

THE BIDDING AND CONTRACT PROVISIONS
Document Section 00 70 00 – General Conditions
(Standard Multiple and Single Contract Sets)

GENERAL CONDITIONS

ARTICLE 1
DEFINITIONS

- 1.1 "Applicable Laws" means all laws, statutes, ordinances, codes, building codes, regulations, rules, orders and resolutions of all federal, administrative, state, local, municipal, and other governing bodies having jurisdiction over the Project or the performance of the Work.
- 1.2 "Business Enterprise Program" means the Business Enterprise Program of the Department of Central Management Services.
- 1.3 "Change Order" means a written order to a Contractor executed by the Owner in accordance with the contract authorizing and directing an addition to, deletion from, or adjustment or revision of the requirements of the Contract Documents, or an adjustment to the compensation payable to Contractor, or to the time for performance of the contract and completion of the Project, or a combination thereof. All additional expenditures related to Work performed or material purchased through an agreement with a Contractor will ultimately take the form of a Change Order.
- 1.4 "Construction Documents" means the complete and final design and construction documents provided by Professional Services Consultant pursuant to the contract between Owner and Professional Services Consultant and shall include the drawings, specifications, and all changes and modifications thereto, prepared by or on behalf of Professional Services Consultant for use in constructing the Project, performing the Work, and rendering the Project fully operational.
- 1.5 "Contract Documents" See paragraph 2.1 herein.
- 1.6 Diversity Goal Cure Period means if the Bidder fails to meet the diversity goal at the time of bid submittal and provide both a completed a utilization plan (Attachment B – Minority/Women Business Enterprise Program Utilization Plan of bid form 00 40 00) and good faith efforts documentation to date, they are granted a cure period of ten (10) calendar days, after Owner notifies bidder of the deficiency, to meet the goal. By the end of the cure period, Bidder shall submit an updated utilization plan and updated documentation of their good faith efforts to achieve the MBE/WBE goals, if the goals are not met. Failure to submit such documentation or to use good faith efforts, shall result in rejection of the bid. Good faith effort documentation is not required when diversity goals have been met.
- 1.7 "Emergency Work Authorization" means a written order to a Contractor executed by the Owner in accordance with the Agreement and directing an adjustment to the Contract Document requirements. An Emergency Work Authorization shall be utilized only in instances of a threat to public health or safety, loss of or damage to property or the integrity of vital records, or serious disruption of essential services. Issuance of an Emergency Work Authorization is entirely within the discretion of the Owner. Prior to commencement of Work, the Owner shall set forth on the appropriate form "not-to-exceed" time and material costs for the contemplated expenditure. An Emergency Work Authorization is preliminarily authorized/supported with appropriate documentation and ultimately utilizes the Change Order form.

- 1.8 "Field Directive" means a written order to a Contractor executed by the Owner in accordance with the contract authorizing and directing an addition to, deletion from, or adjustment or revision to the requirements of the Contract Documents, or an adjustment to the compensation payable to Contractor, or to the time for performance of the contract and completion of the Project, or a combination thereof. Field Directives may only be utilized in distinct and exceptional situations when, due to circumstances beyond the Owner's control, a proposed Change Order is in dispute or the contemplated time of completion for the normal Change Order process could adversely affect the project. Prior to commencement of Work, the Owner shall set forth on the appropriate form "not-to-exceed" time and material costs for the contemplated expenditure. A Field Directive is preliminarily authorized/supported with appropriate documentation and ultimately utilizes the Change Order form.
- 1.9 "Final Completion" means the completion by the Contractor of all Work required by, and in strict compliance with, the Contract Documents.
- 1.10 "Joint Venture" means a legal entity in the State of Illinois that is a cooperative business agreement or partnership between two or more parties that is usually limited to a single enterprise and that involves the sharing of resources, control, profits, and losses.
- 1.11 "Owner's Representative" means the individual named by Owner, in writing and as such writing may be amended from time to time, to act on Owner's behalf in the administration of this contract. Except as set forth in the specifications, Division 01 00 00 - General Project Requirements, the Owner's Representative does not have authority to waive or modify any condition or term of the Contract Documents.
- 1.12 "Professional Services Consultant" means the architect, engineer or other professional named in the Agreement and any successor that Owner may retain in connection with the Project.
- 1.13 "Project" means the project identified on page one of the Agreement.
- 1.14 "Subcontracts" means the contracts between Contractor and any Subcontractor, including any contracts assigned to the Contractor by the Owner.
- 1.15 "Subcontract Costs" means those sums properly paid or due and payable to Subcontractors under the terms of the Subcontracts.
- 1.16 "Subcontractor" means any person or entity having a direct or assigned contract or purchase order with Contractor for the performance or supply of all or any portion of the Work required by the Contract Documents or the supply of any materials, services, equipment or installation services required by the Contract Documents.
- 1.17 "Substantial Completion" means that stage of completion of the Project, or such agreed discrete portion thereof, such that the Work and the Project, or such agreed discrete portion thereof, are functionally and legally usable by Owner for the purpose for which they are intended.
- 1.18 "Utilization Plan" means the bid form 00 40 00 Attachment B and additional documentation included in all bids or proposals that demonstrates a vendor's proposed utilization of vendors certified by the CMS Business Enterprise Program to meet the targeted Owner goal(s). The utilization plan shall demonstrate that the bidder has either: (1) met the entire contract goal or (2) requested a full or partial waiver and provided documentation of good faith efforts toward meeting the goal(s).

- 1.19 "Work" means any and all labor, supervision, work, supplies, fixtures, furnishings, vehicles, equipment, services, tools, materials, computers, utilities, items, documents and things required by the Contract Documents to be performed or supplied. For purposes only of determining Final Completion, "Work" shall not include those things expressly required by the Contract Documents following Final Completion.

ARTICLE 2 **THE CONTRACT DOCUMENTS**

- 2.1 Contract Documents Defined. The contract between the parties consists of the "Contract Documents." The Contract Documents include the Agreement, these General Conditions, the Construction Documents, any supplemental conditions, any special conditions, any subsequent Change Orders, field orders, and other written amendments to the Agreement, and all documents expressly annexed as part of the Agreement. Documents not described above are not Contract Documents and do not constitute part of the contract between the parties.
- 2.2 Priority of Documents. In the event of any conflict, discrepancy, or inconsistency among the Contract Documents, interpretation shall be based on the following descending order of priority:
- 2.2.A the Agreement.
 - 2.2.B supplemental or special conditions (if any).
 - 2.2.C the General Conditions.
 - 2.2.D specifications.
 - 2.2.E drawings, and among the drawings, the following:
 - 2.2.E.1 as between figures given on drawings and scaled measurements, the figures shall govern;
 - 2.2.E.2 as between large scale drawings and small scale drawings, the large scale drawings shall govern.

In the event that Work is called for by the drawings but not by the specifications, or by the specifications but not by the drawings, the Contractor shall be responsible for such Work.

- 2.3 Intent. The intention of the Contract Documents is to include all labor, materials, equipment, transportation, construction plant, and facilities necessary for the proper execution and completion of the Work, and the terms and conditions of payment therefor. All work not specifically excluded in the Contract Documents which is reasonably and properly inferable therefrom, or from accepted trade practice, or which is necessary for the proper completion of the Work, is included even though not specifically mentioned in or called for by the Contract Documents.

ARTICLE 3 **REPRESENTATIONS AND WARRANTIES**

- 3.1 Representations and Warranties. Contractor makes the following representations and warranties to Owner:
- 3.1.A Contractor is professionally qualified to act as the Contractor for the Project and has, and shall maintain, any and all licenses, permits, and other authorizations

necessary to act as the Contractor for the Project and to perform the Work required hereunder.

- 3.1.B Contractor has become familiar with the Contract Documents provided to date and will become familiar with all provided hereafter, and has become familiar with the Project site and the local conditions under which the Project is to be constructed.
 - 3.1.C Contractor has the capability and experience, including sufficient qualified and competent supervisory personnel, to efficiently and timely accomplish the Work, and Contractor will continuously furnish sufficient personnel to accomplish the Work in a timely and efficient manner.
 - 3.1.D Contractor shall comply, and shall cause all Subcontractors to comply, with all Applicable Laws.
 - 3.1.E Contractor assumes full responsibility to Owner for the acts and omissions of its officers, employees, Subcontractors, consultants, and others employed or retained by it or them in connection with the performance of the Work.
 - 3.1.F Contractor warrants to Owner that all labor furnished to perform the Work under the Contract Documents will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by the Contract Documents, and that the Work will be of good quality, free from faults and defects, and in strict conformance with the Contract Documents. Any Work not conforming to these requirements may be considered defective.
 - 3.1.G All obligations related to or arising from all representations and warranties made in the Contract Documents shall be obligations of, and shall be deemed incorporated in, the performance bond furnished by Contractor.
- 3.2 Enumerated Representations and Warranties Not Exhaustive. The representations and warranties enumerated in this Article 3 operate in addition to, and shall not supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required by the Contract Documents or by law.

ARTICLE 4 CONTRACTOR'S DUTIES: GENERAL PROVISIONS

- 4.1 Generally. Contractor shall perform and provide the Work required by, or reasonably implied by or inferable from, the Contract Documents, shall be responsible for the construction of the Project in conformance with the requirements of the Contract Documents, and shall pay for all labor, supervision, materials, supplies, furnishings, fixtures, equipment and things required by the Contract Documents.
- 4.2 Standard of Care. Contractor shall perform the Work at a level, and be judged by a standard of care, that is consistent with the standards and quality prevailing among nationally recognized contracting firms of superior knowledge, skill and experience engaged in projects of similar size and complexity. Contractor shall carry out and complete the Work in an efficient, economical and timely manner, as expeditiously as is consistent with the level of skill and care required hereby and the interests of Owner, and in strict accordance with the Contract Documents.
- 4.3 Permits, Notices, and Fees. Contractor shall secure and pay for the building permit, if required by the University, and other permits and governmental fees, licenses and

inspections necessary for completion of the Work which are customarily secured after execution of the contract. Building permits are not required when working on University owned buildings or land. The Contractor shall comply with, and give notices required by, Applicable Laws. Except as above provided, Owner shall obtain necessary approvals, easements, and shall pay for assessments and charges required for construction.

- 4.4 Compliance with Applicable Laws. Contractor shall reasonably ensure that the Work is performed, and the Project is constructed, in a manner which meets the requirements of all Applicable Laws relating to the construction, occupation, and operation of the Project, including, but not limited to, building codes, fire and safety regulations, and environmental regulations. Such Applicable Laws shall be deemed minimum standards for the Project. Where the requirements of the specifications and the accompanying drawings exceed those of the Applicable Laws, the drawings and specifications shall control. Contractor shall immediately report to Owner's Representative in writing any known or anticipated violation by any Subcontractor of any Applicable Law.
- 4.5 Communications in Writing. All communications relating to the Project between Contractor and Owner's Representative shall be in writing or, as applicable, shall be confirmed in writing.
- 4.6 Reporting Anticipated Delays. Should Contractor, at any time during the course of the Project, have reason to believe that Contractor, Professional Services Consultant, or any Subcontractor will be unable to meet a completion date of any activity which is on the critical path of the Project or which may delay Contractor, any Subcontractor, the Professional Services Consultant, or the progress of the Project, Contractor shall immediately notify Owner's Representative in writing, stating the reason for the delay, describing steps being taken to remedy the delay, and recommending steps for eliminating or reducing the extent and impact of such delays.
- 4.7 Duty to Correct. Contractor shall promptly correct any errors, omissions, deficiencies, or conflicts in the Work at its own cost and without additional compensation or reimbursement, and Contractor shall not be compensated or reimbursed for performing any services necessitated by its failure to perform in strict accordance with the Contract Documents.
- 4.8 Cooperation of Contractor and Subcontractors. The Contractor shall cooperate and work in harmony with its Subcontractors and other contractors so that all of the Work will be performed without undue delay or friction.

The Contractor shall allow its Subcontractors and other contractors adequate time to furnish and locate sleeves, openings, inserts, hangers, anchors, conduits, and other items of any description which are to be built into the Work. Any delays or prospect of delay shall be promptly reported in writing to the Professional Services Consultant.

If any part of the Contractor's Work depends for proper execution or results upon other work, the Contractor shall inspect and promptly report to the Professional Services Consultant any defects in such Work that render it unsuitable for such proper execution and results. The Contractor's failure so to inspect and report shall constitute an acceptance of the other work as fit and proper for the reception of the Contractor's Work, except as to defects which may develop in the other work after the execution of the Contractor's Work.

To insure the proper execution of the Contractor's subsequent Work, the Contractor shall measure Work already in place and shall at once report to the Professional Services Consultant any discrepancy between the executed Work and the Drawings.

ARTICLE 5 **CONSTRUCTION SCHEDULE**

- 5.1 Preparation of Schedule. Within fifteen (15) days after receipt of the Notice to Proceed from the Owner, Contractor shall provide to Owner's Representative and Professional Services Consultant a detailed schedule for performance of all of the Work (the "Construction Schedule"). The Construction Schedule shall be in such form as Owner may require, shall, unless otherwise agreed by Owner in writing, utilize the critical path method of scheduling, and shall conform to the established Substantial Completion Date. The Construction Schedule shall coordinate and sequence all activities and performance by all participants in the construction of the Project, including Owner, Contractor, Professional Services Consultant and Subcontractors. The Construction Schedule shall identify those activities and events which are on the critical path.
- 5.2 Owner's Acknowledgment of Construction Schedule. Upon Owner's written acknowledgment of the Construction Schedule, Contractor may proceed in accordance therewith; provided, however, Owner's acknowledgment of any schedule shall only indicate Owner's acknowledgment of the dates contained therein and shall not constitute ratification or approval of the accuracy, adequacy, or logic of such schedules, or of the means, methods, manner or sequence of Work contained in such schedules. Owner's acknowledgment of the Construction Schedule shall in no way diminish Contractor's duties to schedule and coordinate the Work, which shall remain Contractor's sole responsibility, and shall not diminish or excuse Contractor's duties to perform in a manner so as to achieve timely completion of the Project. In no event shall updates to the Construction Schedule provided by Contractor whether or not objected to or acknowledged by Owner, constitute evidence of an adjustment in the Substantial Completion Date or Contractor's entitlement to additional compensation hereunder.
- 5.3 Updating of Schedules. Contractor shall update the Construction Schedule on a monthly basis throughout the construction of the Project to reflect accurately Work accomplished and to be accomplished. Such updates of the Construction Schedule shall be furnished to Owner's Representative and Professional Services Consultant monthly and shall detail all elements of Project progress and shall identify any delays relating to any activity on the critical path of the Project, the cause and extent of same, the projected impact on Substantial Completion of the Project by the Substantial Completion Date, and steps being taken and recommendations for eliminating or reducing the extent of such delays.
- 5.4 Expediting to Maintain Schedule. Contractor at its sole expense, shall take all reasonable steps to expedite performance of any activity, contract, delivery, or inspection where necessary to mitigate any delay, to maintain the Construction Schedule, and to achieve Substantial Completion by the Substantial Completion Date.

ARTICLE 6 **SUBCONTRACTS**

- 6.1 Contractor to Subcontract. Contractor shall enter into Subcontracts with Subcontractors for the performance of those portions of the Work not performed directly by the Contractor. Except as set forth in paragraph 6.3, Contractor shall, within thirty (30) days after notification of award of the contract, notify the Owner and the Professional Services Consultant in writing of the names of Subcontractors proposed for the principal parts of the Work and for such others as the Professional Services Consultant may direct.

Contractor shall simultaneously provide the Professional Services Consultant and the Owner's Representative with such written information as Owner deems necessary in order to determine whether to object to the Contractor's hiring of any Subcontractor or consultant, including proof of license. If no objection is interposed by the Owner within seven (7) days of its receipt of such information, Owner shall be deemed to have no such objection and Contractor may execute such Subcontract and shall furnish Owner a copy of same. Contractor shall not subcontract for any part of the Work with any Subcontractor or consultant (including affiliates and subsidiaries of Contractor) who is not properly licensed or against whom Owner has a reasonable objection. The Contractor shall bind every Subcontractor by all of the provisions of the Contract Documents which are applicable to such Subcontractor's Work unless specifically noted to the contrary in a Subcontract approved in writing by the Owner. The Contractor shall pay the Subcontractor the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein, or pay the Subcontractor to such extent as may be provided by the Contract Documents or the Subcontract, if either of these provides for earlier or larger payments than the above. Nothing in paragraph 6.1 shall create any obligation on the part of the Owner to pay or to see to the payment of any sums to any Subcontractor.

6.2 Related Parties. Contractor must notify Owner in writing of the specific nature of any contemplated transaction with any Related Party and any such transaction must be approved in writing by Owner before the transaction is consummated or costs are incurred. A "Related Party" may include any of the following: a parent, subsidiary or other entity having common ownership or management with Contractor; entities in which stockholders in, or management employees of, Contractor owns an interest; any person or entity with the right to control the business or affairs of Contractor; and any member of the immediate family of any such person. The terms of any such transaction shall conform to the requirements of the Contract Documents, including, but not limited to, the right to audit books and records pertaining to the Work undertaken by such Related Party, which audit may be undertaken by Owner or its representatives. All other terms and provisions of any such subcontract are subject to Owner's approval. All savings under any such subcontract shall be applied to reduce the Owner's costs under this Agreement and profit related to the transaction shall not be payable to any such Related Party.

6.3 Assignment of Contracts. In compliance with the Illinois Procurement Code, the following five (5) subdivisions of the Work, if applicable to this Project, were separately advertised for bids by the Owner:

- plumbing;
- heating, piping, refrigeration, and automatic temperature control systems, including the testing and balancing of those systems;
- ventilating and distribution systems for conditioned air, including the testing and balancing of those systems;
- electric wiring; and,
- general contract work.

The Owner has accepted the lowest responsive bid from a responsible bidder for each subdivision of the Work above indicated, and has awarded contracts to each. Upon executing contracts for the subdivisions of the Work above indicated excluding the subdivision of the Work bid upon by the Contractor, Owner has assigned all of its rights and delegated all of its duties therein to the Contractor who accepts said assignment and delegation, and subsequently shall be responsible to Owner for performance of the Work to be performed pursuant to such assigned contracts. Such assigned contracts, and such assigned contractors, are sometimes referred to herein as "Assigned Subcontracts" and "Assigned Subcontractors", respectively.

- 6.3.A Status of Assigned Subcontractors. Upon such assignments, the contractors holding contracts which have been assigned shall become Subcontractors of the Contractor and shall no longer have any rights under the contracts against the Owner or duties or obligations under the contracts to the Owner, but all of their rights under the contracts shall be against the Contractor and all of their duties and obligations under the contracts shall be to the Contractor. Excluding paragraph 2.3 of the Contractors Agreement (Document Section 00 50 00) between the Owner and the Contractor, the Assigned Subcontractors and the Contractor shall be bound to each other by the Contract Documents to the same effect and extent as the Owner and the Contractor are so bound, but only insofar as the Contract Documents relate to each Assigned Subcontractor's scope of the Work.
- 6.3.B Status of the Contractor. Upon such assignment, the Contractor shall be responsible for the performance of the Work and shall be as fully responsible to the Owner for the acts and omissions of the Assigned Subcontractors and all persons either directly or indirectly employed by them as the Contractor is for the acts and omissions of persons directly employed by the Contractor or with whom the Contractor has directly entered into Subcontracts for portions of the Work to be performed by Contractor.
- 6.3.C Payment of Assigned Subcontractors. The Contractor shall be responsible to the Assigned Subcontractors for all payments and the Assigned Subcontractors shall look to the Contractor for such payments but all payments becoming due to the Contractor under the terms and conditions of the Contractor's contract with the Owner for Work performed by an Assigned Subcontractor shall be made by the Owner directly to the Assigned Subcontractor performing such Work upon compliance by the Assigned Subcontractor with the terms, conditions and requirements of its Assigned Subcontract.
- 6.3.D Contractor's Approval of Payments to Assigned Subcontractors. The written approval of the Contractor shall be a condition precedent to payment of any Assigned Subcontractor. Within seven (7) days after a request for approval for the making of a payment to an Assigned Subcontractor has been submitted to the Contractor, the Contractor shall furnish its approval thereof or state in writing its reasons for withholding such approval.

Except as provided in this paragraph 6.3, the Contractor shall subcontract directly with all Subcontractors.

- 6.4 Subcontract Requirements. Excepting only the provisions contained in paragraph 2.3 of the Agreement between Owner and Contractor, all Subcontracts shall afford Contractor rights against its Subcontractors which correspond to the rights afforded to Owner against Contractor herein, including those rights of contract suspension, termination, replacement of unsatisfactory personnel at Owner's request, and documentation of Subcontractor charges as set forth herein. Except as otherwise approved by Owner in writing, all Subcontracts shall provide for the retention of ten percent (10%) of amounts earned under the Subcontracts ("Subcontract Retainage"), and Owner shall not be responsible for releasing, paying, or compensating Contractor any amount on account of such Subcontract Retainage until such time as specified herein for release of retainage.

The documents and information for the contractors and subcontractors listed in Table 1 and as described below must be provided by the Owner to the Chief Procurement Officer for Higher Education.

Table 1: Contracts and Level Descriptions

Contract Type	Level	Contract	Dollar amount
Contractor without Assigned	1	With Owner	All
Contractor with Assigned	1	With Owner	All
Assigned Subcontractor	1	With Owner	All
Subcontractor	2	With Level 1	> \$50,000
Subcontractors' Subcontractor*	3 and below	With Level 2 and below	> \$50,000

* For any subcontractor beyond level 3 with a contract value of > \$50,000 shall also be included.

Level 1 Contractor

The Certifications and Statutory Requirements form and the Financial Disclosures and Conflicts of Interest form submitted by the Level 1 Contractor with the bid documents are hereby made a part of this Contract.

It is the responsibility of the Level 1 Contractor to provide the following with respect to each Level subcontract* which exceeds \$50,000. The forms shall be completed and signed by each Level subcontractor*.

- subcontractor(s) name(s)
- address(es)
- subcontract value(s)
- general type(s) of work to be performed, the
- Certifications and Statutory Requirements form(s) and the
- Financial Disclosures and Conflicts of Interest form(s),

The documents submitted to the Owner shall be in electronic pdf format and follow the Owner's file naming convention. The forms and file naming convention can be found at: <http://www.uocpres.uillinois.edu/contractors/contracts>. These documents shall be provided to the Owner within 15 calendar days after the execution of the Contract or after execution of the subcontract, whichever is later.

The Level 1 Contractor must provide the above information for any Level subcontractors* added or changed which results in a contract value exceeding \$50K during the term of the contract.

Any subcontracts entered into prior to receiving a fully executed copy of the Contract are done at the Contractor's or Assigned Subcontractor's own risk.

- 6.5 **Coordination of the Subcontracts.** Except as set forth in paragraph 6.3 above, neither Owner nor Professional Services Consultant assumes any responsibility for defining the limits on any Subcontracts on account of the arrangement of the specifications or drawings. As part of the bidding and award of Subcontracts, Contractor shall ensure that the Subcontracts are coordinated so that all of the Work is properly and clearly allocated among, and assigned to, Contractor and Subcontractors without omission, conflict, or duplication. Contractor shall carefully review all Subcontracts to ensure: (a) that all subcontracted parts of the Work are assigned to appropriate Subcontractors; (b) that, unless provided for by Contractor, provisions are made for temporary facilities and utilities necessary for the performance of the Work and for Project site facilities necessary for Contractor, Owner, and Professional Services Consultant to perform their duties in the management, inspection, and supervision of the Work; (c) that responsibility for Project safety programs is properly assigned; (d) that they are in compliance with Applicable Laws; and (e) that they are in compliance with Owner's and Contractor's guidelines, if any.

- 6.6 Competitive Procurement. If directed by Owner, Contractor shall use competitive procurement methods in conformance with Owner's procurement policies and with any rules and regulations of any governing authority who has jurisdiction over the Project.
- 6.7 Contractor Responsible for Acts of Subcontractors. Contractor's subcontracting of the Work, and Owner's consent and approval of Contractor's subcontracting with any Subcontractor, shall not relieve Contractor from any liability or obligation under the Contract Documents or under any Applicable Laws. Contractor shall be responsible for any and all acts, defaults, omissions or negligence of its Subcontractors and consultants, and shall be and remain liable and obligated to Owner for all Work subcontracted. Except as set forth in paragraph 6.3, no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor or consultant of Contractor, and a provision to this effect shall be inserted into all Subcontracts and other agreements between Contractor and its Subcontractors and consultants. In no event shall Owner be liable to any of Contractor's Subcontractors for Work performed by such Subcontractor on behalf of the Contractor or for the Project. Professional Services Consultant will not be asked to resolve disputes between Contractor and any Subcontractor or disputes between Subcontractors.
- 6.8 Procurement of Special Services. Contractor shall schedule and coordinate services from surveyors, testing laboratories, and other special consultants required for the completion of the Work.
- 6.9 Orders of Materials, Fixtures, Furnishings and Equipment. Contractor shall schedule, coordinate, expedite, and effect the purchase and delivery to the Project site of materials, fixtures, furnishings and equipment required to be provided by Contractor pursuant to the Contract Documents. Contractor shall perform expediting and inspection services after the placement of all such orders.
- 6.10 Substitutions. If Owner elects to accept any item(s) proposed by Contractor as a substitution, Contractor shall assume full responsibility for the proper performance of such substituted item(s) and shall assume the costs of any changes in the Work which may be due to such substitution.
- 6.11 Procurement of Materials, Fixtures, Furnishings and Equipment on Owner's Behalf. Contractor shall be responsible for scheduling and coordinating, and if requested by Owner's Representative, for purchasing and for arranging appropriate delivery, storage and security for, all materials, furnishings, tools, fixtures, computers, and equipment to be furnished by Owner under the terms of the Contract Documents for use in performance and completion of the Work. The purchase price and transportation and storage costs associated with such items shall be borne by Owner.

ARTICLE 7 **CONSTRUCTION ADMINISTRATION**

- 7.1 Review and Approval of Subcontractor Schedules of Values. Contractor shall procure, and carefully review, all schedules of values from each Subcontractor, together with any supporting documentation or data which Owner or Contractor may require from the Subcontractors. The purpose of such review and examination shall be to protect Owner and Contractor from front-end loading and an unbalanced schedule of values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data or than is reasonable under the circumstances. If any Subcontractor's schedule of values is found not to be appropriate, or if the supporting documentation or data is deemed to be inadequate, Contractor shall negotiate with the Subcontractor to establish a balanced schedule of values. After making its review and examination, when the Subcontractor's schedule

of values is found by Contractor to be appropriate as submitted, or if necessary, as revised, Contractor shall sign and deliver same to the Professional Services Consultant thereby indicating Contractor's informed belief that such schedule of values constitutes a reasonable, balanced basis for payment to the Subcontractor. Contractor shall not sign a Subcontractor's schedule of values in the absence of such belief unless directed to do so, in writing, by Owner's Representative.

- 7.2 Supervision. Contractor shall maintain a continuous presence on the Project site at all times through the provision of sufficient qualified supervisory and other personnel to perform the obligations of this contract. Contractor shall continually supervise its own forces and those of its Subcontractors in a first-class manner. Contractor shall determine the adequacy of personnel, labor, materials, equipment and direct supervision provided by Subcontractors and shall monitor their compliance with the Construction Schedule. The jobsite superintendent shall be present at the project site in strict accordance with the project specifications, Division 01 00 00 - General Project Requirements. The jobsite superintendent shall not be changed without the consent of the Professional Services Consultant and Owner unless the jobsite superintendent proves to be unsatisfactory to the Contractor and ceases to be in the Contractor's employ. The jobsite superintendent shall be the Contractor's representative at the jobsite and all directions issued by the Professional Services Consultant or Owner to the jobsite superintendent shall be as binding as if given directly to the Contractor. Directions of major importance shall be confirmed in writing to the Contractor. Directions of lesser importance shall be confirmed on written request in each case.
- 7.3 Job Progress Meetings. Contractor shall conduct meetings at least weekly, and at such additional times as the needs of the Project or good construction practice may require, with the Subcontractors, and if necessary with Professional Services Consultant, for the purpose of discussing all matters relating to the quality, quantity, and progress of the Work. Contractor shall within two (2) working days after each meeting prepare and distribute minutes of such meeting to Owner's Representative, the Professional Services Consultant, the participants, and others who should reasonably be informed of the meetings.
- 7.4 Requests for Information and Interpretation. Where appropriate, Contractor shall transmit to Professional Services Consultant, with a copy to Owner's Representative, requests for information or interpretation from itself or as made by any Subcontractor regarding the intent and meaning of the Construction Documents. Contractor shall maintain a log of all requests for information and interpretation (the "Request Log"), recording (a) the date each request was made; (b) the date the request was transmitted to Professional Services Consultant and Owner's Representative; (c) the date of receipt of the response to the request; and, if applicable, (d) the date the response to the request was transmitted to the Subcontractor.
- 7.5 Submittals. Contractor shall review, and indicate its approval (or require re-submission if necessary) prior to forwarding to Professional Services Consultant and Owner each submittal required by the Contract Documents, including shop drawings, product data, samples, catalogues, and other submittals (collectively, "Submittals"). Approval by Contractor of Submittals shall constitute Contractor's representation to Owner and Professional Services Consultant that such Submittals are in conformance with the requirements of the Contract Documents. The review and approval required by this paragraph shall be completed with reasonable promptness, and expedited where necessary, so as to cause no delay to the Subcontractors, Professional Services Consultant, or the Project. Contractor shall also maintain a detailed log (the "Submittal Log"), reflecting: (a) the date, where applicable, the Subcontractors submit to Contractor, and that Contractor submits to Professional Services Consultant, each Submittal; (b) the date of approval or rejection of each

Submittal by Contractor or Professional Services Consultant; (c) the reason for the rejection of any Submittal; and (d) the date of each subsequent action by Contractor, Professional Services Consultant, Owner, or Subcontractors with respect to any Submittal. Contractor shall immediately report to Owner's Representative in writing any delays in the Submittal process and the cause thereof and shall take appropriate steps to coordinate and expedite the Submittal process. The Professional Services Consultant's review or approval of Submittals shall not relieve the Contractor from its obligation for performance of the Work in strict compliance with the Contract Documents.

- 7.6 Liens. Contractor shall promptly pay all indebtedness for labor, materials, services, tools and equipment, and for any other items used in the performance of the Work. Contractor shall not permit any notice of lien or charge to attach to the Work, the premises upon which the Work is being performed or against any public funds being held by the Owner to pay for Work on the Project. If any lien does so attach, Contractor shall promptly procure its discharge and hold Owner harmless from any claims, losses, costs, damages or expenses (including attorney's fees) incidental thereto.
- 7.7 Labor Relations. Contractor shall develop and implement a coordinated plan for labor relations to avoid labor disputes and to provide for the uninterrupted and efficient construction of the Project in accordance with the Construction Schedule, shall comply, and shall require all Subcontractors to comply, with Applicable Laws relating to the terms and conditions of employment of any employee who is employed in connection with the Project.
- 7.8 Protection of Persons and the Work. Contractor shall at all times take, or require to be taken, all necessary steps required to safeguard Owner's property and employees from injury or loss in connection with the performance of the Work. Contractor shall take, or require to be taken, all necessary steps to protect Owner's equipment, adjacent facilities, apparatus, and other property and all adjacent Work and property, including, but not limited to, the use of shoring, boarding, and other safeguards. Where the Work endangers the safety of pedestrians and drivers, barricades for traffic shall be used. Contractor shall keep Owner's property and the Work reasonably free from dampness, dirt, dust, and other damage and shall provide all reasonable security measures necessary to protect the Project from the elements, vandalism, theft, and other risks of property loss. All temporary protections shall be removed by Contractor upon completion of the Work.
- 7.9 Demolition, Removal of Materials, and Burning. Except with prior written approval of the Owner, the use of explosives will not be permitted. The procedure proposed for the accomplishment of any required demolition work shall be submitted to Professional Services Consultant and Owner's Representative for approval. The procedure shall provide for safe conduct of the work, careful removal and disposition of materials, protection of property which is to remain undisturbed and coordination with other Work in progress. The procedures shall include a detailed description of the methods and equipment to be used for each operation, and the sequence of operations. All materials indicated to be removed shall be disposed of off the Owner's property. The use of burning at the Project site to dispose of refuse and debris is not permitted.
- 7.10 Site Limitation. Contractor shall obtain Owner's Representative's written authorization before establishing staging or "lay-down" areas.

ARTICLE 8 UNCOVERING AND CORRECTING WORK

- 8.1 Uncovering Work Covered Contrary to Directions. If any of the Work is covered contrary to the request of Owner's Representative or the Professional Services Consultant, or contrary to any provision of the Contract Documents, said Work shall, if required by Owner's Representative or the Professional Services Consultant, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Substantial Completion Date.
- 8.2 Option to Order Work Uncovered. If the Contract Documents permit the Work to be covered and neither Owner's Representative nor the Professional Services Consultant has requested that the Work not be covered, the Professional Services Consultant and Owner's Representative may nevertheless require that such Work be uncovered for inspection. If such Work conforms strictly with the Contract Documents, the cost of uncovering and proper replacement shall by Change Order be charged to Owner with an appropriate adjustment to the Contract Sum and, if appropriate, the Substantial Completion Date. If such Work does not strictly conform with the Contract Documents, Contractor shall pay the cost of uncovering and proper replacement without adjustment to the Contract Sum or the Substantial Completion Date.
- 8.3 Correction of Defective Work. Contractor shall immediately proceed to correct Work rejected by Owner's Representative or by the Professional Services Consultant as defective or failing to conform to the Contract Documents, unless such Work is accepted in accordance with paragraph 8.6 below. Contractor shall bear all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections and any fees and expenses of the Professional Services Consultant made necessary thereby, without adjustment to the Contract Sum or the Substantial Completion Date. If additional design is required for correction of defective Work, the Contractor shall use the Owner's Professional Services Consultant for all design changes that may be allowed from the original design, at the rates established within the Owner's/Professional Services Consultant Agreement. The Contractor will be assessed these costs through a deductive change order.
- 8.4 Correction During One Year Following Completion. If within one (1) year after Substantial Completion any of the Work is found to be defective or not in strict accordance with the Contract Documents, Contractor shall correct such Work promptly upon receipt of written notice from Owner and shall bear all costs and expenses associated therewith. This obligation shall survive Final Payment by Owner and termination of this contract.
- 8.5 No Period of Limitation Established. Nothing contained in paragraph 8.4 shall establish any period of limitation with respect to Contractor's other obligations and warranties under the contract, including, without limitation, Article 3. Establishment of the one year time period in paragraph 8.4 relates only to Contractor's specific duty to correct the Work.
- 8.6 Owner's Option to Accept Defective Work. Owner may, at its sole discretion, choose to accept defective or nonconforming Work. Such acceptance shall not be effective unless specifically and expressly stated in writing by Owner's Representative. In such event, any sums then or thereafter due or owing to Contractor shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Work, regardless of whether Final Payment has been made or the defective Work replaced or corrected, the intent being that Owner may use such funds to remedy such defects at a time and in a manner convenient to Owner. If any such sum is insufficient to compensate Owner for the acceptance of defective or nonconforming Work, Contractor shall, upon written demand from Owner, pay Owner any shortfall of compensation for accepting defective or nonconforming Work.

ARTICLE 9
INSPECTIONS AND CERTIFICATIONS OF COMPLETION

- 9.1 Inspection of Work. Contractor shall, on a continuous basis as a part of its day-to-day supervision of the Project, inspect the Work to ensure that the quality, quantity and progress of the Work meets the requirements of the Contract Documents. In making such inspections, Contractor shall reject Work that is defective or deficient, take steps to avoid unexcused delays in the performance of the Work, and protect Owner from overpayment.
- 9.2 Equipment and Other Items. When instructed by Owner's Representative, Contractor shall schedule and perform factory testing and shop inspections of equipment, fixtures, furnishings, and other items. Such testing and inspections shall be performed at times appropriate to the stage of fabrication, construction, installation, and testing of such items. Contractor shall notify Professional Services Consultant and Owner's Representative prior to each such testing or inspection, and Professional Services Consultant and Owner's Representative or designee shall be entitled, but not required, to accompany Contractor for such testings and inspections.
- 9.3 Inspection upon Arrival, During Installation, and After Installation. Upon arrival of any materials, supplies, systems, equipment, fixtures, furnishings, and other items at the Project site, whether procured by Contractor, Owner, or Professional Services Consultant, Contractor shall inspect such items for damage, for compliance with the Contract Documents and for compliance with all shipping documents and shall arrange for the proper storage and security of such items. Contractor shall also provide for and monitor the proper and timely installation of all such items on the Project. After such items are installed or made ready for use, Contractor shall again inspect all such items for damage and shall arrange for and monitor testing of all such items for compliance with the Contract Documents and readiness for use on the Project.
- 9.4 Punch Lists. Professional Services Consultant shall prepare punch lists and other itemizations of defective, deficient, or incomplete Work to be completed by the Contractor.
- 9.5 Contractor's Observation of Testing and Start-Up. Contractor shall schedule (and notify Professional Services Consultant and Owner's Representative of such schedule), coordinate, and observe the testing and start-up of all utilities, systems, fixtures, and other equipment and shall report the results of same to Professional Services Consultant and Owner's Representative in writing.
- 9.6 Transfer of the Work and the Project to Owner. Contractor shall provide assistance in the transfer of the completed Project, and all portions thereof, to Owner. Such assistance shall include procuring certificates of ownership and warranties, keys to the Project, operations and maintenance manuals and instructions, supplies, start-up of Project systems, transferring Project security, arranging for training Owner in the operation and maintenance of all systems and components of the Project, and such other matters as may relate to Owner's initial occupation, possession, and use of the Project or any part thereof.

- 9.7 Certification at Final Completion. When Contractor believes that Final Completion of the entire Project has been achieved, it shall notify Professional Services Consultant and Owner's Representative in writing and request an inspection for certification of Final Completion of the Project. Contractor's request for final inspection shall constitute a representation by Contractor to Owner that Contractor has made all inspections of the Work as provided in the contract and that all the Work has been completed in strict compliance with the Contract Documents and that the quality of the Work meets or exceeds the requirements of the Contract Documents.

**ARTICLE 10
PROJECT DOCUMENTATION**

- 10.1 Basic Project Documentation. Contractor shall maintain the following documents on behalf of and for the use of Owner: (a) a complete set of current Subcontracts and Contract Documents, including a current set of drawings, specifications, Change Orders and modifications reflecting product and materials selections and as-built conditions on the Project; (b) all shop drawings, samples, product data, and other Submittals; (c) a clean set of the principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations certified by a qualified surveyor or engineer; (d) all required insurance certificates from Subcontractors; and (e) all other documents required by this contract.
- 10.2 Daily Log. Contractor shall maintain a log of daily reports ("Daily Log") which shall identify daily weather conditions and any impact on the Work caused thereby, Contractor's personnel on site, all Subcontractors working each day and the number of employees of each on the Project, the Work accomplished each day, any equipment failures or breakdowns, any procurement or delivery problems, any job site accidents or injuries, any safety or environmental violations, warnings or citations, and any other events, circumstances, or occurrences impacting the progress or cost of the Project.
- 10.3 Monthly Reports. Each month Contractor shall prepare and submit to Owner's Representative and Professional Services Consultant a written report detailing the progress of the Project (the "Monthly Report"). The Monthly Report shall contain Contractor's estimate of percentage of completion of the Project and each element thereof, identify any and all delays to the Project and the cause and extent thereof and describe the remedial measures being taken to overcome such delays, identify any defective or deficient Work installed during the preceding month and describe the remedial measures being taken to correct the defective or deficient Work, identify any outstanding requests for information or clarification, requests for interpretation, change order requests, questions, or other matters requiring the response of either Owner, Contractor, Professional Services Consultant, or a Subcontractor and shall include any and all other information required to fully inform Owner and Professional Services Consultant of the status of the Project and the performance of Contractor, Professional Services Consultant, and Subcontractors.
- 10.4 Review and Assignment of Warranties. Contractor shall obtain and shall transmit to Owner's Representative all special products, system, equipment or material warranties required by the Contract Documents and the Subcontracts. Contractor shall review all such warranties to confirm that the warranties are in compliance with the requirements of the Contract Documents and Subcontracts. Contractor hereby assigns to Owner all of Contractor's rights and interest in and to any and all warranties, including Uniform Commercial Code warranties, that Contractor receives or is entitled to receive from any Subcontractor or supplier in connection with the Project.
- 10.5 Operations and Maintenance Documentation. Contractor shall obtain and transmit to Owner's Representative all documentation required by the Contract Documents regarding

the operation and recommended maintenance programs relating to the various elements of the Project. Such documentation shall be furnished to Owner's Representative in uniform three-ring binders labeled with the Project name and number.

- 10.6 Review and Approval of As-Built Drawings. Contractor shall provide as-built drawings and shall confirm to Owner that such drawings are adequate and complete and in compliance with the requirements of the Contract Documents.
- 10.7 Availability of Project-Related Records to Owner. All records relating directly or indirectly to the Project which are in the possession or control of Contractor shall be made available to Owner, its designee, and any governmental authority for audit, inspection, and copying upon request of Owner's Representative. Such records include, without limitation: all drawings, specifications, Submittals, subcontractor bids, the Daily Log, correspondence, the Request Log, the Submittal Log, minutes, memoranda, tape or videotape recordings, or other writings or things which document the Project, its design, and its construction.
- 10.8 Maintenance of Project-Related Records. Contractor shall maintain and protect all Project-related records, other than those required to be returned to Owner, for no less than five (5) years after Final Completion of the Project and for any longer period of time as may be required by law or good construction practice.
- 10.9 Project Videotapes and Photographs. If at any time requested by Owner's Representative, Contractor shall, at Owner's expense, record periodic narrated videotapes or take photographs depicting progress of the Work. Any specific safety or environmental incidents shall be videotaped at the time of the incident without waiting for Owner authorization. All videotapes and photographs shall be submitted to Owner's Representative on a weekly basis.

ARTICLE 11

OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

- 11.1 Provide Project Information. Owner shall make available to Contractor / Assigned Subcontractor adequate information regarding Owner's requirements for the Project including adequate complete sets of the Construction Documents. The Contractor / Assigned Subcontractor is responsible for the purchase of these Construction Documents if the desired number of sets exceeds those available from those returned by unsuccessful bidders
- 11.2 Review of Documents. Owner shall review any documents submitted by Contractor requiring Owner's decision and shall render any required decisions pertaining thereto.
- 11.3 Access to the Site and the Work. Owner shall provide Contractor access to the site and to the Work as necessary for Contractor to perform the requirements of the Contract Documents.
- 11.4 Timely Performance. Owner shall perform its duties and obligations set forth in this contract in a timely fashion so as to permit the orderly progress of Contractor's Work.
- 11.5 Owner's Reviews, Inspections, Approvals, and Payments. Owner's review, inspection, or approval of any Work, or any documents prepared or submitted by Contractor shall be solely for the purpose of determining whether such Work and such documents are generally consistent with Owner's construction program and requirements, and Contractor understands that Owner is relying on Contractor to assure compliance with the Contract Documents. No review, inspection, or approval by Owner of such Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract Documents or for the accuracy, adequacy, fitness, suitability, or coordination of

its Work. Approval by any governmental or other regulatory agency or other governing body of any Work, design document, or Subcontract shall not relieve Contractor of responsibility for the performance of its obligations under the Contract Documents. Payment by Owner shall not constitute a waiver of any of Owner's rights under the Contract Documents or at law, and Contractor accepts the risk that defects in the Work, if any, may not be discovered until after payment, including Final Payment, is made by Owner.

- 11.6 Non-Waiver. Owner's failure to exercise any right or remedy hereunder or to require compliance with any obligation of Contractor under the Contract Documents shall not constitute a waiver or an estoppel of the right to exercise such right or remedy or to insist on such compliance at any other time or on any other occasion.

ARTICLE 12 **PAYMENT**

- 12.1 Contract Sum. The Contract Sum is stated in the Agreement and, including authorized adjustments and any direct payments to any Assigned Subcontractors, is the total amount payable by the Owner to, and on behalf of, the Contractor for performance of the Work under the Contract Documents.
- 12.2 Contractor Retainage. Except as otherwise approved by Owner in writing, Owner shall retain ten percent (10%) of the amounts earned under this contract ("Contract Retainage"), and Owner shall not be responsible for releasing, paying or compensating Contractor any amount on account of such Contract Retainage until such time as specified herein for release of Contract Retainage.
- 12.3 Schedule of Values. Contractor shall prepare and present to the Professional Services Consultant within fifteen (15) days after commencement of the Work, a proposed schedule of values. Contractor's schedule of values shall be prepared in such form, with such detail, and supported by such data as the Professional Services Consultant or the Owner's Representative may require to substantiate its accuracy. Contractor shall not front-end load its schedule of values by imbalancing it or by increasing any element thereof in excess of its anticipated actual value, and such acts shall constitute a material breach of this contract. Contractor's proposed schedule of values shall be used in determining the amounts payable to Contractor and the Assigned Subcontractors hereunder, but only after it has been acknowledged in writing by the Professional Services Consultant and the Owner's Representative. Schedule of Values and Subcontractors listed will only be accepted if the documentation required by applicable law, including the Illinois Procurement Code (30 ILCS 500/1 et seq.) has been provided to the Owner. See Section 6.4 for the requirements.
- 12.4 Schedule of Values Shall Identify Subcontractors. The Contractor's schedule of values shall identify all Subcontractors, vendors, and suppliers with whom a Subcontract or purchase order in excess of \$1,000 is executed or pending in connection with this contract.
- 12.5 Reporting Diversity Participation. The Contractor's schedule of values shall separately identify all of the proposed Subcontractors, vendors, or suppliers that are certified by the Illinois Department of Central Management Services (CMS) as a Minority or Women Business Enterprise (MBE or WBE). This information is requested only for the Owner's use in monitoring the level of diversity participation on its projects.

- 12.6 Applications for Payment. At least twenty five (25) days before the date established for each payment, the Contractor shall submit to the Professional Services Consultant an itemized Application for Payment for operations completed in accordance with the Contractor's acknowledged schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Professional Services Consultant may require, and shall reflect retainage as provided in the Contract Documents.
- 12.6.A Such applications shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.
- 12.6.B Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing in advance by the Owner, payment may be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to protect the Owner's interest in materials and equipment, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Whenever payment for furniture, fixtures or equipment is included, the Owner's furniture, fixtures and equipment inventory form (FIF) shall be completed by the Contractor and submitted with that payment. The FIF shall be itemized to the component level as described on the FIF.
- 12.6.C The Contractor warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- 12.6.D Lien Waivers
- 12.6.D.1 Partial lien waivers are not required with the first payment application if payment is less than fifty percent (50%) of the contract amount. Each subsequent payment application shall be accompanied by the Contractor's partial waiver, and by partial waivers from all assigned subcontractor(s), subcontractor(s), vendor(s), and suppliers who were included in the immediately preceding payment application, to the extent of that payment, as reflects on the payment application form.
- 12.6.D.2 Partial lien waivers from the Contractor and all assigned subcontractor(s), subcontractor(s), vendor(s) and suppliers shall accompany the first payment application when the amount of payment exceeds fifty percent (50%) of the total contract amount. Lien waivers are to be in the amount reflected on the payment application form.
- 12.6.D.3 The Contractor's request for final payment shall include final lien waivers, on Owner forms, from all assigned subcontractor(s), subcontractor(s), vendor(s), and suppliers in the full amount of their contracts as reflected on the payment application form. The

Contractor shall also furnish its own final waiver of lien as reflected on the payment application form.

- 12.7 Certificates for Payment. The Professional Services Consultant will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Professional Services Consultant determines is properly due, or notify the Contractor and Owner in writing of the Professional Services Consultant's reasons for withholding certification in whole or in part.
- 12.8 Decisions to Withhold Certification. The Professional Services Consultant may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Professional Services Consultant is unable to certify payment in the amount of the Application, the Professional Services Consultant will notify the Contractor and Owner. If the Contractor and Professional Services Consultant cannot agree on a revised amount, the Professional Services Consultant will promptly issue a Certificate for Payment for the amount which the Professional Services Consultant is able to certify. The Professional Services Consultant may withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Professional Services Consultant's opinion to protect the Owner from loss for which the Contractor is responsible, because of:
- 12.8.A defective Work not remedied;
 - 12.8.B third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
 - 12.8.C failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
 - 12.8.D reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - 12.8.E damage to the Owner or another contractor;
 - 12.8.F reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance will not be adequate to cover applicable damages for the anticipated delay; or
 - 12.8.G persistent failure to carry out the Work in accordance with the Contract Documents.
- 12.9 Certification of Previously Withheld Amounts. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- 12.10 Partial Payments. The Owner shall make payments for Work performed under the contract as follows:
- 12.10.A On or about the last day of each month, Owner shall pay to the Contractor and Assigned Subcontractors, that portion of the Contract Sum for which the Professional Services Consultant has issued a Certificate for Payment during such month.
 - 12.10.B Within fifteen (15) days after receipt of any partial payment, the Contractor shall submit to the Professional Services Consultant an affidavit on the Monthly

Affidavit Form bound herewith certifying that all debts incurred for Work for which Contractor has been paid have themselves been paid.

- 12.10.C After the first partial payment, the proper submission by Contractor of such monthly affidavits shall be a condition precedent to future payments.
- 12.10.D Neither the Owner nor Professional Services Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.
- 12.10.E A Certificate for Payment, a partial or final payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 12.11 Failure of Payment. If within sixty (60) days after the date established in subparagraph 12.10 for payment and through no fault of the Contractor, the Owner does not pay the Contractor and Assigned Subcontractors the amount certified by the Professional Services Consultant or, if no amount has been certified by the Professional Services Consultant, the amount properly owed to the Contractor and Assigned Subcontractors, then the Contractor may, following the receipt by Owner and Professional Services Consultant and Assigned Subcontractors of sixty (60) additional days' written notice of its intent to do so, suspend the Work until such payment has been received. In the event of such a suspension by the Contractor, the Contractor shall be entitled to (1) its costs of suspension as provided by, and subject to the provisions of paragraph 20.4, and (2) an extension of time as provided by, and subject to the provisions of paragraph 20.5
- 12.12 Substantial Completion.
- 12.12.A When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Professional Services Consultant and the Owner in writing and request an inspection for certification of Substantial Completion. Simultaneously, the Contractor shall prepare and submit to the Professional Services Consultant and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- 12.12.B Upon receipt of the Contractor's list, the Professional Services Consultant and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Professional Services Consultant's and Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Professional Services Consultant. In such case, the Contractor shall then submit a request for another inspection by the Professional Services Consultant and Owner to determine Substantial Completion and Contractor shall bear all costs of same.
- 12.12.C When the Work or designated portion thereof is substantially complete, the Professional Services Consultant will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, and shall establish transfer of responsibility from Contractor to Owner for security,

maintenance, heat, utilities, damage to the Work and insurance except for Work items specifically excluded from the substantial completion punchlist. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

- 12.12.D The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment to the Contractor as provided in subparagraph 12.12.E.
- 12.12.E Payment at Substantial Completion. Provided that all conditions precedent have been satisfied, within thirty (30) days after written acceptance by Owner and Contractor as provided in subparagraph 12.12.D, Owner shall pay Contractor and Assigned Subcontractors all sums due including Contract Retainage, less any amounts attributable to liquidated damages, and less two hundred percent (200%) of the reasonable cost for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims. As a further condition precedent to such payment, however, Contractor shall deliver to Owner's Representative the final complete set of as-built drawings in the form of marked-up blue-line drawings, all required releases of claim, all certificates of occupancy or similar documents required for the occupation and use of the Project for its intended purposes, all required warranties and all Project Documentation as described in Article 10 herein.
- 12.13 Partial Occupancy or Use. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Professional Services Consultant as provided under subparagraph 12.12.A. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Professional Services Consultant. Immediately prior to such partial occupancy or use, the Owner, Contractor and Professional Services Consultant shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 12.14 Final Completion.
- 12.14.A Written Notice for Final Inspection, Acceptance, and Payment. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Professional Services Consultant will promptly make such inspection and, when the Professional Services Consultant finds the Work acceptable under the Contract Documents and the Contract fully performed, the Professional Services Consultant will promptly issue a final Certificate for Payment.

- 12.14.B Payment at Final Completion. Provided that all conditions precedent have been satisfied, within thirty (30) days after execution of the final Certificate for Payment, Owner shall pay Contractor and Assigned Subcontractors all unpaid sums due Contractor under this Agreement (“Final Payment”), less any amount properly withheld pursuant to this contract. Contractor’s acceptance of Final Payment shall constitute an unconditional waiver and release of all claims by Contractor for additional compensation beyond that provided in the Final Payment. Final Payment by Owner shall not, however, constitute a waiver by Owner of its rights or claims arising from Contractor’s failure to perform the requirements of the Contract Documents.
- 12.15 Withholding of Payment. Any provision of the Contract Documents notwithstanding, Owner shall not be obligated to make a payment or payments to Contractor or Assigned Subcontractors otherwise due, if, and for so long as, any one or more of the following conditions exist:
- 12.15.A Contractor’s Application for Payment is not in the form or supported by the documentation required by this Contract;
 - 12.15.B Contractor is in default of any of its obligations under the Contract Documents;
 - 12.15.C Any part of such payment is attributable to Work which is defective or not strictly conforming with the requirements of the Contract Documents; provided, however, that payment shall be made as to the part thereof attributable to Work which is rendered or performed in accordance with the Contract Documents and is not defective, subject to other provisions hereof;
 - 12.15.D Contractor has improperly failed to make payments to its Subcontractors, consultants, employees, or others performing Work in connection with the Project or any person has filed a claim that Contractor has failed to make payments due to such person;
 - 12.15.E Any person has asserted a claim against Owner in whole or in part on account of alleged acts or omissions of Contractor;
 - 12.15.F Evidence that the balance of the Work cannot be completed in accordance with the Contract Documents for the unpaid balance of the Contract Sum;
 - 12.15.G Failure or refusal by Contractor to perform the Work in accordance with the Contract Documents;
 - 12.15.H Damage to Owner or to a third-party to whom Owner is, or may be, liable; or
 - 12.15.I Any situation or condition exists which, as set forth elsewhere herein or in the Contract Documents, justifies the withholding of payments.

In the event that any of the foregoing conditions exist, Owner shall be entitled to withhold from any sum then due or thereafter to become due, including from retained sums, an amount sufficient in the sole judgment of Owner’s Representative to satisfy, discharge, and defend against such claims and to make good any losses, prospective losses, costs, attorney’s fees, and other expenses which may result from the existence of such conditions.

- 12.16 Disputed Payment Applications. In the event Owner’s Representative or the Professional Services Consultant disagrees with or questions all or any portion of any Application for Payment, the amount due to Contractor, or the sufficiency of the information and

documentation submitted by Contractor, Owner's Representative or the Professional Services Consultant shall notify Contractor in writing and Owner shall pay the undisputed parts of such Application for Payment. If Owner's Representative and Contractor are able to agree on the amount due under the disputed part of any Application for Payment, payment will be made to Contractor within ten (10) days after receipt of a new Application for Payment representing the agreed amount. Pending resolution of any disputed Application for Payment, or other disputes, Contractor shall continue its performance hereunder without interruption.

- 12.17 Non-Waiver of Claims for Defective Work. Neither entrance, inspection nor use of the Project by Owner, Professional Services Consultant, or their representatives shall be construed as an acceptance of defective or nonconforming Work nor shall such entrance, inspection or use release Contractor from any of its obligations under the Contract Documents.

ARTICLE 13 **CHANGE ORDERS**

- 13.1 Authority to Order Changes. Owner may by written Change Order, and without affecting the validity or enforceability of this contract, direct changes in the Work within the general scope of the Contract Documents, including changes, additions, deletions, modifications, and revisions thereto. Owner may, at its sole discretion, initially direct changes in the Work by a Field Directive or Emergency Work Authorization, as defined in this Article and the Contract Documents. Contractor shall promptly proceed, and cause all Subcontractors to proceed, with the performance of the Work in accordance with Owner's direction, and failure to agree on the terms of a Change Order shall not excuse Contractor from continued performance of the Work in an expeditious fashion or from proceeding with any directed change.
- 13.2 Adjustments to Contract Sum and Contract Time Only by Change Order. Changes in the Contract Sum and extensions of time for the performance of this contract may only be made by a Change Order issued in accordance with the terms of this Article. Owner shall not be responsible for any change in the Work involving extra cost unless approval in writing is furnished by Owner before such Work is begun. Professional Services Consultant does not have authority to order changes in the Work that involves changes in cost or time.
- 13.3 Adjustments to the Contract Sum. If there is a change in the Work required of Contractor under the Contract Documents, which change increases Contractor's cost of performance, or if Contractor submits a claim for additional compensation pursuant to paragraph 14.2, then, subject to Owner's approval of Contractor's claim, the Contract Sum shall be adjusted by a Change Order; provided, however, that no upward adjustment shall be made if the change in the Work, or the basis of the claim for additional compensation, is caused by the fault, in whole or in part, of Contractor, a Subcontractor, or anyone for whom they are, or may be, responsible. If a change in the Work reduces Contractor's cost of performance, then the Contract Sum shall be decreased accordingly. The amount of any adjustment to the Contract Sum shall be determined by agreement between Owner and Contractor. In the absence of such agreement, the Contractor, upon receipt of a written order from the Owner, shall nevertheless promptly proceed to implement the change. In such case, the Contractor shall keep and present, in such form as the Professional Services Consultant may direct, a correct account of the resulting job costs or savings, or both, with supporting vouchers. The Professional Services Consultant, upon determination of the costs or savings from such account and from any investigation made by it and, after applying the percentages for overhead and profit provided in the Agreement, shall certify the adjusted Contract Sum. Such certification shall be binding upon both parties.

For Lump Sum Change Orders, the Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner. The Owner will require itemized change orders on all change order proposals related to work to be performed by the Contractor and all Subcontractors. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable).

- 13.4 Payment. Requests for payment for performance of Work pursuant to a Change Order shall be made in accordance with, and payment shall be subject to, the provisions of Article 12.
- 13.5 Change Orders Final. The execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, the Contract Documents as thus amended, the Contract Sum and the Substantial Completion Date. Contractor, by executing the Change Order, waives and forever releases any claim against Owner for additional time or compensation for matters in any manner relating to, arising out of or resulting from the executed Change Order. Any additional Work performed by Contractor or Subcontractors without prior written authorization by Owner shall be performed at the sole risk and expense of Contractor.
- 13.6 Field Directives. In the event of unforeseen circumstances that are beyond the Owner's control as defined in Article 1, Section 1.6, Owner may issue a Field Directive to commence Work. Upon completion of the Work performed under the Field Directive, a Change Order shall be generated in accordance with Article 13 within.
- 13.7 Emergency Work Authorization. In the event of conditions that require immediate action as defined in Article 1, Section 1.5, Owner may issue an Emergency Work Authorization to commence Work. Upon completion of the Work performed under the Emergency Work Authorization, a Change Order shall be generated in accordance with Article 13 herein.

ARTICLE 14 CLAIMS BY CONTRACTOR

- 14.1 Generally. All claims against Owner shall be initiated by a written notice submitted by Contractor to Owner's Representative and to the Professional Services Consultant. Such notice shall be submitted to, and received by, Owner's Representative and the Professional Services Consultant not later than seven (7) days after the occurrence of the event, or commencement of the condition, giving rise to the claim. Promptly thereafter, Contractor shall submit its documented claim to Owner's Representative and to the Professional Services Consultant and shall make available to both all pertinent information requested by either relating to such claim. Contractor and Owner shall continue their performance under this Agreement regardless of the existence of any claims submitted by Contractor.
- 14.2 Claims for Additional Compensation. In the event Contractor seeks to make a claim for an increase in the Contract Sum, then as a condition precedent to any liability of Owner therefor, Contractor shall strictly comply with all of the requirements of paragraph 14.1 and such claim shall be made by Contractor before proceeding to execute any additional or changed work. Failure to satisfy this condition precedent shall constitute a waiver by Contractor of any claim for additional compensation. Any liability of Owner for additional costs to Contractor shall be limited to actual and reasonable direct costs incurred by

Contractor and shall in no event include indirect costs or consequential damages of Contractor or others. Absent a Change Order, Owner shall not be liable to Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction. No change in the Contract Sum shall be made except by Change Order issued in accordance with the terms of this contract. Claims by Assigned Subcontractors shall be handled by Contractor the same as claims by other Subcontractors. However, any payments otherwise due and payable to Assigned Subcontractors shall be made directly by the Owner.

- 14.3 Claims for Extensions of Time. In the event the Contractor should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the Owner or someone acting in the Owner's behalf, or by Owner-authorized Change Orders, unusually bad weather not reasonably anticipatable, or Acts of God, the Substantial Completion Date, or as applicable, the date for Final Completion, shall be appropriately adjusted by the Owner upon the written claim of the Contractor to the Owner and the Professional Services Consultant. A task is critical within the meaning of this paragraph 14.3 if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. As a condition precedent thereto, any claim for an extension of time by the Contractor shall strictly comply with the requirements of paragraph 14.1 above. If the Contractor fails to make such claim as required in this paragraph 14.3, any claim for an extension of time shall be waived.
- 14.4 Claims for Concealed or Unknown Conditions. In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Contract Sum shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Professional Services Consultant written notice of, and an opportunity to observe such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this paragraph 14.4 shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition.
- 14.5 No Damages for Delay. The Owner shall not be responsible for damages to any extent whatever to the Contractor for delays in furnishing those materials or performing those acts required under the terms hereof to be furnished or performed by the Owner, Owner's employees, agents or assigns, if such delays are the result of causes beyond the Owner's reasonable control or power to avoid.

ARTICLE 15 **PAYMENT AND PERFORMANCE BONDS**

Contractor shall provide separate payment and performance bonds on the forms provided by Owner and issued by a surety, or sureties, acceptable to Owner. The surety companies providing coverage must have a policyholder's rating not lower than "A-" and a financial rating not lower than "VI" in the current edition of Best's Key Rating Guide for property/casualty insurance companies. Each of the bonds shall include a penal sum in the amount of one hundred percent (100%) of the Contract Sum. Contractor's surety(ies) shall be deemed to have waived notice of, and to have consented to, changes to the Contract Documents, including changes in: (a) the time for performing the Work and payment of compensation to Contractor hereunder; (b) the sums payable under this contract to Assigned Subcontractors, if applicable; and (c) the Work to be performed. The Contract Documents shall be incorporated by reference into each of the bonds.

ARTICLE 16
CONTRACTOR'S PERSONNEL AND SUBCONTRACTORS

- 16.1 Personnel. Contractor shall assign only qualified personnel to perform the Work.
- 16.2 Removal of Personnel and Subcontractors. If, at any time during the course of the Project, Owner's Representative reasonably determines that the performance of any member of Contractor's staff or any of Contractor's Subcontractors including Assigned Subcontractors, or consultants working on the Project is unsatisfactory, Owner's Representative may, in writing, require Contractor to remove such staff member or terminate such Subcontractor or consultant from the Project immediately and replace the staff member, Subcontractor or consultant at no cost to Owner, including those resulting from delay or inefficiency the change may cause.
- 16.3 Employment Taxes. Contractor shall be responsible for payment of all unemployment compensation, social security, and other similar taxes and benefits covering its employees.

ARTICLE 17
OWNERSHIP OF DOCUMENTS

All Contract Documents, as well as information and items provided by Owner to Contractor to facilitate Contractor's performance hereunder, shall remain the exclusive property of Owner, and all such documents, information, and items, including all copies thereof, shall be returned to Owner's Representative upon Final Completion and as a condition precedent to Final Payment, provided that Contractor may retain one copy of same for record purposes only.

ARTICLE 18
INDEMNITY AND LIABILITY INSURANCE

- 18.1 Indemnification. To the fullest extent permitted by law the Contractor agrees to pay and reimburse and indemnify, keep and hold harmless the Owner, its Trustees, officials, agents, employees, servants and their respective heirs, executors, administrators, officers, directors, successors and assigns from and against any and all losses, demands, obligations, costs, damages, liabilities, suits, actions, judgments, claims (including, but not limited to, claims for the infringement of any patents, copyrights, licenses or other intellectual property rights) and expenses, including, but not limited to, attorneys' consultants', and experts' fees and expenses, and including both litigation and pre-litigation expenses, arising out of or connected with: (a) any injury to or death of persons or damage to or loss of destruction of property (other than the Work itself) caused by or attributable to errors or omissions or negligent acts or willful acts, in whole or part, of the Contractor, its sub-consultants, sub-contractors, officers, agents, representatives, or employees; (b) any error, omission, or negligent act; (c) any breach or failure of performance by the Contractor or its sub-consultants, sub-contractors, officers, agents, representatives, or employees under this Agreement. Contractor expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit its responsibilities or liabilities or serve as a limit in recovery.
- 18.2 Contractor's Liability Insurance. The Contractor agrees to maintain the following minimum insurance coverage for the duration of the Project or the term for which services will be rendered, and for as long as necessary thereafter to cover claims with respect to its performance under this Agreement.
- 18.2.A. The Contractor shall cause a Certificate of Insurance to be issued showing the following required coverage in no less than the minimum coverage limits listed

below. The insurance companies providing coverage must have a policyholder's rating not lower than "A-" and a financial rating not lower than "VI" in the current edition of Best's Key Rating Guide for property/casualty insurance companies.

<u>Coverage</u>	<u>Minimum Limits of Liability</u>
18.2.A.1. Worker's Compensation and Occupational Diseases Employer's Liability (Part B)	Illinois Statutory Limits \$1,000,000 per occurrence
18.2.A.2. Commercial General Liability	
Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Products Completed Operation Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Fire Damage	\$100,000
18.2.A.3. Commercial Auto Liability	
Combined Single Limit	\$1,000,000 per occurrence
OR	
Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
18.2.A.4	Evidence of umbrella or excess liability may be used to meet the above required liability limits.
18.2.A.5.	Evidence of waiver of subrogation must be expressly stated on the certificate of insurance form (reference section 18.2.A.8.4).
18.2.A.6.	Subcontractors must comply with the same underlying insurance coverage requirements as Contractor. Subcontractors shall submit the required Certificate of Insurance to the Contractor.
18.2.A.7.	With respect to the required Commercial General Liability insurance, the Certificate of Insurance should include Additional Insured wording that conveys the following: "The Board of Trustees of the University of Illinois, Construction Manager (if applicable), Contractor with assigned subcontractor(s) (if applicable), and additional parties as designated by Owner (if any) shall be named as an additional insured on a primary and non-contributory basis for liability incurred arising from the activities of Contractor or its subconsultants, subcontractors, officers, agents, representatives, or employees performing work on behalf of Contractor."
18.2.A.8	<u>General Liability Terms and Conditions.</u> The Contractor's general liability insurance shall include, without limitation, the following coverages:
18.2.A.8.1.	<u>Contractual Liability.</u> Coverage shall cover all contractual obligations which the Contractor has assumed, including the Indemnity Agreement, for the liability limits set forth above. An Owner/Contractor's protective liability policy may be provided in lieu of a commercial general liability policy for the liability limits set forth above.
18.2.A.8.2.	<u>Explosion, Collapse and Underground Hazards.</u> Coverage for "XCU" (explosion, collapse and

underground) hazards shall be included for the liability limits set forth above.

18.2.A.8.3. Completed Operations Coverage. Completed operations coverage in the liability limits set forth above shall be included for a period of not less than one year after the Substantial Completion date.

18.2.A.8.4. The Contractor's liability insurance policies shall include a waiver of subrogation clause which must be expressly stated on the Certificate of Insurance that conveys the following:

"It is agreed that in no event shall any insurance company of the Contractor have any right of recovery against Owner for any and all damage or loss unless such damage or loss results from the sole gross negligence or willful misconduct of Owner."

18.3 Terms and Conditions

18.3.A. Modification or Cancellation. The Contractor's insurance policies shall be modifiable or cancelable only after written notice has been delivered by Contractor to the Owner by certified or registered mail thirty (30) days in advance of such modification or cancellation.

18.3.B. Delivery of Policies. Upon request, the Contractor shall deliver copies of its newly issued or renewal insurance policies to the Owner within ten (10) days following the Owner's request for such copies. Failure to request such copies of new or renewal insurance policies does not relieve the Contractor of its contractual obligation to provide the insurance coverages set forth.

18.3.C. Notification of Insurance Carriers. The Contractor shall be responsible for notifying all of its liability insurance carriers of the provisions of this Agreement and for procuring insurance coverage for this contract on a timely basis. The Contractor shall not commence work under this contract until it has obtained all the insurance required under this Article and until certificates of such insurance have been approved by the Owner.

18.3.D. Contractor's Liability. The procuring of the insurance required under this contract shall be considered solely as securing Contractor's obligations or liabilities assumed under the Contract Documents, including, but not limited to, the obligation to indemnify the Owner assumed under paragraph 18.1 and shall not be considered as satisfaction of, or a substitution for, such obligations and liabilities. The Contractor shall remain liable and responsible for all such obligations whether or not the insurance provided by it is approved by the Owner and whether or not such insurance is sufficient in amount, quality or coverage to protect it against such liability. The Contractor shall pay and make good all such obligations to the full extent thereof and to the extent that such insurance does not cover them.

18.3.E. Enforcement of this Contract. In the event Owner retains legal counsel to secure performance by Contractor of any of its obligations under this contract, or if Owner retains or utilizes such counsel to represent its interest with respect to any matter for which Contractor has an indemnity obligation to Owner under any provision of this contract or otherwise, Contractor shall pay and reimburse Owner

for the cost of such counsel and shall further pay and reimburse Owner for any and all other cost and expense incurred in preparing, negotiating, or prosecuting any claim against Contractor, including, but not limited to, any and all expert witness fees and expenses.

- 18.3.F. Lapse of Insurance. In the event Contractor loses insurance coverage, Contractor shall stop work and shall immediately notify Owner of such cancellation or other loss of insurance coverage. Owner shall withhold any future payments due to Contractor until the matter is resolved. Owner reserves the right to pursue any legal action necessary to cover losses. If Contractor procures replacement insurance in accordance with Contract Documents, Owner reserves the right to allow Contractor to continue work. There shall be no time credit for days not worked pursuant to this section.
- 18.3.G. Uninsured Loss Occurrence. In the event a loss occurs during the uninsured period, Owner reserves the right to withhold payment due to Contractor. Contractor shall immediately notify Owner of any loss. Owner shall withhold any future payments due to Contractor. Owner reserves the right to pursue any legal action necessary to cover losses. If Contractor remedies the loss and obtains the required insurance coverages, Owner reserves the right to allow Contractor to continue work. There shall be no time credit for days not worked pursuant to this section.
- 18.3.H. The Contractor's failure to comply with any insurance requirements set forth herein shall be deemed a material breach of the contract terms.
- 18.3.I. Contractor shall furnish any original Certificate(s) of Insurance evidencing the required coverage to be in force on the date of this Contract, and any renewal Certificate(s) of Insurance if coverage has an expiration or renewal date occurring during the term of this Contract to the appropriate contact person as designated. The receipt of any certificate does not constitute an admission by the Owner that insurance requirements have been met. Failure of the Owner to obtain certificates or other insurance evidence from the Contractor shall not be deemed a waiver by the Owner.

ARTICLE 19 BUILDER'S RISK INSURANCE

19.1 The Owner's Risk.

- 19.1.A Permanent Installation. Owner bears the risk of loss or damage for Owner-procured property that will be permanently installed into the project while in transit or in storage away from the jobsite until responsibility for the Owner-procured property is accepted by a contractor or the property is transferred to the custody of the designated contractor or the custody of any contractor subject to the supervision of the designated contractor, or any contractor named as an additional insured, or named insured, under the Builder's Risk/Installation Floater (herein after referred to as "Builder's Risk" or "policy"). The designated contractor is responsible for providing and paying for the builder's risk insurance as described in Article 19. Any loss or cost of repair not covered by such insurance shall be borne by the Contractor responsible for the Work, without additional cost to the Owner. The entity (Contractors or Construction Managers) responsible for providing Builder's Risk Insurance, identified in Document 00-10-00 Section 2.0, will hereinafter be known as the Designated Contractor throughout this Article.

- 19.1.B Non-Permanent Installation. Owner bears the risk of loss or damage for Owner procured non-permanent property (contents including furniture, fixtures, equipment, etc.), whether installed by Owner or contractor, until the project is substantially complete.

19.2 The Contractor's Risk.

- 19.2.A. Designated Contractor with Assigned Subcontractors. If Builder's Risk Insurance is required, the Designated Contractor will provide an insurance policy which shall insure against all risks of direct physical loss or damage to the project. Risk of transit and storage for equipment not Owner-procured is the responsibility of each individual Contractor until such time as the equipment is delivered to the jobsite. The Designated Contractor shall be responsible for the deductible.

- 19.2.B. Designated Contractor without Assigned Subcontractors or Construction Managers.

- 19.2.B.1 If Builder's Risk Insurance is required and where the Owner has not assigned subcontractors to a Designated Contractor, the Contractor assigned the responsibility of procuring the Builder's Risk policy will provide an insurance policy that insures against all risks of direct physical loss or damage to the Project. Risk of transit and storage for equipment not Owner-procured is the responsibility of each individual Contractor until such time as the equipment is delivered to the jobsite. Contractors will be responsible for payment of the policy deductible for losses to their portion of the Work. Contractors will be responsible for submitting and negotiating their claims, if any, under the Builder's Risk policy, and/or for any other coverages that they might procure on their own behalf.

- 19.2.B.2 Deductible. The policy shall be subject to the following deductible schedule unless a different deductible is approved by the Owner under separate cover:

<u>Policy Limit of Builder's Risk</u>	<u>Maximum Amount of Deductible</u>
Up to \$10,000,000	\$ 5,000
Over \$10,000,000	\$50,000

The Owner shall not be responsible for any portion of the deductible.

- 19.2.C. Designated Contractor Procured Non-Permanent Property (contents including furniture, fixtures, equipment, etc.). Non-permanent Property procured by the Designated Contractor shall be insured by said Designated Contractor under their property policy or endorsed onto the Builder's Risk policy purchased for the project. Coverage shall be on a replacement cost basis for 100% of the value of the non-permanent property and shall remain in force until the project is substantially complete. Designated Contractor shall be responsible for the deductible.

19.3. Builder's Risk Policy.

- 19.3.A. The policy shall be a Completed Value All Risk Builder's Risk/Installation Floater form or equivalent form issued under an ISO (hereinafter referred to as "Builder's Risk" or "policy") with the policy limit equal to one hundred percent (100%) of the total sum of all Agreements, including the value of Owner-purchased building materials and supplies, equipment, machinery and fixtures intended to become a permanent part of the Project.

- 19.3.B. The policy shall be issued in the name of the Designated Contractor with the Owner (The Board of Trustees of the University of Illinois), all assigns, all contractors, subcontractors of every tier, mortgagees and/or loss payees, if applicable and Professional Services Consultants (limited to their site activities) as additional insureds, as their interests may appear.
- 19.3.C. The insurance companies providing coverage must have a policyholder's rating not lower than A- and a financial rating not lower than VI in the current edition of Best's Key Rating Guide.
- 19.3.D. The policy will, at a minimum, comply with the requirements set forth. Further, the policy shall include a waiver of subrogation clause which must be expressly stated on the Evidence of Property form that conveys the following:
- "It is agreed that in no event shall any insurance company of the Designated Contractor have any right of recovery against Owner for any and all damage or loss unless such damage or loss results from the sole negligence or willful misconduct of Owner."
- 19.3.E. Contractor shall furnish Evidence of Property Insurance Form evidencing the required Builder's Risk coverage to be in force on the start of construction at the jobsite, and any renewals if coverage has an expiration or renewal date occurring during the term of this Agreement.
- 19.3.F. Designated Contractor(s) is responsible for and may carry whatever additional insurance they may deem necessary to protect themselves against hazards or perils not covered by the Builder's Risk policy. Any loss or cost of repair not covered by the Builder's Risk insurance shall be borne by the Contractor whose Work or property suffers the loss, without additional cost to the Owner.
- 19.3.G. Required Coverage. Policy shall cover all risks of direct physical loss or damage to covered property during the policy term, including where applicable, Flood and Earthquake.
- 19.3.G.1. Covered Property (this may be property of the Insured and/or the property of others for which the Insured has assumed responsibility):
- 19.3.G.1.1. Property which will become a permanent part of the project. This includes materials, supplies, equipment, machinery, foundations, and underground pipes and wiring; owner supplied materials, equipment, machinery and supplies, the value of which has been included in the total project value. Coverage to include commissioning and testing of equipment and systems including boilers, chillers, pumps and other similar equipment.
- 19.3.G.1.2. Temporary structures including all scaffolding, construction forms, falsework, shoring, cribbing, fencing, and temporary buildings at the job site, when the value has been included in the total project value.

- 19.3.G.1.3. Property while in transit from the time of loading until unloading at the final destination (the job site, a temporary offsite location).
- 19.3.G.1.4. Property while at any location other than the job site, and on a temporary basis.
- 19.3.G.2. Required Coverage Extensions. Policy shall additionally cover the following, subject to policy sub-limits sufficient to cover the exposure, which shall be listed in the policy Declarations.
 - 19.3.G.2.1. Occupancy. The policy shall specifically permit and allow for beneficial or partial occupancy prior to substantial completion of the Project and acceptance by the Owner.
 - 19.3.G.2.2. Landscaping. Coverage shall extend to trees, shrubs, plants, lawns or sod to be planted as part of the insured project.
 - 19.3.G.2.3. Extra Expenses. Extra expenses shall cover reasonable and necessary excess costs incurred during the period of repair of the damaged property and include equipment rental, emergency expenses, and other expenses necessarily incurred to reduce loss. Unless Owner requires it Extra Expenses would not include additional interest or debt service expense, business interruption, loss of earnings/income, or other delay in completion.
 - 19.3.G.2.4. Construction Documents. Construction Documents shall cover Plans, Blueprints, Drawings, Models or other such Documents related to the project.
 - 19.3.G.2.5. Debris Removal. In the event of direct physical loss or damage to the covered property the policy shall pay the necessary and reasonable costs: 1) to remove debris, including necessary demolition expenses, and/or 2) cost of cleanup at the insured site.
 - 19.3.G.2.6. Architects and Engineers Fees
 - 19.3.G.2.7. Expediting Expense
 - 19.3.G.2.8. Fire Dept. Service Charges and Fire Protective Equipment Refill
 - 19.3.G.2.9. Ordinance or Law/Demolition and Increased Cost of Construction
 - 19.3.G.2.10. Water Damage. Flood, as defined by the Owner in Article 19.3.G may or may not be required depending on the Project; however, the following

Water Damage coverage is always required: back-up of sewers, drains and sumps; weight of snow, ice, sleet; sprinkler leakage; water under the ground surface pressing on, or flowing or seeping through foundations, walls, floors or paved surfaces – basements, whether paved or not; or doors, windows or other openings.

OPTIONAL CLAUSES:

- 19.3.G.2.11. Delay in completion. Policy shall cover business income and extra expense (loss of rental income and/or gross earnings including concession and/or merchandise revenue; soft costs such as legal/accounting fees, design professional fees, insurance premiums for extending or renewing coverage, general overhead, etc.) in the event direct physical loss or damage to the covered project results in delay. Limit of Owner's coverage under the Policy shall be \$_____. Coverage must be expressly stated on the Evidence of Property Insurance form.
- 19.3.G.2.12. Flood. As defined by the Owner means the overflow of a body of water onto normally dry land. The policy shall include coverage for loss due to Flood as defined above. The limit of liability for this peril must be equal to the completed value or \$5,000,000, whichever is less. The deductible for this peril may be as high as \$25,000. Loss limitations or higher deductibles do not relieve the Contractor of responsibility for the uninsured portion of the loss. Coverage must be expressly stated on the Evidence of Property Insurance form.
- 19.3.G.2.13. Earthquake. The policy shall include coverage for loss due to earth movement, including earth sinking, rising or shifting related to such event: landslide, including any earth sinking, rising or shifting related to such event, and including mine subsidence, whether man-made or not; earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. The limit of liability for this peril must be equal to the completed value or \$5,000,000, whichever is less. The deductible for this peril may be as high as \$25,000. Loss limitations or higher deductibles do not relieve the Contractor of responsibility for the uninsured portion of the loss. Coverage must be expressly stated on the Evidence of Property Insurance form.

OPTIONAL CLAUSES:

19.3.G.3. Coverage options - Owner **may**, at their option, additionally require these Coverage options:

19.3.G.3.1. Delay in completion. Policy shall cover business income and extra expense (loss of rental income and/or gross earnings including concession and/or merchandise revenue; soft costs such as legal/accounting fees, design professional fees, insurance premiums for extending or renewing coverage, general overhead, etc.) in the event direct physical loss or damage to the covered project results in delay.

19.3.G.3.2. Flood. As defined by the Owner means the overflow of a body of water onto normally dry land. The policy shall include coverage for loss due to Flood as defined above. The limit of liability for this peril must be equal to the completed value or \$5,000,000, whichever is less. The deductible for this peril may be as high as \$25,000. Loss limitations or higher deductibles do not relieve the Contractor of responsibility for the uninsured portion of the loss.

19.3.G.3.3. Earthquake. The policy shall include coverage for loss due to earth movement, including earth sinking, rising or shifting related to such event: landslide, including any earth sinking, rising or shifting related to such event, and including mine subsidence, whether man-made or not; earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. The limit of liability for this peril must be equal to the completed value or \$5,000,000, whichever is less. The deductible for this peril may be as high as \$25,000. Loss limitations or higher deductibles do not relieve the Contractor of responsibility for the uninsured portion of the loss.

19.3.H. Policy shall not be required to cover these types of property:

19.3.H.1 Machinery and tools that will not become a permanent part of the project.

19.3.H.2 Vehicles licensed for road use, aircraft, watercraft, rolling stock.

19.3.H.3 Existing property at the job site; unless required by contract.

19.3.H.4 Money, securities, accounts, bills, stamps, and other similar items; precious metals and/or stones.

- 19.3.H.5 Water, timber, crops, animals; trees, shrubs, plants, and lawn or sod *already existing at the job site*.
- 19.3.H.6 Land, except excavations, grading, backfilling, filling or other movement of land if such Work is part of the project.
- 19.3.I. Acceptable Policy exclusions:
 - 19.3.I.1 War and Military Action, including:
 - 19.3.I.1.1 War, including undeclared or civil war
 - 19.3.I.1.2 Hostile or warlike action by a military force in time of peace or war;
 - 19.3.I.1.3 Insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating, or defending against any of these;
 - 19.3.I.1.4 Seizure or destruction of property by order of governmental authority.
 - 19.3.I.2 Nuclear reaction, nuclear radiation or radioactive contamination from any other cause, however, loss or damage arising out of a resultant fire shall be covered (subject to the provisions of the insurance policy).
 - 19.3.I.3 Mysterious disappearance or shortage found upon taking inventory;
 - 19.3.I.4 Dishonest or criminal acts of the insured or its employees;
 - 19.3.I.5 Seizure or destruction of property by order of any governmental authority; unless such action is ordered to prevent the spread of fire, in which case the policy shall pay for the damage to the covered property.
 - 19.3.I.6 Loss from fungus, mold, mildew, and the like, unless otherwise specified in the insurance policy;
 - 19.3.I.7 Actual, alleged or threatened release, discharge, seepage, escape, or dispersal of Contaminants or Pollutants. However, if fire arises directly or indirectly from the actual release, discharge, seepage, escape or dispersal of Contaminants or Pollutants, any loss or damage insured under the policy arising directly from that fire shall be covered;
 - 19.3.I.8 Asbestos removal per governmental order, plus any additional costs for such things as demolition, or cost of reconstruction or debris removal, arising out of such order.
 - 19.3.I.9 Normal subsidence and/or normal settling, cracking, shrinking or expanding of foundations or any other part of the covered property;

- 19.3.1.10 Normal wear and tear, gradual deterioration, rust, corrosion, hidden or latent defect or any quality in the property that causes it to damage or destroy itself;
- 19.3.1.11 Omission or error in planning, zoning, development, surveying, design or specifications;
- 19.3.1.12 Defective or inadequate workmanship, materials, or maintenance.

19.4 Terms and Conditions

- 19.4.A. Modification or Cancellation. The Designated Contractor's insurance policies shall be modifiable or cancelable only after written notice has been delivered by Designated Contractor to the Owner by certified or registered mail thirty (30) days in advance of such modification or cancellation. Designated Contractor must agree to maintain such insurance for the duration of the Project.
- 19.4.B. Delivery of Policies. Upon request, the Designated Contractor shall deliver copies of its newly issued or renewal insurance policies to the Owner within ten (10) days following the Owner's request for such copies. Failure to request such copies of new or renewal insurance policies does not relieve the Designated Contractor of its contractual obligation to provide the insurance coverages set forth.
- 19.4.C. Notification of Insurance Carriers. The Designated Contractor shall be responsible for notifying its insurance carriers of the provisions of this Agreement and for procuring insurance coverage for this contract on a timely basis. The Contractor shall not commence work under this contract until it has obtained all the insurance required and until evidence of such insurance has been approved by the Owner.
- 19.4.D. Designated Contractor's Liability. The procuring of the insurance required under this contract shall be considered solely as securing Designated Contractor's obligations or liabilities assumed under the Contract Documents, including, but not limited to, the obligation to indemnify the Owner assumed under paragraph 18.1 and shall not be considered as satisfaction of, or a substitution for, such obligations and liabilities. The Designated Contractor shall remain liable and responsible for all such obligations whether or not the insurance provided by it is approved by the Owner and whether or not such insurance is sufficient in amount, quality or coverage to protect it against such liability. The Designated Contractor shall pay and make good all such obligations to the full extent thereof and to the extent that such insurance does not cover them.
- 19.4.E. Enforcement of this Contract. In the event Owner retains legal counsel to secure performance by Designated Contractor of any of its obligations under this contract, or if Owner retains or utilizes such counsel to represent its interest with respect to any matter for which Contractor has an indemnity obligation to Owner under any provision of this contract or otherwise, Designated Contractor shall pay and reimburse Owner for the cost of such counsel and shall further pay and reimburse Owner for any and all other cost and expense incurred in preparing, negotiating, or prosecuting any claim against Designated Contractor, including, but not limited to, any and all expert witness fees and expenses.
- 19.4.F. Lapse of Insurance. In the event Designated Contractor loses insurance coverage, Contractor shall stop work and shall immediately notify Owner of such cancellation or other loss of insurance coverage. Owner shall withhold any future

payments due to Designated Contractor until the matter is resolved. Owner reserves the right to pursue any legal action necessary to cover losses. If Designated Contractor procures replacement insurance in accordance with Contract Documents, Owner reserves the right to allow Designated Contractor to continue work. There shall be no time credit for days not worked pursuant to this section.

19.4.G. Uninsured Loss Occurrence. In the event a loss occurs during the uninsured period, Owner reserves the right to withhold payment due to Designated Contractor. Designated Contractor shall immediately notify Owner of any loss. Owner shall withhold any future payments due to Designated Contractor. Owner reserves the right to pursue any legal action necessary to cover losses. If Designated Contractor remedies the loss and obtains the required insurance coverages, Owner reserves the right to allow Designated Contractor to continue work. There shall be no time credit for days not worked pursuant to this section.

ARTICLE 20 **SUSPENSION**

- 20.1 Suspension of Work. Owner may for any reason suspend, in whole or in part, performance of the Work and Contractor's performance under this contract. Owner's Representative shall give written notice of such suspension to Contractor specifying when such suspension is to become effective and the scope of the Work affected by such suspension.
- 20.2 Ceasing Performance upon Suspension. From and upon the effective date of any suspension ordered by Owner, Contractor shall not incur, nor permit any Subcontractor to incur, any further expense or obligations in connection with the suspended portion of the Work. From and upon the effective date of any suspension ordered by Owner, Contractor shall cease performing Work, and shall cause all Subcontractors to cease performing Work, related to the suspended portion of the Work, and shall utilize its best efforts to mitigate costs resulting from the suspension.
- 20.3 Resumption of Work after Suspension. If Owner lifts the suspension it shall do so in writing signed by Owner's Representative and Contractor shall promptly resume performance of the Work and cause the Subcontractors to resume performance of the Work, unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided in paragraph 21.8 herein.
- 20.4 Costs of Suspension. Within seven (7) days after either the resumption of the suspended portion of the Work or the termination of this contract, Contractor shall submit an itemization of the following cost items reasonably and necessarily expended by Contractor as a direct result of the suspension, together with pricing or other data required by Owner's Representative:
- 20.4.A salaries of Contractor's home or branch office employees, or both, but only to the extent that such employees were directly impacted by said suspension;
 - 20.4.B salaries of Contractor's field employees, costs of construction tools, equipment, and field office costs but only to the extent that such employees were directly impacted by said suspension; and
 - 20.4.C Subcontract costs reasonably and unavoidably incurred on account of the suspension; and
 - 20.4.D any other items directly related to the suspended part of the Work.

Contractor's failure to provide such itemized information within such seven (7) day time period shall constitute a waiver of any compensation relating to the suspension of Contractor's Work under this contract. Owner shall promptly review Contractor's itemization and shall issue a Change Order providing for payment to Contractor of such amounts, and only such amounts, listed above as may be due on account of the suspension and increasing the Contract Sum by like amount. In no event shall Contractor be entitled to lost profits, other consequential damages, or any items of damage related to or resulting from a suspension of the Work except for those items enumerated in this paragraph.

- 20.5 Extension of Time Due To Suspension. In the event that Work is suspended as provided herein, subject to the provisions of paragraph 14.3, Contractor shall be entitled to an equitable time extension as determined by the Professional Services Consultant.

ARTICLE 21 **TERMINATION**

- 21.1 Termination for Convenience. Owner may for any reason terminate performance of the Work, this contract, or any part of any of them, for Owner's convenience. Owner shall give written notice of such termination to Contractor specifying when termination becomes effective and the scope thereof.
- 21.2 Ceasing Performance upon Termination. From and after the effective date of any termination, Contractor shall not incur, nor permit any Subcontractor to incur, any further expense or obligations in connection with the terminated portion of the Work. From and after the effective date of any termination, Contractor shall cease performance and cause the Subcontractors to cease performance, to the extent of the terminated portion of the Work. In the event of termination of this contract, Contractor shall terminate outstanding Subcontracts and purchase orders related to the terminated portion of the Work unless directed to do otherwise by Owner's Representative. Owner's Representative may direct Contractor to assign, and Contractor hereby agrees to assign Contractor's right, title and interest under open or terminated Subcontracts to Owner or its designee. Unless directed otherwise by Owner's Representative, Contractor shall settle the liabilities and claims arising out of the termination of the Subcontracts. If requested by Owner's Representative, Contractor shall vacate the Project site immediately.
- 21.3 Submission of Termination Invoice. In the event of termination of all or any part of the Work or this contract for convenience, Contractor shall, within ninety (90) days after the effective date of termination, submit a written termination invoice to Owner specifying the amounts due because of the termination together with costs, pricing, and other supporting documentation or data required by Owner's Representative. Contractor's failure to submit a termination invoice within such ninety (90) day period shall constitute a waiver of any compensation relating to the termination. If a proper termination invoice is submitted, then Owner shall pay Contractor an amount derived in accordance with paragraph 21.4 herein.
- 21.4 Compensation for Termination for Convenience. As full compensation due to Contractor for any termination for convenience, including any amounts due from Contractor to a Subcontractor on account of such termination, Owner shall, subject to subparagraph E. below, pay Contractor the following amounts:
- 21.4.A Reasonable costs of settling and paying debts arising out of the termination of Subcontracts pursuant to the order of termination;
- 21.4.B The unpaid portion of overhead and profit earned to the date of termination;

- 21.4.C If it appears that the Contractor would not have profited, would have sustained a loss, or that its profit would have been diminished if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any, notwithstanding the provisions of subparagraphs A., B., C., and D. of this paragraph 21.4.
- 21.4.D The total sum to be paid the Contractor under this paragraph 21.4 shall not exceed the Contract Sum, as properly adjusted, less those sums paid or to be paid directly by Owner to Assigned Subcontractors, reduced by the amounts of payments otherwise made, and shall in no event include duplication of payment.
- 21.4.E In no event shall Contractor be entitled to recover from Owner, on its own account or on behalf of a Subcontractor, lost profits or other consequential damages, whether its own or those of a Subcontractor, on account of a termination for convenience or an erroneous termination for cause, as described below.
- 21.5 Termination for Cause. If Contractor refuses or fails to perform under this contract in a timely manner, supply enough properly skilled supervisory personnel, labor or proper equipment or materials, make prompt payment to its Subcontractors, suppliers, employees, or consultants, or comply with Applicable Laws, or if Contractor is otherwise guilty of a material breach of this contract or any warranty made herein, then Owner may, by written notice to Contractor, and without prejudice to any other right or remedy, terminate the employment of Contractor, in whole or in part, and take possession of the Project site, the Contract Documents, Subcontracts, Project Documentation in the possession of Contractor, and all equipment and materials at the site.
- 21.6 Erroneous Termination for Cause. In the event the employment of Contractor is terminated by Owner for cause and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under paragraph 21.1 and the provisions of paragraph 21.4 regarding compensation shall apply.
- 21.7 Completion by Owner and Survival of Obligations. Following any termination, whether for convenience or for cause and whether in whole or in part, Owner may complete the terminated portion of the Work by whatever means Owner deems most expedient. Contractor's obligations and all provisions of this contract shall continue in full force and effect as to all Work performed prior to the effective date of the termination and as to that portion of the Work not affected by the termination.
- 21.8 Termination by Contractor. If the Work or this contract is suspended by Owner or by governmental authority in its entirety for a period of one hundred and twenty (120) consecutive days or more through no fault of Contractor or the Subcontractors, or if Owner fails to perform its material obligations to the Contractor for a period of sixty (60) days after receipt of written notification from Contractor of its intent to terminate hereunder, then Contractor may, upon seven (7) days written notice to Owner, terminate this contract. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance for convenience pursuant to paragraph 21.1 above.

ARTICLE 22
LABOR AND EMPLOYMENT LAWS AND REGULATIONS

- 22.1 Illinois Statutes. The Contractor shall comply with all laws, statutes, regulations, ordinances, rulings or enactments of any governmental authority that are applicable to the

work or which in any way pertain to the project, including, without limiting the foregoing thereto, the following Illinois statutes:

22.1.A The Prevailing Wage Act.

Pursuant to the Prevailing Wage Act, Contractor shall pay a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, to all laborers, workers and mechanics, pursuant to definitions, guidelines and procedures set forth in 820 ILCS 130/0.01 et seq. If the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid by the Owner, the revised rate shall apply to this contract. The prevailing rate of hourly wages is revised by the Illinois Department of Labor and is available on the Illinois Department of Labor's official website.

The Contractor shall submit monthly to Owner, via the Owner's electronic project management system, a certified copy of the records required under section 130/5(a)(1) of the Act . The certified payroll shall include records of all laborers, mechanics, and other workers employed by the Contractor, including assigned subcontractors, for services performed. The records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, hourly wages paid in each pay period, number of hours worked each day, and the starting and ending times of each work day. The certified payroll shall be accompanied by a statement signed by the Contractor and statements signed by each subcontractor where appropriate which aver that: (1) such records are true and accurate, (2) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required under the Act; and (3) the Contractor acknowledges that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.

22.2 Compliance. The above explanations of these Acts are condensed and not intended to be a complete detailed account of all duties and obligations imposed thereby, and hence by this article of The General Conditions, upon the Contractor. The Contractor shall comply with all of the provisions of the above cited Acts, whether herein set forth or not, as well as with the provisions of all other applicable legislation and regulations issued thereunder.

ARTICLE 23
RESERVED

ARTICLE 24
ENVIRONMENTAL ISSUES

- 24.1 Environmental Licenses, Certifications, and Permits. Contractor covenants and agrees that during the term of this contract and any extensions or renewals thereof, all of its employees, agents, representatives, and Subcontractors, if any, performing Work will have the requisite skills, licenses, certifications, training, permits and the like mandated by all applicable federal, state and local governing authorities with jurisdiction over environmental matters. Contractor agrees to provide to Owner's Representative evidence of compliance with the requirements of this paragraph upon demand.
- 24.2 Environmental Laws. Contractor, its Subcontractors, representatives, employees, and agents shall comply with all federal, state, and local laws, rules, and ordinances relating to environmental protection governing the Work.

- 24.3 Termination. Contractor agrees that a breach of any of the terms, conditions, and obligations of this Article would be detrimental to Owner, a material breach of this contract and grounds for Owner's termination of the contract.
- 24.4 Application with Other Provisions. The provisions of this Article 24 shall operate in addition to, and not in limitation of, any other obligations contained in the Contract Documents.

ARTICLE 25
MISCELLANEOUS PROVISIONS

- 25.1 Successors and Assigns. Subject to the provisions of the Agreement, Owner and Contractor, respectively, bind themselves, their successors, assigns and legal representatives to the other party and to the successors, assigns and legal representatives of such other party with respect to all terms and conditions of this Contract.
- 25.2 Third Party Beneficiaries. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party, including any Subcontractor.
- 25.3 Severability. In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction or other competent tribunal or rendered invalid by any legislative or regulatory enactment, the remaining provisions shall remain in full force and effect, and such holding or enactment shall not invalidate or render unenforceable any other provision hereof.
- 25.4 Headings. The headings used are merely for convenience and shall have no other force, effect or purpose.
- 25.5 Exhibits. All exhibits annexed hereto are incorporated by reference and made a part of the contract.
- 25.6 "Including". The terms "including", "includes", and their derivatives are not intended as terms of limitation, and shall be deemed in each instance to be followed by the phrase "without limitation."
- 25.7 Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Illinois.
- 25.8 Entire Agreement/Amendments in Writing. This contract represents the entire agreement between Owner and Contractor and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. Subject only to the provisions of Article 13, this contract may be amended only by written instrument signed by both Owner and Contractor.
- 25.9 Waiver. No waiver by Owner of any one or more defaults by Contractor in the performance of the provisions of this contract shall be construed as a waiver of any other defaults, whether of a like kind or different nature.
- 25.10 Taxes. The Contractor shall pay all current and applicable city, county, State and Federal taxes, licenses, assessments, including Federal Excise Taxes, due on his work, including without thereby limiting the foregoing, those required by the Federal Insurance Contributions Act and the Federal and State Unemployment Tax Acts.

The Contractor shall accept exclusive liability for, and pay, all taxes, license fees, assessments, and excises, levied, assessed or imposed upon or on account of the

execution of the contract or on the materials therefor, or on the manufacture, storage, sale, receipts from sale, transportation or delivery of the materials therefor, under any Federal, State, or local law or laws, and in the event said taxes, license fees, assessments and excises, or any part thereof, are in the first instance charged to the Owner, the Contractor shall, at the demand of the Owner, pay the Owner the amount thereof, plus any and all penalties which may have accrued thereon.

The Owner is exempted by Section 3-5 of the Illinois Use Tax Act (35 ILCS 105/3-5 (2000)) from paying any of the taxes imposed by that Act, and sales to Owner are exempt by Section 2-5 of the Illinois Retailer's Occupation Tax Act (35 ILCS 120/2-5 (2000)) from any of the taxes imposed by that Act. The Department of Revenue of the State of Illinois under Rule No. 15, issued August 9, 1961, has declared that sales of materials to construction contractors for conversion into real estate for schools, governmental bodies agencies and instrumentalities, are not taxable retail sales. The Board of Trustees of the University of Illinois has been assigned the following Tax Exemption Number in connection with the Retailers' Occupation Tax, the Service Occupation Tax, the Use Tax, and Service Use Tax in Illinois: E9989-9779-06.

END OF DOCUMENT 00 70 00