any Subcontractor to begin Work until the Contractor has obtained a certificate evidencing the required insurance. Contractor shall retain Subcontractor certificates on file and shall provide them to the Owner upon demand.
- iv. Owner reserves the right to require certified copies of any insurance policy required above at any time.
- v. Failure of the Owner to notify Contractor of any deficiencies in the required insurance policies or to request insurance policies or insurance certificates shall not relieve the Contractor from the responsibility to provide the specified insurance coverages.

51.10 Contractor and Subcontractors shall not use watercraft or aircraft in the Work under this Agreement without prior written approval from Owner which will specify reasonable minimum requirements for watercraft or aviation liability insurance.

51.11 The general liability, automobile liability, workers' compensation and umbrella or excess liability insurers shall waive all rights of recovery by subrogation against the Additional Insureds.

52. PROPERTY INSURANCE

52.1 Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductible. Such insurance shall be maintained on a policy applying to the Project or on a policy applying to other Owner-owned property at Owner's discretion unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Final Payment has been made as provided in this Agreement or until no person or entity other than the Owner has an insurable interest in the property required under this Section 52 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Work. The Owner shall be named as a named insured on this policy and Contractor and Subcontractors shall be additional insureds.

52.2 Property insurance shall be on an all-risk policy form and shall insure against physical loss or damage resulting from the perils of fire and extended coverage and including, without duplication of coverage, water damage, theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

52.3 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

52.4 The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and sub-subcontractors in the Work, and the Owner shall be the named insured and Contractor and Subcontractors shall be additional insureds.

52.5 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property related to the Project due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property related to the Project, including consequential losses due to fire or other hazards however caused.

52.6 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Modification.

52.7 If after Final Payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 52.9 for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

52.8 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of the insurance certificates and of each policy that includes insurance coverages described by this Section 52. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Contractor.

52.9 The Owner and Contractor waive all rights against: (1) each other and any of their Subcontractors, sub-subcontractors, agents and employees, each of the other; (2) the Architect, Architect's consultants, separate contractors described in Section 50, if any, and any of their Subcontractors, sub-subcontractors, agents and employees if required by

contract; and (3) the Owner for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 52 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Section 50, if any, and the Subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

52.10 A loss insured under property insurance purchased by Owner shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 52.13. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

52.11 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreements as the parties in interest may reach. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

52.12 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power. The Owner as fiduciary shall, in that case, make settlement with insurers. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

52.13 Partial occupancy or use in accordance with Section 41 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

52.14 Property insurance provided by Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms staging, shoring and other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance the Contractor may require on such construction equipment. The insurer shall waive the right of subrogation against the Additional Insureds.

52.15 Property insurance for the Work purchased by Owner shall provide a deductible of no more than \$1,000,000 per occurrence. Contractor shall be responsible for all deductible payments under Owner's property insurance from \$0 to \$25,000 per occurrence and Owner shall be responsible for the deductible in excess of \$25,000.

53. PERFORMANCE AND PAYMENT BONDS

53.1 If required by the Owner under Section 4.3 of the Key Terms Cover Sheet, Contractor shall furnish and deliver to Owner performance bond and payment bonds pursuant to and in accordance with the terms of this Section 53 (collectively the "**Bonds**"), each in an amount equivalent to one hundred percent (100%) of the Contract Sum as security for the faithful performance and completion of all obligations under the Contract Documents including the payment of all materials used in the performance of this Agreement and all labor and services performed under this Agreement, whether by Subcontractors or otherwise. Bonds shall be issued on AIA Document 312-1984 Payment Bond and AIA Document 312-1984 Performance Bond forms or other form(s) approved by Owner, and shall, without limitation, cover the Contractor's warranty and any liquidated damages obligations under this Agreement and shall name Owner as obligee. Each surety providing the Bonds must have a Best's rating not less than A-X and be licensed in the state where the job site is located and shall be named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts,

U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of his or her authority to act. It shall be the duty of the Contractor to advise the surety or sureties of any Change Orders that result in an increase to the Contract Sum and to ensure that the amount of the Bonds are updated to reflect and cover any such increases throughout the course of the Project.

53.2 **Subcontractor Bonds.** If requested by Owner, the Contractor shall furnish and deliver to the Owner Bonds with respect to the Work of those Subcontractors and/or trades performing the Work as specifically identified by Owner (collectively, the “**Subcontractor Bonds**”). Any such Subcontractor Bonds securing a Subcontractor’s performance and/or payment obligations shall be issued on AIA Document 312-1984 Payment Bond and AIA Document 312-1984 Performance Bond forms or other form(s) approved by Owner, and shall name Contractor and Owner as dual obligees thereunder. The Subcontracts shall require that the amount of each Subcontractor Bond shall be equal to one hundred percent (100%) of the subcontract price. The cost of such Subcontractor Bonds shall be a part of the Contract Sum. The Contractor shall expressly require in the relevant subcontract that it shall be the duty of the Subcontractor to advise the surety or sureties of any Change Orders that result in an increase to the subcontract price and to ensure that the amount of the Subcontractor Bonds required are updated to reflect and cover any such increases throughout the course of the Project. If required by Lender, the Lender shall be identified as a dual or co-obligee on each of these Subcontractor Bonds. Contractor shall furnish to Owner proof of any required Subcontractor Bonds prior to the start of the Work of the applicable Subcontractor.

53.3 If the surety behind any Bond furnished by Contractor, or any of its Subcontractors, is declared bankrupt or becomes insolvent or its right to do business is terminated in the state, province, region and/or country in which the Project is located (as applicable) or it ceases to meet any of the requirements of Section 53.1 or Section 53.2 above, Contractor shall, within five (5) days thereafter, substitute (or require the substitution of) another Bond and surety, both of which must be acceptable Owner. In addition, no further Progress Payments under the Agreement will be made by Owner until Contractor complies with the provisions of this Subparagraph.

53.4 Upon the request of any person or entity appearing to be a potential beneficiary of Bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the Bonds or shall permit a copy to be made.

53.5 For those materials and equipment specifically designated in the Specifications, Contractor will require the supplier selected to furnish any such materials or equipment to provide a Manufacturer’s Bond, naming Contractor and Owner as dual obligees; the Bond to be in a form and by a surety acceptable to Owner. Such Bond will remain in full force and effect for a period of time to be specified by Owner.

54. TAXES AND TAX EXEMPT STATUS

54.1 Contractor acknowledges that the Owner is a not for profit corporation, and is tax exempt under state and federal law. The Contractor represents and warrants that no tax withholdings or other similar withholdings were or will be included in determination of the Contract Sum or Cost of Work.

54.2 The Contractor shall be responsible for the payment of any payroll taxes and/or contributions for unemployment and worker's compensation insurance or retirement pensions or annuities which are measured by the wages, salaries, or other remunerations paid to the employees of the Contractor.

54.3 The Owner reserves the right to require evidence of payment of all taxes and federal and state withholdings prior to Final Payment to the Contractor.

55. SUBCONTRACTORS

55.1 The Contractor shall involve the Owner in the review of all Subcontractors and shall provide Owner with copies of all proposals submitted by Subcontractors for the performance of Work on the Project. The Contractor shall enter into a written subcontract agreement with each Subcontractor using a form approved by Owner (the “**Subcontract**”). The Contractor shall advise the Owner of the conduct of scope review meetings held between the Contractor and any potential Subcontractors and the Owner shall have the right to attend any and all such meetings. The Owner shall have the right to approve all Subcontractors, and Contractor shall not enter into a Subcontract with an intended Subcontractor to whom the

Owner objects. All Subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of termination as set forth below.

55.2 Each Subcontractor shall agree:

- i. To be bound to the Contractor by the terms of the Contract Documents and to assume toward the Contractor all obligations and responsibilities that the Contractor assumes toward the Owner;
- ii. To submit to the Contractor accurate applications for payment in such reasonable time as to enable the Contractor to apply for payment under the terms of this Agreement;
- iii. To make all claims for extras or changes, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided for in the Contract Documents; and
- iv. That Owner shall be the third party beneficiary of the Subcontract.

55.3 The Contractor agrees:

- i. To pay the Subcontractor those amounts certified on account of the Subcontractor in accordance with this Agreement;
- ii. To pay each Subcontractor a just share of any fire and extended coverage insurance money received by the Contractor under Section 51 of the General Conditions;
- iii. Contractor shall be responsible for all actions, inactions, and omissions of Subcontractors, and lower tier Subcontractors, suppliers, and their agents, employees, and any other person employed or performing portions of the Work under a contract with the Contractor or a party to a contract between the Contractor and any Subcontractor or lower tier Subcontractor or supplier.
- iv. Nothing contained in the Contract Documents shall be deemed to create any contractual relationship with any Subcontractor or lower tier Subcontractor or any other party than the Owner and Contractor.

55.4 Each Subcontract for a portion of the Work shall be assigned by the Contractor to the Owner provided that:

- i. assignment is effective only after termination of the Agreement by the Owner for cause pursuant to Section 58 of the General Conditions, and only for those Subcontracts which the Owner accepts by notifying the Subcontractor in writing;
- ii. assignment is subject to the prior rights of the surety, if any, obligated under Bonds relating to the Agreement; and
- iii. if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

55.5 In performing the Work, Contractor shall use its best efforts to maximize its use of Subcontractors and vendors whose businesses are located in the following areas: (i) the City; and (ii) Cook County (“**Local Subcontractors**”). In selecting Local Subcontractors, Contractor shall give preference: (i) first to businesses located in the City and (ii) second to businesses located in Cook County. Contractor further agrees to comply with the Owner’s residency requirements as well as other on-site approval requirements as set forth in **Exhibit G** to the Agreement. Contractor shall use best efforts to utilize minority business enterprises (“**MBE**”) and women business enterprises (“**WBE**”) as Subcontractors in accordance with the minimum guidelines set forth in **Exhibit G** to the Agreement. Contractor agrees to comply with the guidelines and procedures set forth in **Exhibit G** to the Agreement and further agrees to work with the Owner as well as those consultants retained by the Owner to assist it in achieving MBE, WBE and Local Subcontractor objectives. Contractor agrees that attendance at all meetings conducted by the Owner or its consultants for purposes of monitoring the Contractor’s compliance with the MBE, WBE and Local Subcontractor guidelines shall be included within the Work.

55.6 Contractor shall coordinate and cooperate with the consultant selected by the Owner to promote minority and women business enterprises in accordance with **Exhibit G** to the Agreement.

55.7 Contractor shall provide the Owner with monthly reports detailing the extent to which the Contractor is utilizing minority and women business enterprises as Subcontractors, the extent to which the Subcontractors are utilizing minority and women business enterprises as sub-subcontractors on the Project and the percentage of workers on Project Site that are women and minorities. These reports shall be in accordance with **Exhibit G** of the Agreement, Economic Impact Program and the forms contained therein.

55.8 Contractor is responsible for coordinating the space requirements of the Subcontractors and determining that adequate clearance is allowed for their respective equipment and components. The coordination program will consist of

coordination meetings attended by Contractor and Subcontractors and coordination drawing Shop Drawings. Coordination drawings will be prepared from single base drawings produced by the sheet metal or other similarly situated Subcontractors and coordinated by the Subcontractors.

55.9 Contractor shall take all steps necessary to avoid any labor stoppages, slow downs, or conflicts arising from jurisdictional disputes among unions.

56. REVIEW OF PROJECT SITE AND CONTRACT DOCUMENTS

By execution of the Agreement, the Contractor represents and warrants that:

56.1 The Contractor has carefully examined the Project Site, the Contract Documents and the adjacent areas, has taken field measurements and has otherwise suitably investigated the Project to ascertain the nature and location of the Work, and has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as, without limiting the generality of the foregoing: (i) conditions bearing on transportation, disposal, handling and storage of materials; (ii) the availability of labor, water, power and roads; (iii) normal weather conditions; (iv) observable physical conditions at the Project Site; (v) the structural sufficiency of the areas of the Project Site that the Contractor intends to utilize for the staging of materials and the prosecution of the Work; (vi) the surface conditions of the ground and subsurface conditions (based on geotechnical and other subsurface information or data provided by Owner or other subsurface information or data generally available to the Contractor regarding the Project Site); (vii) the character of equipment and facilities needed prior to and during the performance of the Work; (viii) the availability of utilities to the Project Site; and (ix) all Laws, zoning and land use restrictions applicable to the Project Site and is satisfied that the Contractor can complete the Work with all appurtenant improvements as shown or specified in or reasonably inferable from the Contract Documents and consistent with the Contract Documents without the need for any change to the Contract Sum or the Contract Time.

56.2 The Contractor has examined all land and areas adjoining and surrounding the Project Site (including, for the purposes hereof, the streets, sidewalks, and buildings adjoining the Project Site) and has ascertained the materials and construction of the buildings and all existing conditions of such buildings. The Contractor further agrees that the Contractor's prosecution of the Work shall be controlled by such existing conditions and all work and protective measures necessary to keep and leave said premises and buildings in the same condition as they were before commencing the Work shall be done by the Contractor without any addition to the Contract Sum or change in the Contract Time. Wherever any parts of adjoining premises interfere with or are interfered with by the Work to be performed hereunder, the Contractor shall make whatever changes are made necessary thereby without any addition to the Contract Sum or change in the Contract Time, Construction Schedule, Milestone(s), Date of Substantial Completion or Date of Final Completion.

56.3 The Contractor has carefully studied and compared the various Drawings, Specifications and other Contract Documents as well as the information furnished by the Owner pursuant to Section 6 of the General Conditions for errors, omissions, inconsistencies and for compliance with all Laws. The Contractor shall promptly report to the Architect and Owner any error, inconsistency or omission in the Contract Documents and any difference between field measurements or conditions and the Contract Documents of which the Contractor becomes aware. Such deficiencies and differences shall be reported in the form of a request for information in such form as the Architect or Owner may require.

57. SUSPENSION AND TERMINATION BY THE CONTRACTOR

57.1 If, through no act or fault of the Contractor, Subcontractor, sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, the Work is stopped for a continuous period of one hundred fifty (150) days due to either: (i) an issuance of an order of a court or other public authority having jurisdiction; or (ii) an act of government, such as a declaration of national emergency, making material unavailable, then Contractor may terminate this Agreement upon seven (7) days prior written notice to Owner.

57.2 The Contractor may suspend performance of the Agreement if, through no act or fault of the Contractor, Subcontractor, sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, the Owner has repeatedly not made payment of an undisputed amount within the time stated in the Contract Documents and such failure to make payment has continued for thirty (30) days after receipt by Owner of written notice from Contractor regarding such repeated failure.

57.3 If, for the reasons set forth in Section 57.2 above, the Work is suspended for thirty (30) days, the Contractor may, upon thirty (30) additional days written notice to the Owner, terminate this Agreement. In case of such termination, Owner shall pay to Contractor, as Contractor's sole and exclusive remedy for such termination, the amount which would have been due if a progress payment was to be made with respect to the Application for Payment with the last Work date being the date of termination plus reasonable costs of settling and paying claims arising out of the termination of Subcontracts or orders.

58. TERMINATION BY THE OWNER FOR CAUSE

58.1 The Owner may terminate the Agreement if the Contractor:

- i. refuses or fails to supply enough properly skilled workers or proper materials;
- ii. fails to perform or fails to cause the Work to be performed in a safe manner in accordance with the applicable provisions of the University's Project Safety and Accident Prevention Plan;
- iii. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- iv. disregards or violates Laws; or
- v. otherwise is guilty of a material breach of a provision of the Contract Documents.

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

- i. take possession of completed, partly completed or in progress Submittals, deliverables, electronic, files, information and other such Project related property; the Project Site and of all materials, equipment, supplies, tools, construction equipment and machinery thereon owned by the Contractor, which are located at the Project Site and used or to be used for the Work. Upon completion of the Work, any remaining materials, equipment, supplies, tools, construction equipment and machinery not consumed or incorporated in the Work shall be returned to the Contractor in substantially the same condition as when taken, reasonable wear and tear excepted;
- ii. accept assignment of Subcontracts pursuant to Section 55.4 of the General Conditions and or finish the Work by whatever reasonable method the Owner may deem expedient.

58.3 When the Owner terminates the Agreement for one of the reasons stated in Section 58.1 above, the Contractor shall: (i) immediately discontinue all further operations while using reasonable efforts to protect and maintain the Work and (ii) submit to Owner, within fifteen (15) days from the effective date of termination, a schedule of termination inventory, certified by Contractor as to quantity and quality. The Owner may extend this deadline in writing, upon receipt of timely written request from Contractor.

58.4 The Contractor will not be entitled to receive further payment until the Work is finished.

58.5 When the Owner terminates the Agreement for the reasons stated in Section 58.1 above, if the cost to Owner to complete the Work after Contractor's termination, including amounts paid to the Architect and consultants necessitated by the termination, exceeds the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Agreement.

58.6 If the Owner's termination of the Contractor pursuant to this Section 58 is, for any reason, adjudicated to be unwarranted or unjustified, the Owner's termination of the Contractor shall be treated as though it were accomplished pursuant to Section 59 of the General Conditions below.

59. TERMINATION BY THE OWNER FOR CONVENIENCE

59.1 The Owner may, without cause, terminate performance of the Work under this Agreement by the Contractor. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop the Work when such termination becomes effective. At the Owner's option, the Owner shall direct the Contractor to either terminate outstanding orders from suppliers and Subcontractors or assign the Contractor's right, title and interest to supply contracts, and/or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or

partially completed portions of the Work and materials, equipment, parts, fixtures, information and agreement rights as the Contractor has. In case of such termination for the Owner's convenience, Owner shall pay to Contractor, as Contractor's sole and exclusive remedy for such termination, the amount which would have been due if a progress payment was to be made with respect to the Application for Payment with the last Work date being the date of termination plus reasonable costs of settling and paying claims arising out of the termination of Subcontracts or orders, provided Contractor fulfills all requirements hereunder for the making of Final Payment by the Owner. The Contractor shall not be entitled to any lost profits or consequential damages. As a condition of payment of the costs set forth herein, the Contractor shall submit a termination claim in writing to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect to support its claim.

59.2 In addition to Owner's rights to terminate for convenience under 59.1 above, the Owner may, without cause and for convenience, terminate performance of any part of the Work under this Agreement or any Subcontract. The Owner shall give written notice of such termination to the Contractor specifying the part of the Work or Subcontract to be terminated and when such termination becomes effective. The Contractor shall continue to prosecute the part of the Work not terminated. If a part of the Work or any Subcontract is so terminated, the Owner shall incur no liability to the Contractor by reason of such termination, except that the Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract Documents). In case of such termination, the Owner will issue a Construction Change Directive or authorize a Change Order in making any required adjustment to the Contract Time or Contract Sum. For the part of the Work terminated, the applicable provisions of the Contract Documents shall continue in full force and effect as to all Work performed prior to the effective date of termination. For the remainder of the Work, the Contract Documents shall remain in full force and effect. As a condition of payment of the costs set forth herein, the Contractor shall submit a termination claim in writing to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect to support its claim.

60. DISPUTES

60.1 Owner shall be the final interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder with respect to any claim challenging a conclusion otherwise made by either the Architect or Owner. Claims, disputes and other matters relating to the interpretation of the Contract Documents, as to the performance and finishing of the Work, in respect to extras or changes in the Contract Sum, the amount of payment due Contractor, or modifications of the Contract Time will be timely and initially made to the Owner.

60.2 Prior to the Contractor's exercise of any other remedy that may be available under the Agreement, by law or regulation, the Contractor shall submit all claims, disputes and other matters to the Owner for initial decision.

60.3 If the Owner's decision on any claim, dispute or other matter shall be adverse to Contractor, or if Owner makes no decision for sixty (60) days from Contractor's submission, the Contractor shall initiate mediation with a neutral mediator mutually selected by and jointly paid for by the parties. Each party will be otherwise responsible for its costs of mediation. Only upon the conclusion of such mediation shall Contractor have any right, remedy or redress by action in court or otherwise.

60.4 Contractor, except if Owner agrees otherwise in writing, will be barred from asserting or pursuing any claims, demands, or causes of action against Owner unless Contractor complies with the requirements set forth in this Section 60.

60.5 Owner shall not be required to initiate in any mediation of claims or demands including claims it may have against Contractor. However, if Owner, in its sole discretion, intends to mediate a claim or demand against the Contractor, Contractor shall participate in such mediation, the mediator to be mutually selected by the parties. The Owner may abandon such mediation at any time. The Owner may seek the adjudication in court of any of its rights or remedies against Contractor at any time without any condition precedent.

60.6 If after completing any internal dispute resolution process or alternate dispute resolution proceeding, Contractor files suit and fails to increase its recovery in such dispute resolution process by at least twenty percent (20%) over the resolution last offered by the Owner or recommended by the mediator, Owner will be entitled to litigation expenses including attorneys and expert witness fees, and Contractor will not be entitled to interest on any judgment rendered in its favor.

60.7 **Cooperation in Other Proceedings.** The Contractor shall, and shall cause its Subcontractors to, fully cooperate with Owner in any arbitration, mediation, litigation or other proceeding to which Owner may be a party to the extent that any such proceeding involves or raises any issue relating to the Agreement or the performance or non-performance of the Work or services and so long as Owner and Contractor are not adverse to each other in such proceeding. Such cooperation shall be at Contractor's cost and expense, unless Contractor (or its Subcontractor(s), as applicable) is determined not to be at fault in any respect with respect to the matters at issue in such proceeding, in which event Contractor (and/or Subcontractor(s), if applicable) shall be reimbursed by Owner for its actual reasonable costs and expenses that are incurred in such proceeding at the request of Owner.

60.8 **Duty to Continue Performance.** Contractor's obligation to properly and timely perform and complete the Work in accordance with the Contract Documents shall be absolute. Subject to Contractor's rights to terminate or suspend in accordance with the terms of Section 57 of the General Conditions, the Contractor shall carry on the Work and adhere to the Construction Schedule during all disputes or disagreements with Owner and Owner shall continue to make payments to the Contractor of all undisputed amounts as required by the Contract Documents.

61. ACCOUNTING RECORDS AND RIGHT TO AUDIT

61.1 The Contractor shall keep full and detailed accounts (in both hard-copy and electronic format) and exercise such control as required by this Section 61 and as may be necessary for proper financial management under this Agreement, using generally accepted accounting and control principles and systems satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project (whether maintained in hard-copy or electronic format), and the Contractor shall preserve these for a period of three (3) years after Final Payment or termination of the Project, or until claims or litigation initiated during said period have been completed, whichever is longer, or for such longer period as may be required by Law. Contractor will provide Owner ten (10) days written notice before destroying such Project records.

61.2 Contractor records shall be kept and maintained as set forth in Section 61.1 above shall include by example and not limitation, complete and accurate records (including supporting data and documents) of all expenses pertaining to goods and services provided on a cost basis, including records sufficient to properly support all Contract adjustments (direct and indirect costs). Such records shall also consist of documentation pertaining to the bidding and execution of the Work and the character of the materials and equipment used, and shall include, without limitation, insurance certificates, computer records, canceled checks, purchase orders, third party confirmations, invoices, and all other documents that support the claimed expenses, consistent with Contractor's standard and Owner accepted accounting practices. Such records shall also include applicable portions of Contractor's general ledger and those records necessary to evaluate and verify costs and expenditures when required under the Contract and where specific costs are not otherwise established hereunder.

61.3 The Owner and its designees shall have the right to access the Contractor's records (whether in electronic or hard-copy format) during normal business hours in order to verify that the Contractor has complied with all the terms and conditions of the Agreement or in the event of a financial audit or claim by Contractor against the Owner, or a claim by Owner against Contractor.

61.4 All Change Order costs, fees and expenses shall be subject to audit by the Owner in accordance with the terms of this Section 61.

61.5 Contractor shall include a clause in the Subcontracts, requiring Subcontractors to preserve and make accessible to Owner under the same terms required of Contractor, all documents specified in this Section 61, for a period of three (3) years after termination or Final Payment on the Project by the Owner, or until litigation initiated during said period has been completed, whichever is longer, or for such longer period as otherwise required by Law.

61.6 If any audit performed pursuant to this Agreement determines that the Owner has overpaid the Contractor, the Contractor shall immediately pay the amount of overpayment plus interest at 5% per annum from the date when such payment originally was paid plus any and all costs and fees expended by Owner in performing such audit. In the event that the Contractor disputes any audit conducted by the Owner, then the matter shall be submitted to arbitration before a nationally recognized certified independent public accounting firm (the "CPA") in Chicago, Illinois, that has not been

affiliated with or done work for the Contractor or the Owner or their respective affiliates for the preceding two years. If the parties are unable to agree on an accounting firm, then the American Arbitration Association located in Chicago, Illinois shall perform the selection. The determination of the CPA shall be final and binding among the parties and enforceable in any court of competent jurisdiction.

62. MISCELLANEOUS PROVISIONS

62.1 Representations and Warranties. The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the Final Completion of the Work:

- .1 Contractor warrants and guarantees to the Owner that the Work shall be performed in a manner consistent with the standards set forth in Paragraph 1.4 of the Agreement.
- .2 Contractor covenants and warrants that it shall be responsible for performing and completing, and for causing any Subcontractors to perform and complete the Work or portion thereof, in accordance with the Contract Documents.
- .3 The Contractor and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder.
- .4 The Contractor is able to furnish the plans, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder.
- .5 Contractor is not party to any legal, administrative, arbitration, investigative or other proceeding or controversy pending, or, to the best of Contractor's knowledge, threatened, which would adversely affect Contractor's ability to perform under this Agreement.
- .6 Contractor is familiar with the review and approval process of any applicable Governmental Authority for the construction of projects of the type described in the Contract Documents and Contractor shall take no action that would in any manner cause Owner to be in violation of, or in non-compliance with, any such requirements. Contractor shall not be entitled to an adjustment in the Contract Sum or Construction Schedule for any delays in any such review and approval by a Governmental Authority.

62.2 Valid Authority. Contractor represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the state of Contractor's jurisdiction or organization; is in good standing and duly licensed and qualified to transact business as a domestic or foreign corporation in the state, province, region and/or country in which the Project is located; and has full corporate power and authority to enter into and perform this Agreement. Contractor further represents that execution, delivery and performance of this Agreement by Contractor has been duly authorized by all necessary corporate actions of Contractor and that this Agreement constitutes the legal, valid and binding obligation of Contractor, is fully enforceable against Contractor in accordance with the terms of this Agreement, will not violate any judgment, Law, article of incorporation or by-law and will not cause or constitute a default under any lien, charge, encumbrance or security interest upon any assets of Contractor. Contractor's license number, if required, is the license number set forth in Section 1.4 of the Key Terms Cover Sheet.

62.3 Notices. All notices required or permitted pursuant to this Agreement shall be in writing and shall be deemed given when personally delivered, or on the third day after being posted by certified or registered mail, return receipt requested, postage prepaid, to the party to be notified and marked to the following person's attention at the following address (or to such other address as a party may specify by notice given to the other party pursuant to this provision): (1) If to Owner, to the individual(s) set forth in Section 1.7 of the Key Terms Cover Sheet, the Project Manager at the address set forth in Section 1.2 of the Key Terms Cover Sheet, with copies to Elizabeth L. Shanin, Esq. at the University of Chicago, 5801 South Ellis, Suite 619, Chicago, Illinois 60637 and Jeffrey H. Winick, Esq. at Stein, Ray & Harris LLP, 222 West Adams Street, Suite 1800, Chicago, Illinois 60606; and (2) If to Contractor, to the individual(s) set forth in Section 1.7 of the Key Terms Cover Sheet and the Contractor's Representative at the address set forth in Section 1.4 of the Key Terms Cover Sheet.

62.4 **Headings.** All headings and captions in this Agreement are for convenience only and are not intended to define, limit, extend or describe the meaning or intent of any provision of this Agreement.

62.5 **Singular and Plural.** The use of the singular or the plural herein shall be construed to be the plural or singular as the context requires.

62.6 **Counterparts.** This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, and it shall not be necessary in making proof of the Agreement or the provisions of this Agreement to produce or account for more than one of such counterparts.

62.7 **Third Party Beneficiaries.** Nothing in this Agreement shall create, or be construed to create, any third party beneficiary rights in any person not a signatory to this Agreement except the Owner shall be the third party beneficiary of all subcontracts, a provision with respect to which Contractor shall cause to be inserted in all subcontracts in the following form: "Subcontractor agrees that the Owner is an intended third party beneficiary of this Subcontract. Notwithstanding the Owner's status as an intended third party beneficiary of this Subcontract Agreement, the Owner has no duties to the Subcontractor under the Subcontract and the Subcontractor has no cause of action or other claim against the Owner arising out of the Subcontract or the Contractor's failure to perform thereunder."

62.8 **Choice of law/Jurisdiction.** The Contract Documents will be governed by and construed in accordance with the laws of the State of Illinois. The Contractor hereby irrevocably submits itself to the original jurisdiction of the Circuit Court of Cook County, Illinois with regard to any controversy in any way relating to the execution or performance of this Agreement. Any and all disputes relating to this Agreement or the performance of it by either party shall be adjudicated solely by and in the Circuit Court of Cook County.

62.9 **Successors and Assigns; Assignment.** Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of the other party in connection with all terms and conditions of this Agreement. No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. In particular, Contractor may not assign its right to recover any moneys that may become due from Owner without the consent of the Owner (except to the extent that the effect of this restriction may be limited by Law). Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Nothing in this Agreement shall limit Owner's right to freely assign or delegate any rights or obligations under this Agreement to any entity controlling, controlled by, or under common control with Owner. Furthermore, notwithstanding anything to the contrary contained in this Section 62.9, each Subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that, (i) the assignment is effective only after termination of the Agreement by the Owner for cause pursuant to Section 58 of the General Conditions and only for those Subcontract agreements which the Owner accepts by notifying the Subcontractor in writing and (ii) the assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

62.10 **Severability.** The provisions of this Agreement and the Contract Documents shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any provision of this Agreement, or other Contract Document, is unenforceable for any reason whatsoever, that provision shall be appropriately limited and given effect to the extent that it may be enforceable.

62.11 **No Waiver by Owner.** No act or failure to act to exercise the rights enjoyed by Owner to demand the obligations owed to Owner by Contractor shall constitute a waiver of any right enjoyed or obligation owed.

62.12 **Reservation of Rights.** Unless otherwise provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder to Owner, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the Agreement are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to Owner which are otherwise imposed by or available under law, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Subparagraph will be as effective as if repeated specifically in the Contract Documents in connection

with each particular duty, obligation, right and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents will survive Final Payment and termination or completion of this Agreement.

62.13 **Risk of Loss.** Regardless of passage of title, the risk of loss to any of the Work and to any goods, materials, equipment and furnishings, provided or to be provided under this Agreement shall remain with Contractor until the date of actual occupancy by the Owner. Should any of the Work, and such goods, materials, equipment and furnishings, be destroyed, mutilated, defaced or otherwise damaged prior to the time the risk of loss has shifted to Owner, Contractor shall repair or replace the same. Contractor's obligations hereunder shall be limited to the extent any such losses or damages are actually compensated or reimbursed to the Owner by applicable builder's risk, property or other insurance protection required by the Contract Documents.

62.14 **Prior Services.** The Contractor agrees that any and all work and services rendered by Contractor in connection with the Project prior to the date of this Agreement are hereby deemed part of the Work under this Agreement and shall be governed hereby. The Contractor further represents and warrants to Owner: (i) that the Contractor is not aware of any claims that Contractor may have in connection with the Project as of the date this Agreement is executed by the Contractor, including, without limitation, any claim for payment or for an adjustment in compensation, and the Contractor hereby waives and forfeits all right to any such claim of which Contractor knows or should have knowledge, and (ii) that as of the date this Agreement is executed by the Contractor, the Contractor has not rendered any extra or changes in the Work.

62.15 **No Personal Liability.** The Contractor shall not bring claims or lawsuits against any principals, employees, agents, officers, directors, stockholders, partners, subsidiaries and affiliates of the Owner. The Contractor further agrees that the sole and exclusive remedy of the Contractor for payment and/or performance of this Agreement shall be against the assets of the Owner.

62.16 **Immigration & Security.** Contractor agrees at all times to remain in strict compliance with all immigration and security laws affecting or concerning the Contractor's, and its Subcontractors' and suppliers', laborers and employees, including without limitation, the Immigration Reform and Control Act of 1986 (IRCA) and the Patriot Act (the "**Immigration and Security Laws**"). Contractor further agrees to ensure that none of the Contractor's, nor its Subcontractors' and suppliers', laborers or employees pose a threat to the safe working environment at the Project Site, or a threat to the integrity of the Owner and/or the Owner's business and operations.

62.16.1 Contractor agrees at all times to provide and maintain procedures, methods and facilities to comply with the terms and conditions of this Section 62.16, including, without limitation, the provision of background screening and security checks for employees and laborers performing any work or services at or for the Project Site. Upon request, Contractor shall provide, for the Owner's review and approval, the procedures, methods and facilities used by Contractor in complying with the terms and conditions of this Section 62.16 and the Owner shall have the right to require, in its discretion, any further and additional procedures, methods and facilities. With respect to IRCA, all employees of Contractor assigned to the Project Site shall have had their identity and eligibility for work within the United States properly verified. Within three (3) days of receipt of a written request from the Owner, Contractor shall provide copies of the I-9 form or such other documentation as may be appropriate to satisfy the Owner as to Contractor's compliance with IRCA.

62.17 **Independent Contractor.** This Agreement shall not be deemed to create any other relationship between Contractor and Owner other than as expressly provided herein. Contractor is an independent contractor and is not a partner, joint venturer, agent or employee of Owner.

62.18 **Survival.** The provisions of this Agreement, which by their reasonable terms are intended to survive termination of this Agreement, including, without limitation, all provisions of this Agreement that require the Contractor to insure, defend or indemnify the Owner, shall survive completion, expiration or termination of this Agreement.

62.19 **Applicable Laws and Agreements.** Contractor shall comply, and shall cause all Subcontractors to comply with all Laws (as that term is defined in Section 1.18 of the General Conditions) now existing or hereinafter in effect. Each and every provision required by Laws to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein. In no event shall the failure to so insert such provision into this Agreement prevent the enforcement of same or relieve Contractor of its obligation to fully comply with the same. This Agreement shall not be construed as requiring Owner to be responsible for monitoring Contractor's compliance with any Laws.

62.20 **Confidentiality.** As used in this section, the defined term “Owner” shall expressly include the Owner and all of its affiliates and subsidiaries. Owner reserves the right to control and approve the method, manner and content of any and all public and private information disseminated by or generated with respect to Owner. During the course of Contractor’s performance of the Work, Contractor will acquire, generate and have access to private, confidential and proprietary information and trade secrets of Owner (in any format, e.g., written, oral or otherwise) including, without limitation, insurance policies and information, information regarding properties owned or leased by Owner or which Owner intends to acquire or lease; development, marketing and disposition techniques, practices, strategies and plans; and tenant, lender and financial investor/partner relationships (the “**Confidential Information**”). Contractor shall not at any time during or after the term of Contractor’s engagement, directly or indirectly, use, disseminate, disclose or publish any Confidential Information (including, without limitation, in the course of or in connection with making any presentations or marketing materials), without Owner’s prior approval unless and until such Confidential Information has become a matter of public knowledge through no fault of Contractor, or unless required by court order to comply with law. Contractor shall use and disclose the terms and conditions of the Confidential Information solely for purposes related to the performance of the Work. Contractor shall use the highest degree of care, and shall cause all parties obtaining the Confidential Information to use the highest degree of care, to maintain the confidentiality of the Confidential Information and to use such information solely for purposes related to the performance of the Work. Contractor acknowledges and understands that Contractor’s unauthorized disclosure of any Confidential Information would be prejudicial to Owner. Any breach by Contractor of any provisions of this Section shall entitle Owner to any rights and remedies as may be available to Owner at law or in equity. Contractor hereby agrees to indemnify, defend and hold the Indemnified Parties harmless from any and all loss, damage or liability which results from or arises in connection with Contractor’s breach of its obligations under this Section. This provision shall survive the termination or completion of this Agreement.

University Owner _____
Contractor _____

EXHIBIT B

Contractor's Key Personnel

<u>NAME</u>	<u>PROJECT ROLE</u>	<u>RATE</u>
-------------	---------------------	-------------

	Contractor's Representative	
	Estimating/Contracts/Admin. Manager	
	Engineering & Operations Superintendent	
	Engineering Leader	
	Field Operations Leader	

Owner _____
Contractor _____

EXHIBIT C

Scope of Work

The following is a description of the Contractor's Scope of Work:

The following is an enumeration of the Drawings, Specifications and Addenda applicable to the Work:

Owner _____
Contractor _____

EXHIBIT D

Construction Schedule
(By reference, or included)

Owner _____
Contractor _____

EXHIBIT E

Allowances
(By reference, or included)

Owner _____
Contractor _____

EXHIBIT F

Alternates
(By reference, or included)

Owner _____
Contractor _____

EXHIBIT G

Economic Impact Program
(By reference, or included)

Owner _____
Contractor _____

EXHIBIT H

Schedule of Milestones/Liquidated Damages
(By reference, or included)

Owner _____
Contractor _____

EXHIBIT I

Labor Rate Form and Instructions
(Included as Separate Attachments)
(Labor Rate Form to be completed and submitted with change orders)
