

GENERAL CONDITIONS

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# GENERAL CONDITIONS

## ARTICLE 1 -- DEFINITIONS

### **Section 1.01 - Definitions**

The following terms as used in the Contract Documents shall be defined as follows:

**Addendum or Addenda** – Additional provisions of the Contract Documents issued in writing prior to the receipt of bids.

**Alternate** – Scope(s) of Work stated in the Contract documents to be added or deducted from the Contractor's base bid amount for alternate labor, materials and/or methods of construction.

**Allowance** – A sum of money set aside in the Agreement and included in the Contractor's lump sum base bid for a scope of work which has been specified in the Allowance section of the General Requirements. Reimbursement for Allowance work shall be as per General Conditions Article 7 – Changes in the Work.

**Application for Payment** – A Contractor's written billing request, on a form:

- A. prepared by the Owner from the Schedule of Values approved by the Owner;
- B. completed by the Contractor;
- C. adjusted by the Owner; and
- D. signed by the Contractor,

requesting partial or full payment for partial or full performance of the Contract.

**Beneficial Occupancy** – The stage in the performance of the Work prior to Substantial Completion when a designated portion of the Work is sufficiently complete in accordance with the Contract Documents so the Owner or Client can occupy or utilize such portion of the Work for its intended use, evidenced by the Notice of Beneficial Occupancy executed by the Owner following approval from the Authority Having Jurisdiction. Beneficial Occupancy may or may not allow for completion of outstanding punchlist items, as required by the Contract Documents. Notice of Beneficial Occupancy requires that the designation portion of Beneficial Occupancy Work function in a safe, reliable and warrantable manner.

**Change Order** – Written notice, in a standard Owner's form, to the Contractor, signed by the Contractor and executed by the Owner, changing the Contract Documents in accordance with General Conditions Article 7 - Changes in the Work, or a Forced Change Order.

**Claim** - A demand by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, an extension of time, or other relief with respect to the terms of the Contract. The term Claim also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

**Client** - The entity for whom the Dormitory Authority is performing services, including subsidiaries, agents, related corporations, or fiduciaries of the entity.

**Construction Manager** - A natural person, partnership, limited liability company, corporation, or other legal entity regularly engaged in management of construction projects, and so designated by the Owner.

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**Consultant** - A natural person, partnership, limited liability company, corporation, or other legal entity providing architectural, engineering, construction management, testing, inspection, commissioning, or other professional services, and so designated by the Owner.

**Contract** - The agreement between the Owner and the Contractor consisting of the Contract Documents.

**Contract Amendment** – A written instrument, signed by an authorized officer of the Dormitory Authority and an authorized officer of Contractor, amending, modifying, changing, or supplementing the Contract.

**Contract Completion and Acceptance** - The stage in the performance of the Work when all Work required to be performed by the Contract, including but not limited to submission of all documentation required for final payment, except any Work that may be required in the future with respect to:

- A. any warranty or guarantee in the Contract Documents;
- B. General Conditions Article 6 – Subcontracts, Sections 6.01 E through I;
- C. General Conditions Article 14 - Protection of Persons and Property; or
- D. General Conditions Article 15 – Insurance and Bonds,

is complete in accordance with the Contract Documents, evidenced by the Notice of Contract Completion and Acceptance executed by the Owner. Contract Completion and Acceptance follows or may be concurrent with Physical Completion.

**Contract Documents** - The Notice to Bidders, Information for Bidders, Form of Bid, Agreement, Payment Bond, Performance Bond, General Conditions, General Requirements, Drawings, Specifications, Addenda, Change Orders, Contract Amendments, and all provisions of law deemed to be included in the Contract.

**Contractor** - A natural person, partnership, limited liability company, corporation, or other legal entity with whom the Owner enters into the Contract to perform the Work.

**Design Professional** - A natural person, partnership, limited liability company, corporation, or other legal entity providing architectural or engineering professional services, and so designated by the Owner.

**Disputed Work Directive** - Written directive, in a standard Owner's form, from and executed by the Owner to the Contractor directing the Contractor to proceed with the Work described in the Disputed Work Directive in accordance with General Conditions Article 10 – Claims and Disputes.

**Dormitory Authority** - Dormitory Authority of the State of New York, a public benefit corporation established by the laws of the State of New York with its principal office located at 515 Broadway, Albany, New York, 12207-2964.

**Extra Work** - Any work in addition to the Work initially required to be performed by the Contractor pursuant to the Contract Documents.

**Facility** – the operating unit of the Client where the Site is located.

**False Claim** – Any Claim which is, either in whole or part, false or fraudulent.

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**False Representation** – This action takes place when a person has knowledge of the value of the work and materials supplied, performed, or proposed (the “Information”) constituting the Claim, Change Order, or Application for Payment and either:

- A. acts in deliberate ignorance of the truth or falsity of the Information or
- B. acts in reckless disregard of the truth or falsity of the Information.

**Forced Change Order** –Written notice, in a standard Owner’s form, to the Contractor, without the Contractor’s signature and executed by the Owner, changing the Contract Documents in accordance with General Conditions Article 7 – Changes in the Work.

**Furnish** - To deliver to the Site ready for installation.

**Hazardous Material** – any substance (gas, liquid, or solid) or agent (biological, chemical, radiological, physical, or having two or more of the preceding characteristics) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors, including but not limited to heavy metals, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides, herbicides, dioxins, biological wastes, carcinogens, asbestos or any substance containing asbestos, polychlorinated biphenyls, lead, urea formaldehyde, explosives, radionuclides, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials, and any item defined as a hazardous, special, or toxic material, substance, or waste under any Hazardous Material Law, including, but not limited to, the NYS Environmental Conservation Law and Title 6 of the New York Code of Rules and Regulations.

**Hazardous Material Laws** – collectively, any present federal, state or local law, including all valid amendments, relating to public health, safety, or the environment, including without limitation, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Clean Air Act, 42 U.S.C. §7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Clean Water Act, 33 U.S.C. §1215 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 et seq.; the Atomic Energy Act, 42 U.S.C. §2201 et seq.; the NYS Environmental Conservation Law; the NYS Labor Law; the NYS Public Health Law; and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter enacted or promulgated under any such statute.

**Install** - To unload at the delivery point at the Site and perform every operation necessary to establish secure mounting and correct operation at the proper location.

**Letter of Intent** - Written notice, signed by the Owner, to the Contractor, which accepts the Contractor’s Form of Bid and transmits the Agreement, Payment Bond, Performance Bond, and other documents to the Contractor for execution. The Letter of Intent is not the formal notice to begin the physical Work of the Contract.

**Means and Methods of Construction** - Labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by the Contract Documents.

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**Notice of Beneficial Occupancy** – Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner and delivered to the Contractor prior to Substantial Completion, that certain Work of the Contract Documents, identified in such Notice of Beneficial Occupancy, satisfies the criteria for Beneficial Occupancy and will be occupied or utilized by the Owner or Client.

**Notice of Contract Completion and Acceptance** – Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, that the Work required to be performed by the Contract Documents, except any Work required by any warranty or guarantee in the Contract Documents, satisfies the criteria for Contract Completion and Acceptance.

**Notice of Physical Completion** - Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, that the Work of the Contract Documents satisfies the criteria for Physical Completion.

**Notice of Substantial Completion** - Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, that the Work of the Contract Documents satisfies the criteria for Substantial Completion and constitutes the start of the guarantee period.

**Notice to Proceed** –

- A. Written notice, signed by the Owner, to the Contractor, that acknowledges receipt by the Owner of the signed Agreement, Payment Bond, and Performance Bond from the Contractor and directs the Contractor to start performance of the Work; or
- B. Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, directing the Contractor to proceed with the change in the Work described therein in accordance with General Conditions Article 7 – Changes in the Work. A Notice to Proceed cannot change the Contract amount or the date to achieve Substantial Completion. A Notice to Proceed can change only the General Requirements, the Drawings, or the Specifications.

**NYS** – New York State

**Other Contractor(s)** – The one or more natural persons, partnerships, limited liability companies, corporations, or other legal entities who have entered into a contract with the Owner to perform work (including services) at or near the Site, identified in the Contract Documents or in writing by the Owner, including, but not limited to, contractors, Construction Managers, Consultants, and Design Professionals. Other Contractors does not include the Contractor.

**Owner** - Dormitory Authority of the State of New York.

**Owner's Representative** - A natural person, partnership, limited liability company, corporation, or other legal entity so designated by the Owner to act on behalf of the Owner. See General Conditions Section 2.03 for limitations and further provisions on the Owner’s Representative.

**Physical Completion** – The stage in the performance of the Work when all Work to be performed at the Site, except any Work that may be required in the future by any warranty or guarantee in the Contract Documents, is complete in accordance with the Contract Documents, evidenced by the Notice of Physical Completion executed by the Owner. Physical Completion precedes or may be concurrent with Completion and Acceptance. Physical Completion requires that all punchlist work be completed by the Contractor such that the Contractor no longer is required to perform Work at the site. All insurances must remain in effect

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until the Contractor achieves Physical Completion and the Contractor is required to submit certified payrolls through the date of Notice of Physical Completion.

**Project** - The work at or near the Site(s) carried out pursuant to the Contract and one or more other contracts.

**Project Management Program** – The software program used by the Owner to manage, monitor, and oversee performance of the Contract.

**Provide** - To Furnish and Install the Work complete in place and ready for its intended use.

**Resume Work Order or Directive** – Written notice, signed by the Owner, to the Contractor, to recommence or continue Work of the Contract Documents.

**Schedule of Values** – a form provided by the Owner, completed by the Contractor, and submitted to the Owner for review and written approval; the completed, approved form establishes a minimum level of allocation of the Contract amount among the items of Work to formulate the Contractor's billing requests.

**Site** - The area(s) within the Contract limit, as indicated by the Contract Documents.

**Stop or Suspend Work Order or Directive**- Written notice, signed by the Owner, to the Contractor, to cease or hold Work of the Contract Documents.

**Subcontract** - An agreement between the Contractor and Subcontractor for Work on the Site.

**Subcontractor** - A natural person, partnership, limited liability company, corporation, or other legal entity under contract with the Contractor, or under contract with any Subcontractor, to perform any portion of the Work, or to provide any labor, material, equipment, or service at the Site.

**Substantial Completion** – The stage in the performance of the Work when all Work is sufficiently complete in accordance with the Contract Documents so the Owner or Client can occupy or utilize the Work for its intended use, evidenced only by the Notice of Substantial Completion executed by the Owner. Issuance of a temporary certificate of occupancy or a temporary approval for occupancy does not establish Substantial Completion. Work at the site (Physical Completion), and Work required by the Contract (Completion and Acceptance) may still be required.

**Unit Price** – The price for one measured unit (i.e. cu. ft., sq. foot etc.) of completed Work activity. Each Unit Price includes all labor, material, equipment, overhead, and profit attributable to that scope of Work. Unit Prices shall be based upon estimated quantities specified in the Unit Prices section of the General Requirements and as listed on the Form of Bid and will be paid based upon actual quantities of Work performed as verified by the Owner.

**Unmanned Aircraft System (UAS or DRONES)**- An aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) operated without the possibility of direct human intervention from within or on the aircraft.

**Work** - All obligations explicitly and implicitly imposed upon the Contractor by the Contract Documents.



**ARTICLE 2 -- CONTRACT DOCUMENTS**

**Section 2.01 - Captions**

The table of contents, titles, captions, headings, running headlines, and marginal notes contained herein and in the Contract Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect the interpretation of the provisions to which they refer.

**Section 2.02 – Electronic Data Transfer**

- A. Electronic data includes, but is not limited to, all digital versions of any Contract Document, all digital files produced by mechanical, facsimile, electronic, magnetic, digital or other programs, programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including but not limited to, word processing documents, spreadsheets, database files, charts, graphs, drawings, specifications, outlines, electronic mail, personal digital assistant messages, instant messenger messages, PDF files, PRF files, batch files, ASCII files, DWG files and any other type of files now or hereafter allowed by Owner.
- B. The Owner reserves the right to implement an electronic payment program for payments due the Contractor. Prior to implementation, the Owner, in writing, shall notify the Contractor one hundred twenty (120) calendar days prior to the effective date of the electronic payment program. Commencing on or after the electronic payment effective date, all payments, due the Contractor, shall only be rendered electronically, unless payment by paper check is authorized in writing by the Owner. Commencing on or after the electronic payment effective date, the Contractor, further acknowledges and agrees that the Owner may withhold payments, if the Contractor has not complied with the Owner's policies and procedures relating to the electronic payment program in effect at such time, unless payment by paper check is authorized in writing by the Owner.
- C. Electronic data produced in connection with the Contract is proprietary information of the Owner and to be treated as confidential and not to be disclosed to or shared with others outside the limits of the Contract without the express written consent of the Owner. The Owner makes no warranty, express or implied, as to the accuracy of the information transferred.
- D. The Contractor shall pay, on behalf of the Owner, any loss which the Owner becomes legally liable to pay as a result of a claim by any person or entity against the Contractor or Owner, which results directly from an act, error, or omission of the Contractor in the provision of electronic data in respect to the Contract.

**Section 2.03 - Owner**

- A. The Contract constitutes the entire agreement and understanding between the Contractor and the Owner with respect to the Project and supersedes all prior agreements, arrangements and understandings, and all trade custom and trade usage, and the construction of any provision of the Contract shall not be affected by the wording of any other agreement, whether between the Contractor and the Owner or involving other parties. The Contract may not be amended, modified, supplemented, or changed in any way except in accordance with General Conditions Article 7 – Changes in the Work or a Contract Amendment. The legal relationship between the Owner and the Contractor shall be governed solely by the Contract and no rights shall arise on any other basis, including but not limited to, oral agreement, partial performance, estoppel, conduct of the parties, course of conduct or any other course of dealing

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involving the Project or any other project. The meaning and intent of the Contract Documents shall be interpreted solely by the Owner.

- B. The Owner shall give all orders and directions contemplated under the Contract relative to the execution of the Work. The Owner shall determine the amount, quality, and acceptability of the Work and shall decide all questions which may arise in relation to said Work. The Owner's estimates and decisions shall be final except as otherwise expressly provided herein.
- C. The Owner may, at its sole and exclusive discretion, waive certain provisions of the Contract Documents. Such waiver shall only be done by written instrument signed by a duly authorized officer of the Owner, and any such waiver shall apply solely in accordance with its terms and shall not act as a waiver of any provision of the Contract Documents, or estoppel against the enforcement thereof, in connection with any subsequent or separate event involving the Project or other projects.
- D. Any differences or conflicts concerning performance which may arise between the Contractor and Other Contractors performing work for the Owner shall be analyzed and resolved by the Owner as warranted by the circumstances. The Owner's exercise of discretion in this regard shall be sole and exclusive and its decision concerning such differences and conflicts shall be final and binding.
- E. The Owner may act through an Owner's Representative designated as such in writing by the Owner. Unless otherwise designated by the Owner, the Owner's Representative is the Owner's employee assigned to the Project as the project manager. Unless otherwise stated in writing by the Owner, the Owner's Representative is not an authorized officer of the Owner, does not have authority to approve a Labor Rate Worksheet on behalf of the Owner, does not have authority to waive the requirement for a narrative and fragnet schedule of General Conditions Section 7.01 C. 4, does not have authority to waive any provision of the Contract Documents and does not act for the Owner for General Conditions Article 15 – Insurance and Bonds. Unless otherwise stated in writing by the Owner and notwithstanding the other provisions of this paragraph, the Owner's Representative does have authority to issue a direction to attend a meeting in accordance with General Conditions Section 4.04, a Notice to Proceed in accordance with General Conditions Section 7.01 and a Disputed Work Directive in accordance with General Conditions Section 10.01. The Owner may change the Owner's Representative and the scope of her, his or its duties by written notice to the Contractor in accordance with General Conditions Section 2.04. The Owner's Representative's signature by itself on a Change Order is not execution of a Change Order by the Owner. See General Conditions Section 7.01 A. 5 for the requirements for execution of a Change Order by Owner.

### **Section 2.04 - Notice and Service Thereof**

- A. Any notice to the Contractor from the Owner relative to any part of the Contract shall be in writing and service considered complete when said notice is sent or delivered in person to the Contractor or its authorized representative, at the street address, postal address or email address given by the Contractor in the Form of Bid. The Contractor may change any of these addresses by written notice to the Owner's Procurement Unit, 515 Broadway, Albany, New York 12207 - 2964; such change shall not be effective until Contractor receives from the Owner's Procurement Unit a written acknowledgement that the change has been received.
- B. Any notice from the Contractor to the Owner required by any part of the Contract shall be in writing and shall be sent or delivered to the Owner's Representative at the street address, postal address or email address for the Owner's Representative given in the Notice to Bidders. The Owner may change the Owner's Representative or any of these addresses by written notice to the Contractor. If any part of the Contract shall require the Contractor to provide notice to any other employee or unit of the

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Owner, the notice to such employee or unit is in addition to, and does not replace, the notice to the Owner's Representative. Notice to the Owner may be delivered by certified mail, overnight delivery by a nationally recognized courier or, if an email address is provided, email. The Owner's Representative will endeavor to provide a written acknowledgment of receipt of the notice but any failure to provide such written acknowledgment shall not be a breach of the Contract, shall not in any way alter the Contractor's obligation to provide timely notice and shall not in any way alter any of the other obligations of the Contractor under the Contract.

- C. For all notices from the Contractor to the Owner required by any part of the Contract, the Contractor shall have the burden of proving the Owner's receipt of the notice.

### **Section 2.05 - Nomenclature**

Materials, equipment, or other Work not defined or specified in the Contract but described in words that have a generally accepted technical or trade meaning shall be interpreted as having said meaning in connection with the Contract.

### **Section 2.06 - Invalid Provisions**

If any term or provision of the Contract Documents or the application thereof to any natural person, partnership, limited liability company, corporation or other legal entity or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Contract Documents, or the application of such terms or provisions to natural persons, partnerships, limited liability companies, corporations or other legal entities or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract Documents shall be valid and be enforced to the fullest extent permitted by law. It is the intent of the Owner and the Contractor that all provisions of the Contract shall be construed to be valid under applicable law and shall be enforced to the maximum extent possible.

### **Section 2.07 – Interpretation of Contract Documents**

- A. Should any provision in the Contract Documents be in conflict or inconsistent with the General Conditions or supplements thereto, the General Conditions or supplements thereto shall govern.
- B. Figured dimensions shall take precedence over scaled dimensions. Larger scale Drawings shall take precedence over smaller scale Drawings. Latest Addenda shall take precedence over previous Addenda and earlier dated Drawings and Specifications.
- C. Should a conflict occur in or between or among any parts of the Contract Documents that are entitled to equal preference, the better quality or greater quantity of material or more onerous provision in the Owner's judgment shall govern, regardless of cost, unless the Owner directs otherwise in writing. In each conflict, the Owner, in its sole and exclusive discretion, shall determine whether the quality, quantity or onerous provision method will be used to resolve the conflict.
- D. Drawings and Specifications are complementary. Anything shown on the Drawings and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Drawings, shall have the same effect as if shown or mentioned in both.
- E. The term "materials" includes "supplies".

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- F. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa.

### **Section 2.08 - Copies of Contract Documents**

The Owner may furnish to the Contractor up to three (3) paper copies and one electronic (PDF) copy of the Contract Documents without charge. Additional sets may be furnished at the costs of reproduction and mailing.

## **ARTICLE 3 -- SITE CONDITIONS**

### **Section 3.01 - Subsurface or Site Conditions Found Different**

- A. The Contractor acknowledges that the Contract amount set forth in its bid includes such provisions which the Contractor deems sufficient for all subsurface or site conditions the Contractor could reasonably anticipate encountering as indicated in the Contract Documents, or borings, reports, rock cores, foundation investigation reports, topographical maps, or other information available to the Contractor or from the Contractor's inspection and examination of the Site prior to submission of bids.
- B. The Owner assumes no responsibility for the correctness of any boring or other subsurface information and makes no representation whatsoever regarding subsurface conditions and test borings, reports, rock cores, foundation investigation and topographical maps which may be made available to the Contractor.
- C. Should the Contractor encounter subsurface or site conditions at the Site materially differing from those shown on or described in or indicated in the Contract Documents, the Contractor shall immediately give written notice to the Owner of such conditions and shall not disturb said conditions until authorized to do so by the Owner in writing.
- D. Subsurface or site conditions found materially differing from those that could have been reasonably anticipated may be cause for change to the Contract amount and time of completion. This determination will be made at the sole and exclusive discretion of the Owner.

### **Section 3.02 - Verifying Dimensions and Conditions**

- A. The Contractor shall take all measurements at the Site and shall verify all dimensions and conditions at the Site before proceeding with the Work. If said dimensions or conditions are found to conflict with the Contract Documents, the Contractor immediately shall refer said conflict to the Owner in writing. The Contractor shall comply with any revised Contract Documents.
- B. During the performance of the Work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions.
- C. The Contractor shall review all Contract Documents to determine exact location of all Work and verify spatial relationships of all the Work. Any question concerning said location or spatial relationships shall be submitted in a manner approved by the Owner.
- D. Special locations for equipment, pipelines, ductwork, and other such items of the Work, where not dimensioned on plans, shall be coordinated with affected Other Contractors.

E. The Contractor shall be responsible for the proper fitting of the Work in place.

**Section 3.03 - Surveys**

Unless otherwise expressly provided in the Contract Documents, the Owner shall furnish the Contractor all surveys of the property necessary for the Work, but the Contractor shall lay out the Work.

**ARTICLE 4 -- CONTRACTOR**

**Section 4.01 - Representations of Contractor**

The Contractor represents and warrants:

- A. That it is financially solvent and is experienced in and competent to perform the Work, and has the staff, workers, equipment, subcontractors, and suppliers to complete the Work within the time specified for the Contract amount.
- B. That it is familiar with all federal, state, and local laws, codes, ordinances, orders, rules, and regulations which may affect the Work, the Contractor, or the Project.
- C. That all temporary and permanent Work required by the Contract Documents can be satisfactorily constructed, and that said construction will not injure any person or damage any property.
- D. That it has carefully examined the Contract Documents and the Site, and from the Contractor's own investigations is satisfied as to the nature and materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or items which may affect the Work.
- E. That it is satisfied that the Work can be performed and completed as required in the Contract Documents, and warrants that it has not been influenced by any oral statement or promise of the Owner or the Design Professional.
- F. That to the best of Contractor's knowledge, there are no pending or threatened suits, proceedings, judgments, rulings, or orders by or before any court or any governmental agency or arbitrator that could reasonably be expected to affect materially and adversely:
  - 1. the financial condition or operations of the Contractor;
  - 2. the ability of the Contractor to perform its obligations hereunder; or
  - 3. the legality, validity, or enforceability of this Contract.
- G. That Contractor is a duly organized and validly existing entity of the type described in the recital clauses of the Agreement and is in good standing under the laws of the jurisdiction of its formation; it has the legal right, power, and authority and is qualified to conduct its business and to execute and deliver this Contract and perform its obligations under this Contract; and all regulatory authorizations have been obtained and will be maintained, as necessary, for it to perform legally its obligations under this Contract.
- H. That executing and performing this Contract are within Contractor's powers; that executing and performing this Contract has been duly authorized by all necessary action on the Contractor's part; and

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that such actions do not and will not violate any provision of law or any rule, regulation, order, writ, judgment, decree, or other determination presently in effect applicable to Contractor or its governing documents.

- I. That this Contract constitutes the Contractor's legal, valid, and binding obligation, enforceable against it in accordance with this Contract's terms, subject to applicable bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally, and general equitable principles, to the discretion of the court before which proceedings to obtain the same may be pending.
- J. That Contractor is in good standing with any union with craft labor on the Site for part or all the Work of this Contract or the work of the Project.
- K. That Contractor is experienced in the methods of design, engineering, installation, management, and construction contemplated for the Work of this Contract and for contracts of this nature, scope magnitude and quality and that the Contractor understands the complexity involved in this type of Contract and the necessity to coordinate its Work with appropriate governmental agencies, the Owner, and the Other Contractors.
- L. That Contractor is fully informed as to all existing conditions and limitations, including local workforce/labor working arrangements and the continuous, regular, and uninterrupted operations of the Facility.
- M. That Contractor has had the opportunity to consult with or has consulted with legal counsel of its choice before entering into this Contract.
- N. That any breach of any of the representations and warranties of this General Conditions Section 4.01, any failure of the Contractor to familiarize itself with the Contract Documents, the Facility, the Site or the Project or any lack of knowledge on the part of the Contractor of any existing or foreseeable condition or conditions at the Site reasonably inferred from the Contract Documents which create difficulties or hindrances in the execution of the Work shall constitute a conclusive and binding determination by the Contractor that resolving any adverse impact of such breach, failure or lack of knowledge does not constitute Extra Work and a waiver by the Contractor of all Claims for additional compensation or damages or time to achieve Substantial Completion as a result of the breach, failure or lack of knowledge.

### **Section 4.02 - Errors or Discrepancies**

The Contractor shall examine the Contract Documents thoroughly before commencing the Work and report any errors or discrepancies to the Owner, in writing, within fifteen (15) calendar days of discovery. The Owner shall not be responsible for costs, damages or delays due to the Contractor's failure to comply with the requirements of this General Conditions Section 4.02.

### **Section 4.03 - Coordinated Composite Drawings**

- A. The Contractor shall prepare coordinated composite drawings clearly showing how the Work of the Contractor is to be performed in relation to the work of Other Contractors, prepare scaled drawings and sections in the same digital software program, version, and operating system as the original Contract Drawings or in an operating system approved by the Owner.
- B. If, and only if, required by the Information for Bidders for the Contract, the Contractor shall run a conflicts and coordination check utilizing the Project Drawings within a three-dimensional software

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program of the Contractor's choice to limit the number of physical conflicts that may occur during construction. Failure to run such a conflicts and coordination check or to resolve conflicts and coordination issues identified as a result of such a check prior to the initiation of the Work on Site shall constitute a:

1. conclusive and binding determination by the Contractor that resolution of the conflicts does not involve Extra Work; and
2. waiver by the Contractor of all Claims for additional compensation, damages, or time to achieve Substantial Completion as a result of the existence of physical conflicts.

### **Section 4.04 - Meetings**

The Contractor shall attend all meetings required by the Contract Documents and all meetings when directed to attend by the Owner. The Contractor shall be represented at all meetings by the on-Site superintendent described in General Conditions Section 4.05 A who shall attend the meetings in person unless the Owner in writing prior to the meeting directs otherwise. If the Owner directs, the Contractor shall be represented either by the project management personnel of General Conditions 4.05 B or by an authorized officer of Contractor; in each case, the project management personnel or the authorized officer shall attend the meetings in person. The Owner, in its sole and exclusive discretion, shall determine the time, date, location, and purpose of the meeting. The purpose of a meeting includes, but is not limited to, Project progress, submittal status, Change Orders, site logistics, coordination, inspections, testing, safety reviews, or anything which the Owner determines is useful for administration or performance of the Contract or the Project.

### **Section 4.05 - Supervision by Contractor**

- A. The Contractor shall provide full-time competent supervision for the duration of the Contract. During the course of on-Site Work, the Contractor shall provide a full-time on-Site superintendent who shall have full authority to act for the Contractor at all times. The superintendent shall read, write, and speak English fluently, as well as communicate with the Contractor's workers and the workers of all Subcontractors.
- B. The Contractor shall also provide competent project management personnel in addition and superior to the full-time on-Site superintendent who shall also have full authority to act for the Contractor at all times except such project management personnel cannot modify or rescind any action of the full-time on-Site superintendent directed to the Owner without the Owner's written consent.
- C. If at any time the supervisory staff is not satisfactory to the Owner, the Contractor shall, if directed in writing by the Owner, immediately replace such supervisory staff with other staff satisfactory to the Owner at no additional cost to the Owner.
- D. The Contractor shall remove from the Work any employee of the Contractor or of any Subcontractor when so directed in writing by the Owner.

### **Section 4.06 – Project Scheduling**

- A. The Contractor shall provide a project scheduler, experienced in critical path method (CPM) scheduling. The scheduler's experience and credentials shall be submitted in writing to the Owner for review and acceptance prior to proceeding with scheduling of the Work. The Owner may withdraw its acceptance of the project scheduler at any time thereafter for failure to perform in accordance with the Contract. The Contractor shall provide a replacement scheduler and submit the replacement's

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experience and credentials in writing to the Owner for review and acceptance as soon as possible. The replacement scheduler shall be at no additional cost to the Owner.

- B. Using the software required by the Owner, the Contractor shall prepare, maintain, and revise the Project CPM schedule to plan and monitor the progress of all Project operations, in accordance with the Contract Documents. See the General Requirements for further details.
- C. Construction activities shall be interrelated on a single Project CPM schedule that represents the entire Project, including the entire Contract duration from Notice to Proceed to Substantial Completion and through Contract Completion and Acceptance. The Contractor shall utilize the critical path method of network calculation to generate the Project CPM schedule and shall utilize the time-scaled precedence diagram method to show the Project CPM Schedule. The Project CPM Schedule shall utilize calendar days for the time scale. The Contractor shall ensure all logic constraints are identified between the Work of the Contract, the work of Other Contractors and Owner's work prior to approval of the Project CPM schedule. See the General Requirements for further details.
- D. The Owner may reject any proposed Project CPM schedule, any proposed updated Project CPM schedule or any proposed recovery Project CPM schedule if the Owner, in its sole and exclusive discretion, finds the proposed Project CPM schedule, proposed updated Project CPM schedule or proposed recovery Project CPM schedule defective for any reason, including but not limited to:
  - 1. Defective logic;
  - 2. Excessive use of constraints;
  - 3. Activity durations that are inconsistent with actual or available workforce;
  - 4. The appearance of an effort to manipulate the schedule so that responsibility for an adverse impact is associated with a natural person or entity other than the natural person or entity responsible for the adverse impact; or
  - 5. Lacking executive summary and/or narrative.
- E. If a proposed Project CPM schedule, proposed updated Project CPM schedule or proposed recovery Project CPM schedule is rejected by the Owner, the Owner will notify the Contractor in writing of the rejection and the reason or reasons for the rejection. Contractor shall submit a new proposed Project CPM schedule, proposed updated Project CPM schedule or proposed recovery Project CPM schedule with the defect or defects corrected at no cost to the Owner within two weeks of the Owner's written rejection.
- F. Review comments made by the Owner on the proposed Project CPM schedule, any proposed updated Project CPM schedule or any proposed recovery Project CPM schedule shall not relieve the Contractor from compliance with requirements of the Contract Documents. The Contractor shall be responsible for scheduling, sequencing, and performing the Work to comply with the requirements of the Contract Documents.
- G. The Contractor expressly understands and agrees that no additional compensation shall be paid for any alterations to Contractor's planned construction sequence to accommodate the Project CPM schedule requirements, any updated Project CPM schedule or any recovery Project CPM schedule pursuant to



the Contract. Failure to include any element of work required for the performance of the Work shall not excuse the Contractor from completing all the Work required within the applicable completion date of each phase in the Contract Documents regardless of the Owner's approval of the Project CPM schedule, any updated Project CPM schedule or any recovery Project CPM schedule.

- H. The Owner may withhold payments, in whole or in part, if the Contractor fails to provide an acceptable project scheduler, replacement project scheduler, Project CPM schedule, updated Project CPM schedule, recovery Project CPM schedule or other schedule information or reports in accordance with requirements of the Contract.

**Section 4.07 - Worker Identification and Site Access Control**

- A. All employees of the Contractor and every Subcontractor shall comply with all site access control, safety and security procedures prescribed by the Owner which may include, but are not limited to, the wearing of Owner issued identification badges, ingress and egress through controlled entry and exit points, and use of card readers or other electronic identity verification devices. Contractor cannot authorize any one to enter the Site, except Contractor's and Subcontractor's employees and persons delivering materials or equipment to Contractor or a Subcontractor, without the prior written consent of the Owner.
- B. All employees of the Contractor and every Subcontractor, prior to entering the Site for the first time, shall obtain an identification badge if issued by the Owner and produce to the Owner a valid form of government-issued photo identification and furnish other background information, including but not limited to the following:

- Full Name
- Last four (4) digits of Social Security Number
- Home Address (#/Street/Apt./City/Zip)
- Contractor/Subcontractor Name
- Job Classification
- Union Local Affiliation, if any

The Owner recognizes that certain information requested above constitutes personal information and will take all reasonable steps to ensure the security and confidentiality of this information as required by law.

- C. All employees of the Contractor and every Subcontractor shall visibly display on their person, while entering and on the Site, an identification badge if issued by the Owner. In the event said identification badge has not been issued by the Owner, all employees of the Contractor and every Subcontractor shall produce a valid form of government-issued photo identification promptly upon request of the Owner. Failure to display such identification or to produce such identification in the manner as prescribed by the Owner may result in the employee's non-admittance to or immediate removal from the Site. The Owner will send written confirmation to the Contractor confirming the action taken, if requested by the Contractor.

**Section 4.08 - Related Work**

- A. The Contractor should examine the Contract Documents for Work of its Contract and any related work of other contracts, to ascertain the relationship of its Work to any related work of other contracts.

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- B. The Owner may contract with a Design Professional, Construction Manager, or other Consultants to provide services to the Owner. The services enumerated in consultant contracts are for the benefit of the Owner who may choose to utilize any or all of said services. The Contractor has no privity of contract with the Design Professional, Construction Manager, or any other Consultant which contracts with the Owner and should not assume that all of the services enumerated in said contracts will be provided.
- C. The Contractor shall adhere to all of the requirements specified or communicated by the Design Professional in performing delegated design work required by the Contract Documents.

### **Section 4.09 – Coordination with Separate Contracts**

- A. The Owner may award other contracts for work which may proceed simultaneously with the execution of the Work. The Contractor shall coordinate the Contractor's operations with those of Other Contractors as directed by the Owner. Cooperation shall be required in the arrangements for access, the storage of material, and in the detailed execution of the Work.
- B. The Contractor shall take those steps reasonably necessary to keep itself informed of the progress and workmanship of Other Contractors and any subcontractors of Other Contractors and shall notify the Owner in writing immediately of lack of progress or defective workmanship on the part of Other Contractors or any subcontractors of Other Contractors, where said delay or defective workmanship may interfere with the Contractor's operations.
- C. Failure of a Contractor to keep so informed and failure to give written notice of lack of progress or defective workmanship by Other Contractors or any subcontractors of Other Contractors shall be construed as acceptance by the Contractor of said progress and workmanship as being satisfactory for proper coordination with the Work.
- D. Where the Contractor shall perform Work in close proximity to work of Other Contractors or any subcontractors of Other Contractors, or where there is evidence that Work of the Contractor may interfere with work of Other Contractors or any subcontractors of Other Contractors, the Contractor shall assist in arranging space conditions to make satisfactory adjustment for the performance of the Work. If the Contractor performs Work in a manner that causes interference with the work of Other Contractors or any subcontractors of Other Contractors, the Contractor shall make changes necessary to correct the condition at no additional cost to the Owner.
- E. The Contractor shall render any assistance which the Owner may require with respect to any claim or action in any way relating to the Work including, without limitation, review of claims, preparation of technical reports and participation in negotiations, without any additional compensation therefor.

### **Section 4.10 - Cooperation with Other Contractors**

- A. During the performance of the Work, Other Contractors may be engaged in performing work. The Contractor shall coordinate the Contractor's Work with the work of said Other Contractors in such a manner as the Owner may direct.
- B. If the Owner determines that the Contractor is failing to coordinate the Work with the work of Other Contractors as the Owner has directed:
  - 1. The Owner shall have the right to withhold any payments due under the Contract until the Contractor complies with the Owner's direction; and

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2. The Contractor shall assume the defense and pay on behalf of the Owner any and all claims or judgments or damages and any costs to which the Owner may be subjected or which the Owner may suffer or incur by reason of the Contractor's failure to promptly comply with the Owner's directions, including, but not limited to attorney's fees, expert fees, and costs. Notwithstanding the foregoing, the Owner retains the right to select its own counsel for such defense, the cost of which is to be paid by the Contractor.
- C. If the Contractor notifies the Owner, in writing, that an Other Contractor on the Site is failing to coordinate its work with the Work, the Owner shall investigate the charge. If the Owner finds it to be true, the Owner shall promptly issue such directions to the Other Contractor with respect thereto as the situation may require. The Owner shall not be liable for any damages suffered by the Contractor by reason of the Other Contractor's failure to promptly comply with the directions so issued by the Owner, or by reason of an Other Contractor's default in performance.
- D. Should the Contractor sustain any damage through any act or omission of any Other Contractor having a contract with the Owner or through any act or omission of any subcontractor of said Other Contractor, the Contractor shall have no Claim against the Owner for said damage.
- E. Should any Other Contractor having or which shall have a contract with the Owner sustain damage through any act or omission of the Contractor or through any act or omission of a Subcontractor, the Contractor shall reimburse said Other Contractor for all said damages and shall indemnify and hold the Owner harmless from all such claims by said Other Contractor, including, but not limited to attorney's fees, expert fees, and costs. Notwithstanding the foregoing, the Owner retains the right to select its own counsel for such defense, the cost of which is to be paid by the Contractor. The Owner's right to indemnification hereunder shall in no way be diminished, waived, or discharged, by its recourse to assessment of liquidated damages as provided in the Contract Documents, or by the exercise of any other remedy provided by the Contract or law.
- F. The Owner cannot guarantee the responsibility, efficiency, unimpeded operations, or performance of any contractor. The Contractor acknowledges these conditions and shall bear the risk of all delays including, but not limited to, delays caused by the presence or operations of Other Contractors and subcontractors of Other Contractors and delays attendant upon any Project CPM schedule approved by the Owner and the Owner shall not incur any liability by reason of any delay.

### **ARTICLE 5 -- MATERIALS AND LABOR**

#### **Section 5.01 - Contractor's Obligations**

- A. The Contractor shall, comply with all the terms of the Contract Documents and complete all the Work in a good worker like manner, within the time specified in the Contract and to the satisfaction of the Owner.
- B. The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, permits, insurance, temporary structures and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether incorporated or to be incorporated in the Work or not incorporated in the Work.

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- C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- D. Any labor, materials or means whose employment, or utilization during the course of the Contract may tend to or in any way cause or result in strike, work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor, its Subcontractors or material suppliers, or by any of the trades working in or about the Site, or by Other Contractors, their subcontractors or material suppliers pursuant to other contracts shall not be allowed. Any violation by the Contractor of this requirement may in the sole judgment of the Owner be considered a default by the Contractor under the Contract and a basis for the Owner to take action against the Contractor as set forth in General Conditions Article 11 – Termination or Suspension or such other action as the Owner may deem proper.
- E. The Contractor and each Subcontractor shall comply with all applicable local, state, and federal laws, rules and regulations and all applicable construction standards issued by the Joint Commission and other accrediting agencies and organizations.
- F. The Contractor and each Subcontractor shall comply with all applicable Hazardous Material Laws. The Contractor shall provide the Owner the Safety Data Sheets for any Hazardous Materials or hazardous substances brought on the Site by the Contractor or a Subcontractor at least fifteen (15) calendar days prior to the delivery of such materials to the Site. Contractor shall identify to Owner at least fifteen (15) calendar days in advance the quantities of all "Chemicals of Interest" listed under the Chemical Facility Anti-Terrorism Standards of the Homeland Security Appropriations Act of 2007 that will be brought onto the Site.
- G. Contractor shall provide the necessary information and training to its employees on each Hazardous Material and hazardous substance to which they may be exposed on the Site and shall cause each of its Subcontractors to provide the necessary information and training to the Subcontractor's employees on each Hazardous Material and hazardous substance to which they may be exposed on the Site. Upon request of the Owner, Contractor shall provide the Owner with proof, satisfactory to the Owner, that Contractor's employees and all Subcontractors' employees have received the necessary information and training.
- H. Contractor shall not transport, store or use, and shall prohibit Subcontractors from transporting, storing or using, any construction materials or equipment (whether or not totally enclosed) containing Hazardous Materials including, but not limited to, asbestos, polychlorinated biphenyls, benzene, lead or urea formaldehyde in connection with this Contract; provided, however, Contractor and Subcontractors may transport, store and use the following substances: lead, natural gas, gasoline, diesel fuel, fuel oil(s), gravel(s), lube oil(s), grease(s), sealant(s), combustible gases, form oil(s), solvent(s), adhesives, paints, coatings, and all other materials that are used or consumed in or during construction or testing of the Work and its constituent systems and components in quantities reasonably necessary to perform the Work, if transported, stored and used in accordance with applicable laws including, but not limited to, those laws related to the implementation and utilization of spill containment, transport systems and storage vessels and facilities.
- I. Any Hazardous Materials and hazardous substances brought to or stored on or at the Site shall require specific, prior written authorization from Owner and, as a condition to such authorization, Contractor shall provide Owner with the Material Safety Data Sheet covering any Hazardous Material or hazardous substance furnished under or otherwise associated with the Work (including the construction equipment). Contractor shall maintain on the Site, at all times, complete records, and inventories, including Safety Data Sheets, of Hazardous Materials and hazardous substances described in this

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General Conditions Section 5.01 that are being used by it or its Subcontractors, or any persons for whose actions on the Site Contractor is responsible.

### **Section 5.02 - Means and Methods of Construction**

- A. Unless otherwise provided in the Contract Documents, the Contractor shall choose the Means and Methods of Construction subject to the Owner's right to reject, at any time, the Means and Methods of Construction proposed by the Contractor, which in the opinion of the Owner:
1. Will constitute or create a hazard to the Work or to persons or property;
  2. Will not produce finished Work in accordance with the terms of the Contract;
  3. Will be detrimental to the overall progress of the Project; or
  4. Will have an adverse impact on the operations of the Client.
- B. The Owner's failure to exercise its right to reject the Contractor's Means and Methods of Construction shall not relieve the Contractor of its obligation to complete the Work; the Owner's exercise of its right to reject the Contractor's Means and Methods of Construction shall not create a Contractor's or Subcontractor's cause of action for damages against the Owner.

### **Section 5.03 - Contractor's Title to Materials**

- A. No materials for the Work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by any other party. The Contractor warrants that the Contractor has full, good, and clear title to all materials used by the Contractor in the Work, or resold to the Owner pursuant to the Contract Documents free from all liens, claims or encumbrances.
- B. For all materials and equipment to be stored at a location other than the Site prior to execution of an agreement with the Owner for materials stored off-site pursuant to General Conditions Section 8.01 G, the Contractor shall provide the Owner with written notice of the location, security, environmental protections and the materials or equipment to be stored at that location at least fifteen (15) calendar days before such storage begins. Such notice does not obligate the Owner to pay for such stored material or equipment. Payment for stored material or equipment can be made only when the requirements for such payment in General Conditions Article 8 - Payment and elsewhere in the Contract have been met.
- C. All materials, equipment and articles which become the property of the Owner shall be new unless specifically stated otherwise.

### **Section 5.04 - Comparable Products ("Or Equal" Clause)**

- A. Whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalogue number, or make, said identification is intended to establish a standard. Any material, article or equipment of other manufacturers and vendors which performs satisfactorily the duties imposed by the design intent may be considered equally acceptable provided that, in the opinion of the Design Professional, the material, article, or equipment so proposed is of equal quality, substance and function and the Contractor shall not Provide, Furnish or Install any said proposed material, article, or equipment without the prior

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written approval of the Design Professional. The burden of proof and all costs related thereto concerning the "or equal" nature of the substitute item, whether approved or disapproved, shall be borne by the Contractor.

- B. Where the Design Professional, pursuant to the provisions of this General Conditions Section 5.04, approves in writing a product proposed by the Contractor and said proposed product requires a revision of the Work covered by this Contract, or the work covered by other contracts, all changes in the work of all contracts, revision or redesign, and all new Drawings and details required therefore shall be provided by the Contractor at its cost and shall be subject to the approval of the Design Professional.
- C. No substitution which may result in a delay to the Project will be permitted without the prior written approval of the Owner.

### **Section 5.05 - Quality, Quantity and Labeling**

- A. The Contractor shall Furnish materials and equipment of the quality and quantity specified in the Contract. Any excess materials purchased per the Contract are the property of the Owner.
- B. When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet said standards. Contractor's quality control plan required by paragraph D of this General Conditions Section 5.05 shall include measures undertaken by the Contractor to prevent the use of materials with counterfeit labels or other counterfeit indications of meeting a standard.
- C. The above requirements shall not restrict or affect the Owner's right to test materials as provided in the Contract.
- D. The Contractor shall develop and implement quality control plans to assure itself and the Owner that all Work performed by the Contractor and its Subcontractors complies fully with all Contract requirements. The Contractor shall submit the plans to the Owner upon request as required by the Contract. See the Submittals Section of the General Requirements for further details. The Contractor's quality control plans shall be independent of any testing or inspection performed by or on behalf of the Owner.

### **Section 5.06 - Tax Exemption**

- A. The Owner is exempt from payment of federal, state, and local taxes; sales and compensating use taxes of the State of New York and of cities and counties on all materials and supplies incorporated into the completed Work. These taxes are not to be included in bids. This exception does not apply to tools, machinery, equipment or other property leased by or to the Contractor or a Subcontractor, or to supplies and materials which, even though they are consumed, are not incorporated in to the completed Work, and the Contractor and Subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on said leased tools, machinery, equipment or other property and upon all said unincorporated supplies and materials.
- B. The Contractor and Subcontractors shall obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use said certificates or other documentation as required by law, rule, or regulation.

**ARTICLE 6 -- SUBCONTRACTS**

**Section 6.01 - Subcontracting**

- A. The Contractor may utilize the services of Subcontractors, subject to the limits prescribed in the Information for Bidders Section 7.0 – Approval of Subcontractors/Subcontract Limits. Exceeding stated limits, without prior written approval by the Owner, may be cause for Contract termination.
- B. The Contractor shall submit to the Owner the name of each proposed Subcontractor as required by the Contract. The Owner reserves the right to disapprove any proposed Subcontractor and such disapproval shall not result in any additional cost to the Owner. If requested by the Owner, the Contractor shall provide copies of any and all Subcontracts and purchase order agreements related to the Work, which must be in written form. The Contractor shall require each Subcontractor to provide the Owner, upon the Owner's request, with a copy of each of the Subcontractor's subcontracts and purchase order agreements related to the Work.
- C. The Contractor's use of Subcontractors shall not diminish the Contractor's obligation to complete the Work. The Contractor shall control and coordinate the Work of Subcontractors and be fully responsible for the acts and omissions of Subcontractors, and of persons either directly or indirectly employed by Subcontractors. The Contractor shall be responsible for all guarantees and warranties provided by Subcontractors.
- D. The Contractor shall be responsible for requiring each Subcontractor, to extent of the Work to be performed by such Subcontractor, to be bound to the Contractor by all the terms, conditions, and requirements of the Contract Documents, and to assume towards the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. The Contractor shall cause each Subcontractor to receive and review the provisions of the Contract Documents applicable to the Subcontractor, including but not limited to a copy of the Payment Bond for this Contract. Upon request of the Owner, the Contractor shall provide written proof satisfactory to the Owner that each Subcontractor has received and reviewed the provisions of the Contract Documents applicable to such Subcontractor, including but not limited to, a copy of the Payment Bond for this Contract.
- E. The Contractor shall ensure that each Subcontractor's duties to procure insurance for, and to defend, indemnify and hold harmless the Owner and Client, are, to the fullest extent permitted by law, at least the same as the Contractor's duties to procure insurance for, and to defend, indemnify and hold harmless the Owner and Client.
- F. To the fullest extent permitted by law and independent of any duty to indemnify and hold harmless, the Contractor shall require each Subcontractor, to the fullest extent permitted by law, to defend the Owner and Client against claims by third persons for wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Subcontractor's operations or presence at, or in the vicinity of, the Site.
- G. To the fullest extent permitted by law, the Contractor shall require each Subcontractor, to the fullest extent permitted by law, to indemnify and hold harmless the Owner and Client against claims by third persons for wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work, whether actually caused by or resulting from the performance of the

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Work, or out of or in connection with the Subcontractor's operations or presence at, or in the vicinity of, the Site.

- H. The Contractor shall require each Subcontractor, in addition to the Subcontractor's other obligations, to pay the costs of the Owner and Client, including but not limited to, attorneys' and consultants' fees, expenses and court costs, to commence and prosecute a court action against the Subcontractor to enforce one or more of the Subcontractor's obligations under General Conditions Section 6.01 E, F or G or against an insurance company to obtain coverage under an insurance policy which the Subcontractor represented would provide coverage to the Owner or Client.
- I. Nothing contained in the Contract or any subcontract shall create any contractual relationship between any Subcontractor and the Owner except the requirements in General Conditions Sections 15.03 and 15.04 for each Subcontractor to procure insurance policies on which the Owner or the Owner and Client are insureds, the obligations of each Subcontractor pursuant to General Conditions Section 6.01 E, F and G to defend, indemnify and hold harmless, to the fullest extent permitted by law, the Owner and Client against claims by third persons for wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever and the obligation of each Subcontractor pursuant to General Conditions Section 6.01 H

In selecting a Subcontractor, the Contractor shall consider whether the proposed Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The Contractor shall not subcontract with any entity on the List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract, published by the NYS Department of Labor Bureau of Public Work. The Contractor shall not subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law. The Contractor shall not subcontract with any entity on the list of Non-Responsible Entities maintained by the NYS Office of General Services pursuant to Executive Order No. 192.

In selecting a Subcontractor, the Contractor shall also consider whether the proposed Subcontractor has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform Work on the Project.

Prior to award of a Contract, the Contractor shall require any Subcontractor, with a subcontract value of two million dollars (\$2,000,000) or greater, to submit to the Owner a certified NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for review. At any time during the term of the Contract, the Owner may request, and the Contractor or Subcontractor shall provide, a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for any other Subcontractor performing Work on the Project for review. Additionally, the Owner or Contractor may require a Subcontractor to update, recertify and resubmit a previously submitted NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) to the Owner upon request. Refer to General Conditions Article 19 – Executive Order No. 125.

- J. Prior to or after award of the Contract, if requested by the Owner, the Contractor shall require a Subcontractor to submit a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) and a Dormitory Authority DASNY Vendor Questionnaire. If requested by the Owner, the Contractor shall require a Subcontractor to update a NYS Vendor Responsibility Questionnaire For Profit



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Construction (CCA-2) and a Dormitory Authority DASNY Vendor Questionnaire previously submitted to the Owner.

- K. The Contractor shall submit a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) and a Dormitory Authority DASNY Vendor Questionnaire to the Owner for each Subcontractor proposed for the Work with a subcontract value of two million dollars (\$2,000,000) or greater. Refer to General Conditions Article 19 – Executive Order No. 125.
- L. After execution of the Contract, the Owner will provide to the Contractor copies of the Owner’s Code of Business Ethics Certification form. The Contractor is required to have each Subcontractor, at all tiers, complete the form prior to the Subcontractor beginning work. The completed forms are to be filed by the Contractor with the Owner. A failure to comply with this requirement may result in the Subcontractor(s) being removed from the Project Site.
- M. Compliance with General Municipal Law:
  - 1. New York General Municipal Law § 101 (5) requires each bidder on a public work contract, where the preparation of separate specifications is not required by New York General Municipal Law §101 (1), to submit with its bid a separate sealed list that names each subcontractor that the bidder will use to perform work on the contract, and the agreed-upon amount to be paid to each, for: (a) plumbing and gas fitting, (b) steam heating, hot water heating, ventilating and air conditioning apparatus and (c) electric wiring and standard illuminating fixtures. After the low bid is announced, the sealed list of subcontractors submitted with such low bid is opened and the names of such subcontractors is announced, and thereafter any change of subcontractor or agreed-upon amount to be paid to each shall require the approval of Owner, upon a showing presented to the public owner of legitimate construction need for such change, which shall be open to public inspection. Legitimate construction need shall be determined by the Owner in Owner’s sole discretion. Any attempt by Contractor to use or manipulate this process to obtain lower bid amounts by subcontractors than those listed on the sealed bid may result in a finding of non-responsibility of the Contractor.
  - 2. On a project where the preparation of separate specifications is not required by New York General Municipal Law §101 (1), to the extent that Contractor seeks change of subcontractor or the agreed-upon amount to be paid to each for (a) plumbing and gas fitting, (b) steam heating, hot water heating, ventilating and air conditioning apparatus, or (c) electric wiring and standard illuminating fixtures, the Contractor acknowledges and agrees that it shall seek the approval of Owner as set forth in the General Municipal Law.

### **ARTICLE 7 -- CHANGES IN THE WORK**

#### **Section 7.01 - Changes**

- A. Without invalidating the Contract, the Owner, in writing, may order changes in the Work by altering, adding to, or deducting from the Work of the Contract.
  - 1. No change in the Work is effective unless the Owner executes and delivers a Change Order to the Contractor. No payment for a change in the Work is due the Contractor unless and until a Change Order is executed and delivered by the Owner to the Contractor and the Contractor has performed the change in the Work. No alteration to the standard language of the Owner’s Change Order

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form shall be accepted. If the Contractor requests an adjustment to the Substantial Completion date for a change in the Work and the Owner agrees, an increase or decrease to the duration, in calendar days, shall be included in the Change Order.

2. Notwithstanding subparagraph 1, the Owner, at its discretion, may execute and deliver to the Contractor a Notice to Proceed directing the Contractor to proceed immediately and diligently with the change in the Work described in the Notice to Proceed. The Owner, upon execution and delivery of the Notice to Proceed to the Contractor, is obligated to adjust the Contract for the change in the Work described in the Notice to Proceed; the extent of the adjustment(s) will be determined using the method of General Conditions Section 7.01 B specified in the Notice to Proceed, this General Conditions Article and negotiations with the Contractor; the adjustment(s) will be stated in the Change Order to be executed and delivered by the Owner to the Contractor. The Contractor, upon receipt of the Notice to Proceed, is obligated to proceed immediately and diligently with the change in the Work described in the Notice to Proceed while the adjustment(s) are determined. The Notice to Proceed shall be processed through the Project Management Program prior to execution and delivery by the Owner to the Contractor. No alteration to the standard language of the Owner's Notice to Proceed form shall be accepted. No payment for the change in the Work is due the Contractor until the Change Order is executed and delivered by the Owner to the Contractor and the Contractor has performed the change in the Work. The Owner determines the duration between execution and delivery of the Notice to Proceed and execution and delivery of the Change Order.
  3. Contractor's failure to proceed immediately and diligently with any Notice to Proceed or Change Order executed and delivered by the Owner to the Contractor, unless the Owner in writing directs otherwise, shall be a material breach of the Contract.
  4. If, after the Owner has executed and delivered a Notice to Proceed to the Contractor for a change in the Work, the Owner and the Contractor cannot agree on the adjustment(s) to the Contract for the change in the Work described in such Notice to Proceed, the Owner shall execute and deliver a Forced Change Order to the Contractor in an amount and with such other provisions that the Owner considers to be fair and reasonable for the change in the Work described in such Notice to Proceed and Forced Change Order. If the Contractor does not accept the Forced Change Order, the Contractor shall strictly comply with the requirements of General Conditions Section 7.01 D.
  5. No Change Order is executed by the Owner unless and until the Change Order is, reviewed and accepted by the Owner, and properly executed by an authorized representative of the Owner with appropriate approval authority in accordance with the Owner's internal procedures.
- B. The Contract amount may be increased or decreased only by a Change Order and the amount of the adjustment is determined by one or more of the following methods, as determined by the Owner:
1. By applying the applicable unit price or prices contained in the Contract Documents, or negotiated pursuant to the provisions of this General Conditions Article. Unit prices are limited to the quantities specified in the Contract Documents or prior Change Order. Unit prices for quantities greater than specified in the Contract Documents or prior Change Order may, in the Owner's sole and exclusive discretion, be subject to negotiations between the Owner and Contractor.
  2. By estimating the fair and reasonable cost of the change in the Work or deleted Work.
  3. By determining the actual cost of the change in the Work and considering the following:

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- a. Labor, including all wages and required wage supplements, paid to employees below the rank of superintendent directly employed at the Site for the change in the Work. Minimum wages are the prevailing rate of wages defined by the NYS Department of Labor. Actual wages in excess, paid by the Contractor, may be considered by the Owner.
  - b. Premiums or taxes paid by the Contractor for worker's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law, net of actual and anticipated refunds and rebates.
  - c. Materials associated with the change in the Work.
  - d. Equipment, excluding hand tools, which in the judgment of the Owner, would have been or will be employed in the Work. The Owner may employ the use of rental rates it deems most appropriate from the information in the "Equipment Watch Retail Rental and Equipment Watch Cost Recovery" databases. In no case will the equipment rental cost exceed the purchase price of the equipment. Self-owned equipment is defined to include equipment rented from Contractor-controlled or affiliated companies. It is the duty of the Contractor to utilize either rented or self-owned equipment that is of a nature and size appropriate for the Work to be performed. The Owner reserves the right to determine reasonable and appropriate equipment sizing, and at the Owner's discretion, it may adjust the costs allowed to reflect a smaller or less elaborate piece of equipment more suitable for performance of the change in the Work. The Owner, in its sole and exclusive discretion, will determine if equipment is rented from a company controlled by or affiliated with the Contractor.
  - e. To determine the daily and hourly rate of self-owned equipment, the monthly rate shall be divided by twenty-two (22) to establish a daily rate; or by one hundred and seventy-six (176) to establish the hourly rate. The operating cost listed in the "Equipment Watch Retail Rental and Equipment Watch Cost Recovery" databases would be added to this rate to establish the billable rate.
- C. For each change in the Work, the Contractor shall submit to the Owner, within the time period provided by the Owner, the following information:
1. A detailed proposal of labor, material, and equipment costs for the change in the Work. The Contractor and Subcontractors shall use the Owner's Contractor and Subcontractor Change Order Proposal Forms, which are available directly from the Owner or from the Dormitory Authority's website.
  2. The Contractor's and Subcontractor's proposal forms shall include the following signed statement, which shall be notarized if so requested by the Owner:  
  
*"I hereby certify that the value for the labor, material and equipment that comprise the proposal, represents the value of said work, material and equipment for the work performed or to be performed, pursuant to the Contract between the undersigned and the Dormitory Authority and that no overhead or profit is included in the proposal for a change to the Work performed by any Subcontractor or for any major equipment or material supplier that is a subsidiary or an affiliate of this firm."*
  3. Signed Labor Rate Worksheet to determine hourly rates for each classification of worker associated with the change in the Work. The Contractor shall use the Owner's Labor Rate Worksheets, which are available directly from the Owner or from the Dormitory Authority's website

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<http://www.dasny.org>. Only hourly rates for each classification of worker approved by the Owner can be used to determine the adjustment of the Contract amount for a Change Order. Only an authorized officer of Owner or authorized employee of Owner's Project Controls Unit can approve Labor Rate Worksheets.

4. Narrative and fragnet schedule, which describes the impact on the Project CPM schedule in calendar days associated with the change in the Work if the Contractor requests a change in the date to achieve Substantial Completion. Owner, in its sole and exclusive discretion, may waive, in writing, this requirement for requests to change the date to achieve Substantial Completion made prior to the Owner's approval of the initial Project CPM schedule. Owner's waiver of this requirement can be made only by an authorized officer of Owner or authorized employee of Owner's Project Controls Unit. If the Contractor does not submit a narrative and fragnet schedule, the Contractor acknowledges that the Change Order does not require a change in the date to achieve Substantial Completion.
  5. The Contractor agrees to provide, at the Owner's request, any additional documentation to further verify labor, material, equipment, and any other cost sought for a change in the Work.
  6. The Contractor agrees to provide, at the Owner's request, written justification for a change in the Work.
- D. Each Contractor's written change proposal shall be reviewed by the Owner consistent with the requirements of the Contract.
1. Owner and Contractor shall negotiate in good faith to agree on the adjustment(s) to the Contract for each change in the Work. The Owner is not required to respond to any change proposal submitted by the Contractor until the Contractor submits a change proposal that complies with the Contract Documents. Negotiations under this General Conditions Article shall not impact the Project schedule. The Contractor's proposal for a change in the Work is approved and accepted by the Owner only by the Owner's execution and delivery of a Change Order to the Contractor. See General Conditions Section 7.01 A. 5 for the requirements of execution and delivery.
  2. If the Owner has executed and delivered a Notice to Proceed to the Contractor for a change in the Work and the Owner and the Contractor cannot agree on the adjustment(s) to the Contract for the change in the Work described in such Notice to Proceed, the Owner shall execute and deliver a Forced Change Order to the Contractor in an amount and with such other provisions that the Owner considers to be fair and reasonable for the change in the Work described in such Notice to Proceed and Forced Change Order. If the Contractor does not accept the Forced Change Order, the Contractor shall file a notice of Claim in strict accordance with General Conditions Section 10.03 and comply strictly with all requirements of General Conditions Sections 10.03, 10.05 and 10.06. The Contractor's failure to comply with any or all of General Conditions Sections 10.03, 10.05 and 10.06 shall be deemed to be:
    - a. a conclusive and binding determination on the part of the Contractor to accept the Forced Change Order as final, binding and conclusive on the Contractor; and
    - b. a waiver by the Contractor of all Claims for additional compensation or damages as a result of the Forced Change Order.
- E. Any information representing the value of the Work performed, materials supplied and equipment utilized contained in the Contractor's and Subcontractor's proposals that constitutes False

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Representation may subject the Contractor or Subcontractor to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (Fraudulent and False Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.

- F. The compensation specified in the Change Order executed by the Owner and delivered to the Contractor includes full compensation for the changes in the Work covered thereby, and the Contractor waives all rights to any other compensation, damages, or expenses for the changes in the Work described therein.
- G. The Contractor shall furnish satisfactory bills, certified payrolls, vouchers, and other cost documentation covering all items of cost and when requested by the Owner shall give the Owner access to all accounts and records relating thereto, including records of Subcontractors and material suppliers.
- H. At Substantial Completion, the Owner may address increased Project-specific bonding, liability insurance and builder's risk insurance costs which may have resulted from changes in the Work. The Contractor shall provide satisfactory proof of and paid invoices, including cancelled checks or bank statements showing payment, for such increased costs. The Owner will not pay overhead and profit on any increased costs for bonding, liability insurance or builder's risk insurance.
- I. General Conditions Section 10.01 applies when the Owner determines that a decision, response, direction, action, omission, or condition does not require performance of Extra Work.

### Section 7.02 - Overhead and Profit

- A. See Example A for changes in the Work performed directly by the Contractor, whether a base cost is arrived at by estimated cost or actual cost method; add to base cost a sum equal to twenty percent. See Exceptions - Paragraphs "D" and "E".

**Example A:**

Contractor base cost	\$1,000
20% overhead and profit	<u>200</u>
Total	\$1,200

- B. See Example B for changes in the Work performed by a Subcontractor under contract with the Contractor, where estimated or actual cost is Ten Thousand Dollars (\$10,000.00) or less; add to the base cost a sum equal to twenty percent of cost, for the benefit of the Subcontractor. For the benefit of the Contractor; add an additional sum equal to ten percent of the Subcontractor's base cost.

**Example B:**

Subcontractor base cost	\$1,000
20% Subcontractor overhead and profit	<u>200</u>
Subcontractor Total	\$1,200
10% Contractor overhead and profit on base cost	<u>100</u>
Total	\$1,300

- C. See Example C for changes in the Work performed by a Subcontractor, under contract with the Contractor, which exceeds a base cost of Ten Thousand Dollars (\$10,000) in estimated or actual cost;

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add to the base cost a sum equal to twenty percent of cost for the benefit of the Subcontractor. For the benefit of the Contractor; add an additional sum equal to ten percent of the first Ten Thousand Dollars (\$10,000) of the Subcontractor's base cost, plus five percent of the next Ninety Thousand Dollars (\$90,000) of the Subcontractor's base cost, plus three percent of any sum in excess of One Hundred Thousand Dollars (\$100,000) of the Subcontractor's base cost.

### Example C:

Subcontractor base cost	\$200,000
20% Subcontractor overhead and profit	<u>40,000</u>
Subcontractor Total	\$240,000
10% Contractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Total	\$248,500

- D. See Example D for overhead and profit on major equipment such as: switchgear, transformers, air handling units, boilers, etc. For extra equipment purchases by the Contractor or Subcontractors which exceeds a base cost of Ten Thousand dollars (\$10,000) in estimated or actual cost; add to the base cost for the benefit of the Contractor a sum equal to ten percent of the first Ten Thousand dollars (\$10,000) of the vendor's base cost plus five percent of the next Ninety Thousand dollars (\$90,000) of the vendor's base cost, plus three percent of any sum in excess of One Hundred Thousand dollars (\$100,000) of the vendor's base cost. If the equipment is supplied by the Subcontractor, the Contractor is entitled to a maximum of ten (10) percent of the first Ten Thousand dollars (\$10,000) of the base cost.

### Example D:

Vendor base cost	\$200,000
10% Contractor or Subcontractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Contractor or Subcontractor Total	\$208,500
10% Contractor overhead and profit on first \$10,000 base cost when equipment is supplied by the Subcontractor, no other mark-up allowed	<u>1,000</u>
Total	\$209,500

- E. See Example E for overhead and profit on a material only Change Order. For increased material purchases by the Contractor or Subcontractors; add to the base cost for the benefit of the Contractor a sum equal to ten percent of the first Ten Thousand dollars (\$10,000) of the supplier's cost plus five percent of the next Ninety Thousand dollars (\$90,000) of the supplier's cost, plus three percent of any sum in excess of One Hundred Thousand dollars (\$100,000) of the supplier's cost. If the material is supplied by the Subcontractor, the Contractor is entitled to a maximum of ten (10) percent of the first Ten Thousand dollars (\$10,000) of the base cost.

### Example E:

Material cost (net difference between original contract and revised)	\$200,000
10% Contractor or Subcontractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Contractor or Subcontractor Total	\$208,500

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10% Contractor overhead and profit on first \$10,000 base cost when material is supplied by the Subcontractor, no other mark-up allowed	<u>1,000</u>
Total	\$209,500

- F. Other than the overhead and profit described in General Conditions Section 7.02A, no further overhead and profit will be allowed for changes to the Work performed by a Subcontractor under Subcontract with the Contactor or for major equipment or material supplier determined to be an affiliate of or controlled by the Contractor. An affiliate is considered any firm or entity in which the Contractor or any individual listed on the Contractor's NYS Vendor Responsibility Questionnaire either owns 5% or more of the shares of, or is one of the five largest shareholders, a director, officer, member, partner or proprietor of said Subcontractor, major equipment or material supplier; a controlled firm is any firm or entity which, in the opinion of the Owner, is controlled by the Contractor or any individual listed on the Contractor's NYS Vendor Responsibility Questionnaire.
1. The Owner, in its sole and exclusive discretion, will determine if a firm or entity is an affiliate of or controlled by the Contractor.
- G. No overhead and profit shall be paid for changes in the Work performed by a Subcontractor not under Subcontract with the Contractor. No overhead and profit shall be paid on the premium portion of overtime pay. Where the changes in the Work involve both an increase and a reduction in similar or related Work, the overhead and profit allowance shall be applied only to the cost of the increase that exceeds the cost of the reduction.
- H. The Owner, in its sole and exclusive discretion, shall require any Contractor or Subcontractor that is issued a Contract pursuant to pricing from a New York State Office (NYS) of General Services (OGS) Centralized Contract held by said Contractor or Subcontractor to provide an itemized change proposal as per the rates for non-trade service labor, equipment, and materials established within aforementioned NYS OGS Centralized Contract. Rates are considered inclusive of overhead and profit and no additional markup will be approved. All other provisions of Article 7 – Changes to the Work shall apply.

### **Section 7.03 - Deduct Change Order**

The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a decrease in the Contract amount shall be as determined by the Owner. The credit shall include the overhead and profit allocable to the deleted or changed Work unless the Owner, in its sole and exclusive discretion, determines otherwise.

## **ARTICLE 8 -- PAYMENT**

### **Section 8.01 - Provision for Payment**

- A. The Contractor shall complete and submit to the Owner for review and written approval, the detailed Schedule of Values prior to the Contractor's first billing request. It is understood, and the Contractor acknowledges, that the Schedule of Values is an administrative tool to illustrate a format and minimum level of detail required for billing requests, and shall not be considered as delineating the Contractor's scope of Work. The Owner may require the Contractor to revise its Schedule of Values at no cost to the Owner and to provide a greater level of detail. Further, the Owner reserves the right to accept only those cost distributions which, in the Owner's opinion, are reasonable, equitably balanced and correspond to the estimated quantities in or for the Contract Documents. Owner's approval of the

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Schedule of Values can be provided only by an authorized officer of Owner or authorized employee of Owner's Project Controls Unit.

The Contractor, at its own expense, shall take all actions necessary to fully comply with the requirements of the Statewide Utilization Management Plan ("SUMP") of the NYS Contract System. Contractor shall require all Subcontractors to comply with the requirements of SUMP and the NYS Contract System. These requirements include, but are not limited to, the Contractor's timely payment to all Subcontractors and timely input in to the NYS Contract System of information, including but not limited to, information regarding Subcontractor payments and compliance with Contract requirements, including but not limited to Contract requirements for participation of Minority and Women Owned Business Enterprises in the performance of the Contract.

- B. The Owner shall not approve any billing request until:
  - 1. the Contractor is in full compliance with SUMP and the NYS Contract System; and
  - 2. the Owner provides approval of the Schedule of Values.
- C. To request a partial or full payment for partial or full performance of the Contract, Contractor shall obtain from the Owner a Contractor's billing request. The Contractor shall complete the billing request by entering in each line item thereof the percentage of completion of that item as of the end of the preceding business month or billing cycle and deliver the completed billing request to the Owner. The Owner shall review the billing request and make any changes which the Owner, in its sole and exclusive discretion, determines to be necessary so that the percentage of completion for each line item in the billing request accurately reflects the Contractor's performance of the Contract as of the end of the preceding business month. The Owner then delivers the Owner's adjusted version of the billing request to the Contractor for execution by the Contractor of the certifications of the Contractor required for partial or full payment for partial or full performance of the Contract. The Contractor delivers the executed billing request to the Owner. Any partial payment request under the Contract shall be at least thirty (30) calendar days after the preceding partial payment request under the Contract, unless the Owner in writing signed by an authorized officer permits more frequent requests.
- D. The Owner may make a partial payment to the Contractor for partial performance of the Contract on the basis of an Application for Payment for the Work performed during the preceding business month. The Owner shall retain five percent (5%) of the amount of each said Application for Payment. The Owner may make full payment to the Contractor for full performance of the Contract on the basis of an Application for Payment. Each Application for Payment shall be accompanied by all documentation required by law, including but not limited to, certified payrolls and all documentation required by the Owner, including but not limited to documentation to establish compliance with NYS Labor Law and NYS Lien Law. The Owner may require any documentation the Owner determines is necessary or useful to establish that the Contractor's performance of the Work complies with the requirements of the Contract and applicable law.
- E. Any partial payment made shall not be construed as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract. No payment, either partial or full, by the Owner to the Contractor shall waive or excuse any failure by the Contractor to comply fully with the Contract Documents. No payment will be made for Work not performed.
- F. In preparing the Contractor's billing request, material delivered to the Site and properly stored and secured at the Site and material approved to be stored off-site under such conditions as the Owner shall



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prescribe in accordance with paragraph G of this General Conditions Section 8.01, may be taken into consideration. All costs related to the storage of materials are the sole responsibility of the Contractor.

- G. The Owner will provide an agreement for materials stored off-site and specific forms that the Contractor shall complete, execute, and submit with any billing request for such material. Required information includes, but is not limited to: a general description of the material; a detailed list of the materials; a pre-approved storage area; segregation and identification of the material; insurance covering full value against all risks of loss or damage, with non-cancellation provision; immediate replacement agreement in event of loss or damage; agreement to pay the expense of all inspections of the material; ownership provisions; delivery guarantee; project completion statement; bill of sale, releases of liens, and inventory. The Owner, in its sole and exclusive discretion, may require the Contractor to certify in the agreement for materials stored off-site that the materials comply with one or more requirements of the Contract or to provide documentary proof acceptable to the Owner that the materials comply with one or more requirements of the Contract.
- H. All monthly billing requests submitted by the Contractor shall only be in the form and manner approved by the Owner. The Contractor shall furnish such affidavits, vouchers, receipts, and other documentation as to delivery and payment for materials, payment of Subcontractors, and payment of prevailing rate of wage and supplements required by NYS Labor Law as the Owner requires to substantiate each and every billing request. Contractor shall furnish any other documentation required by Owner to establish compliance with one or more requirements of the Contract or any statute or regulation, including but not limited to the certification required by General Conditions Section 16.02 and proof of compliance with NYS Labor Law Section 220-h (See General Conditions Section 16.03 H).
- I. All payments received by the Contractor under or in connection with the Contract are trust funds under Article 3-A of the NYS Lien Law and shall be applied by the Contractor in accordance with such law.

### **Section 8.02 - Substantial Completion and Reduction of Retainage**

- A. After the Owner has determined Substantial Completion of the Work, as evidenced by the executed Notice of Substantial Completion, the Owner shall pay to the Contractor the balance due the Contractor pursuant to the Contract less:
  - 1. Two (2) times the value of any remaining items of Work to be completed or corrected as determined in accordance with paragraph B. of this General Conditions Section 8.02.
  - 2. An amount necessary to satisfy any and all claims, liens, or judgments by the Owner or third parties against the Contractor.
- B. After the Owner has determined Substantial Completion of the Work, as evidenced by the executed Notice of Substantial Completion, the Contractor shall submit to the Owner, for Owner's written approval, a detailed estimate of the value of the known remaining items of Work as set forth by the Owner and a schedule for achieving Physical Completion and Contract Completion and Acceptance of the Work. The Owner shall review that estimate and schedule and:
  - 1. Direct the Contractor to revise and resubmit the estimate, the schedule or both; or
  - 2. Approve the estimate and schedule.

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The Owner, at its discretion, may value the items of Work to be completed or corrected assuming such items will be completed or corrected by an entity other than the Contractor and may include the cost of obtaining regulatory or other third-party approval of one or more items of Work.

- C. As the remaining items of Work are completed and accepted by the Owner, the Owner shall pay the appropriate amount pursuant to a duly completed and submitted Application for Payment.
- D. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until Contract Completion and Acceptance by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to this General Conditions Section 8.02.
- E. The Contractor may request from the Owner a reduction of retainage when a phase of the Work is accepted by the Owner but Owner is not obligated to grant such request.
- F. The Application for Payment for the first payment of reduction of retainage shall be accompanied by a release, by the Contractor to the Owner, in the form set forth at Exhibit "A" to the General Conditions for Construction. As set forth in such release, any Claims not specifically excepted and reserved by the Contractor per the release form will be released and forever discharged. Owner's acceptance of a release containing Claims specified by and reserved to the Contractor does not waive any rights of the Owner arising under the Contract or any other source with respect to such Claims. By executing this Contract, Contractor acknowledges and agrees that it has reviewed the release in the form set forth at Exhibit "[X]" to the Contract Documents. Submission of the duly completed release set forth at Exhibit "[X]" to the Contract Documents along with the Application for Payment for the first payment of reduction of retainage is a condition precedent to the release of any retainage by the Owner. The requirement of a release may be waived only in writing and only by the Owner's Office of Counsel. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations under this Contract or the Performance or Payment bonds.

### **Section 8.03 - Release and Consent of Surety**

Notwithstanding any other provision of the Contract Documents to the contrary, reduction of retainage and/or the final Application for Payment shall not become due until the Contractor submits to the Owner a General Release from the Contractor and, if the Owner requests, a Consent of Surety to said payment in form and content acceptable to the Owner. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations under this Contract or the Performance or Payment bonds.

### **Section 8.04 - Liens**

- A. Upon the Owner's receipt of a notice of public improvement lien, all, or a portion, of the amounts due in the current and subsequent payments due the Contractor shall be withheld until a sum which shall be one and one-half (1 1/2) times the amount stated to be due in the notice of public improvement lien shall have been withheld from payments due the Contractor. This sum shall be withheld until the lien is discharged. The Contractor shall promptly discharge any notice of public improvement lien by filing a bond pursuant to NYS Lien Law Section 21, subdivision 5. If any Subcontractor should file a notice of lien against the property upon which the Project is located, such lien is void and Contractor, at its expense shall obtain and file an order of the Supreme Court of the State of New York cancelling such lien. If Contractor shall fail to obtain such order or if Contractor shall file a notice of lien against the property upon which the Project is located, the Owner may obtain an order of the Supreme Court of the

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State of New York cancelling such lien and deduct the attorney's fees and other costs incurred in obtaining and filing such order from any amount due the Contractor.

- B. Upon receipt of any other lien, levy, notice to withhold, restraining notice, court or administrative order or any other instrument allowed by law and directing the Owner to withhold payments due Contractor, the Owner will withhold the sum which Owner determines is necessary to withhold to comply with the applicable law. This sum shall be withheld until the instrument is, in the Owner's sole and exclusive discretion, appropriately satisfied or discharged.

### **Section 8.05 - Withholding of Payments**

- A. The Owner may withhold from the Contractor any part of any payment as may, in the judgment of the Owner, be necessary:
  - 1. To ensure payment of just claims of any natural person or entity supplying labor, materials, or equipment for the Work.
  - 2. To protect the Owner from loss due to defective Work not remedied.
  - 3. To protect the Owner, Client, or any Consultant from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of Other Contractors, Subcontractors or others caused by the act or neglect of the Contractor or Subcontractors.
  - 4. To ensure payment of fines and penalties, that may be imposed on the Contractor pursuant to the provisions of the Contract.
  - 5. To ensure payment of fines, penalties, or damages that may be imposed on the Contractor pursuant to General Conditions Article 20 - Opportunity Programs.
  - 6. To protect and make whole the Owner from a Contractor's non-compliance to the requirements set forth in General Conditions Article 14 – Protection of Persons and Property and Article 15 – Insurance and Bonds.
  - 7. To protect the Owner and Client from damage caused or claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work of the Contract in strict accordance with the Contract Documents.
- B. The Owner shall have the right to apply any such amounts so withheld in such a manner as the Owner may deem proper to satisfy said claims, fines, and penalties, or to secure said protection. Said application of the money shall be deemed payments for the account of the Contractor.

### **Section 8.06 - Late Payment**

Timeliness of payment and any interest to be paid to the Contractor for late payment is governed by Section 2880 of the NYS Public Authorities Law. Timely payment by the Contractor to the Subcontractor is governed by Section 139-f of the NYS State Finance Law which requires payment by the Contractor to the Subcontractor within seven (7) calendar days of receipt of payment from the Owner.

### **Section 8.07 – False Representations/Information**

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- A. False Representations, information, or data submitted on or with Applications for Payment may result in one or more of the following actions:
  - 1. Termination of the Contract for cause;
  - 2. Disapproval of future bids or contracts or subcontracts;
  - 3. Withholding of final payment on the Contract; and
  - 4. Civil and/or criminal prosecution (See General Conditions Sections 7.01 E and 10.03 F).
- B. The provisions of this General Conditions Section 8.07 are solely for the benefit of the Owner, and any action or non-action hereunder by the Owner shall not give rise to any liability on the part of the Owner.

### **ARTICLE 9 -- TIME OF COMPLETION**

#### **Section 9.01 - Substantial Completion**

- A. The Contractor shall commence performance of the Work at the time stated in the Notice to Proceed and the Contractor shall achieve Substantial Completion no later than the date for Substantial Completion specified in the Contract. Notwithstanding anything to the contrary, a schedule submitted by the Contractor showing Substantial Completion earlier than that specified in the Contract shall not entitle the Contractor to any additional cost in the event the earlier date is or is not realized unless agreed to by the Owner.
- B. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that Substantial Completion of the Work on or before the date for Substantial Completion specified in the Contract, is an essential condition of the Contract.
- C. The Contractor agrees that the Work shall be prosecuted regularly, diligently, and cooperatively with Other Contractors at such rate of progress as shall ensure Substantial Completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time to achieve Substantial Completion allowed herein is reasonable.
- D. It is further agreed that time is of the essence for each and every portion of the Work. In any instance in which additional time is allowed for Substantial Completion of the Work, the new date of Substantial Completion established by said extension shall be of the essence. The Contractor shall not be charged with liquidated damages or any excess cost of the Owner or Client if the Owner determines in its sole and exclusive discretion that the Contractor is without fault and that the delay in Substantial Completion of the Work is due:
  - 1. To any preference, priority or allocation order duly issued by the Government of the United States or the State of New York.
  - 2. To an unforeseeable cause beyond the control and without the fault of, or negligence of the Contractor, and approved by the Owner, including, but not limited to, acts of God or of public enemy, acts of the Owner, fires, epidemics, pandemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather.
  - 3. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in Subsections 1 and 2 of this paragraph provided the Contractor shall, within fifteen (15) calendar

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days from the beginning of any such delay, notify the Owner in writing of the causes of the delay. Notice shall be delivered to the Owner as specified in General Conditions Section 10.03 C.

- E. The date of Substantial Completion may be modified only by a Change Order.
- F. If the Contractor shall neglect, fail, or refuse to achieve Substantial Completion by the date specified, or any proper extension thereof granted by the Owner, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day thereafter that the Contractor does not achieve Substantial Completion.
- G. If the Contractor shall abandon performance of the Work before achieving Substantial Completion, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day after both the date of abandonment and the date specified for Substantial Completion that the Work has not achieved Substantial Completion. The obligation of the Contractor to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract pursuant to General Conditions Section 11.01.
- H. If the Owner terminates the Contract before the Contractor achieves Substantial Completion, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day after both the date of termination of the Contract and the date specified for Substantial Completion that the Work has not achieved Substantial Completion. The obligation of the Contractor to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract pursuant to General Conditions Section 11.01.
- I. Said amount of liquidated damages is agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the Owner would sustain for loss of beneficial use of the Work of the Contract in the event of delay in Substantial Completion, abandonment of the Work by the Contractor or termination of the Contract pursuant to General Conditions Section 11.01, and said amount is agreed to be the amount of damages sustained by the Owner and said amount may be retained from time to time by the Owner.
- J. The foregoing liquidated damages are intended to compensate the Owner only for the loss of beneficial use of the Work of the Contract. In addition, the Contractor shall be liable to the Owner and the Client, to the fullest extent permitted by law, for whatever actual damages (other than actual loss of beneficial use) the Owner or Client may incur as a result of any actions or inactions of the Contractor or its Subcontractors including, without limitation, interest expense and carrying costs, liabilities to Other Contractors working on the Project or other third parties, job extension costs, and other losses incurred by the Owner or Client. The provisions of this paragraph are for the exclusive use of the Owner and Client, and shall not accrue to Other Contractors or other third parties.
- K. The Owner will issue the Notice of Substantial Completion after the Owner, in its sole and exclusive discretion, has determined that Substantial Completion of the Work has occurred.

### **Section 9.02 – Physical Completion and Contract Completion and Acceptance**

- A. After the Owner has issued the Notice of Substantial Completion, the Contractor shall comply with General Conditions Section 8.02 B. Compliance with General Conditions Section 8.02 B is a condition precedent to the payment described in General Conditions Section 8.02 A. Once the Owner approves

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the detailed estimate of the value of the known remaining items of Work and the schedule for achieving Physical Completion and Contract Completion and Acceptance, the Contractor shall achieve Physical Completion and Contract Completion and Acceptance no later than the dates for each in the approved schedule. The Owner and Contractor agree that achieving Physical Completion and Contract Completion and Acceptance no later than the dates for each in the approved schedule is an essential condition of the Contract and that time is of the essence.

- B. The Contractor agrees that after achieving Substantial Completion, Contractor shall continue to prosecute the remaining items of Work regularly, diligently, and cooperatively with Other Contractors. Contractor further agrees that once the schedule for achieving Physical Completion and Contract Completion and Acceptance is approved, the Contractor shall prosecute the remaining items of Work regularly, diligently, and cooperatively with Other Contractors at such a rate of progress as shall ensure the achieving of Physical Completion and Contract Completion and Acceptance by the dates for each in the approved schedule.
- C. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until Contract Completion and Acceptance by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to General Conditions Section 8.02.
- D. The Owner will issue the Notice of Physical Completion after the Owner, in its sole and exclusive discretion, has determined that Physical Completion of the Work has occurred.
- E. The Owner will issue the Notice of Contract Completion and Acceptance after the Owner, in its sole and exclusive discretion, has determined that Contract Completion and Acceptance of the Work has occurred. Contract Completion and Acceptance follows or may be concurrent with Physical Completion.

### **ARTICLE 10 -- CLAIMS AND DISPUTES**

#### **Section 10.01 - Claim for Extra Work**

A. If the Contractor claims that:

- 1. a decision of, or direction or response to the Contractor by, the Owner, Consultant, or Owner Representative;
- 2. a condition; or
- 3. any action or omission of the Owner;

is contrary to the terms and provisions of the Contract and will require the Contractor to perform Extra Work, Contractor shall file a written notice of Claim in strict accordance with General Conditions Section 10.03. No Claim for Extra Work shall be allowed unless the Contractor files a written notice of Claim that complies strictly with the requirements of General Conditions Sections 10.01 and 10.03. The notice of Claim shall identify the decision, direction, response, action, omission, or condition from which the Claim arises. The Contractor shall also strictly comply with all other requirements of General Conditions Sections 10.01 and 10.03.

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- B. If the Owner determines the decision, response, direction, action, omission, or condition does not require the performance of Extra Work, the Owner shall issue a Disputed Work Directive. The Contractor, upon receipt of the Disputed Work Directive shall immediately and diligently proceed with the Work described in the Disputed Work Directive in accordance with all instructions of the Owner. Contractor's failure to proceed immediately and diligently with any Disputed Work Directive issued by the Owner, unless the Owner in writing directs otherwise, shall be a material breach of the Contract. Contractor's performance of the Work described in and pursuant to the Disputed Work Directive shall not be a waiver of the Contractor's Claim for Extra Work provided the Contractor strictly complies with all requirements of General Conditions Sections 10.01 and 10.03. The Owner may issue a Disputed Work Directive for a decision, response, direction, action, omission, or condition before the Contractor files a notice of Claim arising from such decision, response, direction, action, omission, or condition; if the Owner does so, the Contractor shall still file a notice of Claim in strict compliance with General Conditions Section 10.03 and shall strictly comply with all requirements of General Conditions Sections 10.01 and 10.03.
- C. The Contractor's failure to comply strictly with any or all parts of General Conditions Sections 10.01 and 10.03 shall be deemed to be:
1. a conclusive and binding determination on the part of the Contractor that the decision, response, direction, action, omission, or condition does not involve Extra Work; and
  2. a waiver by the Contractor of all Claims for additional compensation or damages as a result of the decision, response, direction, action, omission, or condition.

### **Section 10.02 - Claim for Additional Cost**

- A. If the Contractor wishes to make a Claim for an increase in the cost to perform the Work, including but not limited to a Claim alleging breach of the Contract by Owner, the Contractor shall file a written notice of Claim strictly in accordance with General Conditions Section 10.03. The notice of Claim shall identify the condition or event from which the Claim arises. No Claim for an increase in the cost to perform the Work of the Contract shall be allowed unless the Contractor files a notice of Claim that complies strictly with the requirements of General Conditions Section 10.02 and 10.03. Contractor shall also strictly comply with all other requirements of General Conditions Sections 10.02 and 10.03. The Owner shall determine the validity of the Contractor's contention. Pending the decision of the Owner, the Contractor shall proceed with the diligent and prompt performance of the Work. Denial of additional costs shall not entitle the Contractor to additional time to achieve Substantial Completion. Nothing in this paragraph waives any of Owner's rights under the Contract.
- B. The Contractor's failure to comply strictly with any or all parts of General Conditions Sections 10.02 and 10.03 shall be deemed to be:
1. a conclusive and binding determination on the part of the Contractor that the event or condition does not increase the cost to perform the Work of the Contract; and
  2. a waiver by the Contractor of all Claims for additional compensation or damages as a result of the event or condition.

### **Section 10.03 - Notice of Claim and Substantiation**

- A. A written notice of Claim shall be delivered concurrently to the Owner's Representative and Project Controls Unit by the Contractor within fifteen (15) calendar days after occurrence of the event, decision,

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direction, response, action, or omission giving rise to such Claim or within fifteen (15) calendar days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier. The burden of proving the Owner's receipt of the notice of Claim shall be the Contractor's responsibility. Contractor's failure to comply with the requirements of this Section 10.03 shall constitute a waiver of its Claim.

- B. Within ninety (90) calendar days of the initial notice of Claim, the Contractor shall substantiate the Claim in writing and document the nature of the Claim and provide supporting cost data and documentation, Contractor's original cost estimate, Project CPM schedule demonstrating alleged impact of and correlation to the Claim subject matter and a Contractor affidavit stating the following:

*"I hereby certify that the value assigned the work, labor, material and equipment that comprise the Claim, represents the actual value of said work, labor, material and equipment pursuant to the Contract between the undersigned and the Dormitory Authority."*

1. The Contractor shall provide, every thirty (30) calendar days thereafter for as long as such damages are incurred, written, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.
2. Contractor shall identify the final written, verified statement for each Claim submitted pursuant to this paragraph.
3. Each written, verified statement shall be delivered as set forth in paragraph C of this General Conditions Section 10.03.

- C. The Contractor shall provide the Owner's Representative one (1) electronic copy of the documented Claim and mail two (2) paper copies of the documented Claim to:

Dormitory Authority  
Project Controls Unit  
515 Broadway  
Albany, NY 12207-2964

- D. The Owner, at any time after the Contractor files a notice of Claim, may request additional documentation to determine the validity of the Contractor's contention and the Contractor shall submit such additional documentation within the time period specified by the Owner in the Owner's request for additional documentation. The Owner, at any time after the Contractor files a notice of Claim, may request an updated and reconciled electronic copy of the documented Claim and the Contractor shall submit such a copy within ten calendar days.
- E. The value of any Claim, if allowed, shall be determined by the methods described in General Conditions Article 7 – Changes in the Work. No Claim shall be allowed unless and until a Change Order allowing the Claim is executed and delivered by the Owner to the Contractor; payment of an allowed Claim may be made only through an Application for Payment.
- F. Any information representing the actual value of the labor performed, equipment utilized and material furnished contained in the Claim that constitutes False Representation may subject the Contractor or



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Subcontractor to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (Fraudulent and False Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.

### **Section 10.04 - No Damages for Delay**

- A. No Claims for increased costs, charges, expenses, or damages of any kind shall be made by the Contractor against the Owner for any delays or hindrances from any cause whatsoever; provided that the Owner, in the Owner's sole and exclusive discretion, may compensate the Contractor for any said delays or hindrances by extending the date for achieving Substantial Completion specified in the Contract. No payment for increased cost, charge, expense, or damage of any kind shall act as a waiver of the Owner's right, in its sole and exclusive discretion, to compensate the Contractor for any delays or hindrances from any cause whatsoever solely by extending the date for achieving Substantial Completion specified in the Contract.
- B. If the Contractor claims that a delay or hindrance entitles the Contractor to additional time to achieve Substantial Completion, the Contractor shall submit a written request to the Owner for such additional time within fifteen (15) calendar days of the event or condition giving rise to the request. The written request shall identify the event or condition causing the alleged delay or hindrance giving rise to the request and show that the Contractor is not responsible for the delay or hindrance or for any concurrent delay. The Contractor shall submit with the request an updated Project CPM schedule that shows the impact of the event or condition on the Project CPM schedule. The request and updated Project CPM schedule shall be submitted to the Owner in accordance with General Conditions Section 10.03 C. The Owner may request additional documentation to decide the Contractor's request and the Contractor shall submit such additional documentation within the time period specified by Owner in the Owner's request for additional documentation. Failure of the Owner to respond in writing to a written request for additional time within thirty (30) calendar days shall be deemed a denial of the request unless the Owner extends the period to respond to the written request for additional time by written notice to the Contractor. While the Owner is considering the Contractor's request, the Contractor shall proceed with the diligent and prompt performance of the Work. Denial of additional time shall not entitle the Contractor to additional costs.
- C. The Contractor's failure to comply strictly with any or all parts of General Conditions Sections 10.03 and 10.04 shall be deemed to be:
  1. a conclusive and binding determination on the part of the Contractor that the event or condition causing the alleged delay or hindrance does not require additional time to achieve Substantial Completion; and
  2. a waiver by the Contractor of all Claims for additional time to achieve Substantial Completion as a result of the event or condition causing alleged delay or hindrance.

### **Section 10.05 - Continuance of the Work**

Unless the Owner, in writing, permits otherwise, the Contractor shall proceed diligently and promptly with the performance of the Work while the Owner considers a notice of Claim filed pursuant to:

- A. General Conditions Sections 7.01D and 10.03;
- B. General Conditions Sections 10.01 and 10.03; or

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C. General Conditions Sections 10.02 and 10.03;

or while the Owner considers a request for additional time to achieve Substantial Completion filed pursuant to General Conditions Sections 10.03 and 10.04 or while the Owner considers any other Claim.

### **Section 10.06 - Resolution of Claim**

- A. Any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion shall be final, binding and conclusive on the Contractor unless within fifteen (15) calendar days after receiving notice of the Owner's resolution, the Contractor files a written notice with the Owner that the Contractor reserves the Contractor's rights under the Contract in connection with the matters covered by said resolution or determination. The written notice shall be filed in strict accordance with General Conditions Sections 10.03 C and 10.06. The Contractor's failure to comply strictly with these requirements shall be deemed to be a waiver by the Contractor of all Claims for additional compensation or damages included in the Claim and the request for additional time to achieve Substantial Completion.
- B. After any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion, the Contractor shall proceed diligently and promptly with the performance of the Work whether the Contractor files a written notice with the Owner that the Contractor reserves the Contractor's rights under the Contract in connection with the matters covered by said resolution or determination or the Contractor does not file such a written notice. Nothing in this paragraph waives any of the Owner's rights under the Contract.
- C. Contractor shall file no action or proceeding in a court challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion unless the Contractor shall have strictly complied with all the requirements relating to the giving of notice and of information with respect to such Claim or request for additional time to achieve Substantial Completion in this General Conditions Article 10. Nothing in this paragraph waives any of Owner's rights under the Contract.
- D. Contractor shall file no action or proceeding in court challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion until Contractor has achieved Physical Completion of the Work. Contractor agrees that any court action or proceeding challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion filed before Contractor has achieved Physical Completion of the Work is premature. Nothing in this paragraph waives any of Owner's rights under the Contract. The Owner, in its sole and exclusive discretion, may modify this paragraph by a Contract Amendment.
- E. At its sole and exclusive discretion, the Owner may resolve any Claim or a request for additional time to achieve Substantial Completion without waiving its rights under the Contract.

## **ARTICLE 11 – TERMINATION OR SUSPENSION**

### **Section 11.01 – Termination for Cause**

- A. In the event that any provision of the Contract is violated by the Contractor or by any Subcontractor, the Owner may serve written notice upon the Contractor and upon the Contractor's surety, if any, of the Owner's intention to declare a Contractor Default (defined in the Performance Bond) and terminate the Contract. Such notice shall contain the reasons for the intention to declare a Contractor Default and

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terminate the Contract. The Contractor will be allowed an opportunity to show why the Owner should not declare a Contractor Default and why the Contractor's Contract should not be terminated for cause. If the violation shall not cease or arrangements satisfactory to the Owner are not made, the Owner, in writing, may declare a Contractor Default and the Contract shall terminate upon the date specified by the Owner in the declaration of Contractor Default. The Owner shall send the Contractor and the Contractor's surety, if any, written notice of and a copy of the declaration of Contractor Default and termination of the Contract. In the event of a declaration of Contractor Default and termination of the Contract, the Owner has the remedies set forth in the Performance Bond, the Contract, and all remedies at law or in equity.

- B. In the event of any such termination, the Owner may take over the Work and prosecute the Contract to completion and take possession of and may utilize such materials, appliances, and equipment on the Site and necessary or useful in completing the Work. The Contractor and Contractor's surety shall be liable to the Owner for all costs incurred by the Owner.
- C. In the event the termination for cause is determined to be improper, the termination shall be deemed a termination pursuant to General Conditions Section 11.02 – Termination for Convenience of Owner.

### **Section 11.02 - Termination for Convenience of Owner**

- A. The Owner, at any time, may terminate the Contract in whole or in part. Any such termination shall be effected by delivering to the Contractor a written notice of termination specifying the extent to which performance of Work under the Contract is terminated and the date upon which the termination becomes effective. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from the termination.
- B. The Owner shall pay the Contractor for Work of the Contract performed by the Contractor and accepted by the Owner for the period extending from the end of the period covered by the last approved Application for Payment up to the effective date of the termination, an amount determined in accordance with General Conditions Article 7 – Changes in the Work. In no event shall the Contractor be entitled to compensation in excess of the total consideration of the Contract. In no event shall Contractor be entitled to overhead or profit on the Work not performed.
- C. In the event of such termination the Owner may take over the Work and prosecute the Contract to completion and may take possession of and may utilize such materials, appliances, and equipment on the Site and necessary or useful in completing the Work.

### **Section 11.03 - Owner's Right to do Work**

The Owner at any time may notify the Contractor that the Owner will have the Work of the Contract or any part thereof, performed by others, without terminating the Contract and without prejudice to any other right the Owner may have. The Owner may recover any and all costs related to such Work and deduct the value of such Work from the Contract amount. In the event the total costs related to such Work performed by others, or other costs associated with compliance with the Contract Documents, exceeds the available funds remaining in the Contract, the Owner shall have the right to recover said funds from the Contractor.

### **Section 11.04 - Suspension of Work**

- A. Should the Owner determine that conditions exist such that it becomes necessary to suspend performance of all or any part of the Work, the Owner, at its sole discretion, shall issue to the Contractor a Suspend Work Order. Upon receipt of the order, the Contractor shall immediately comply with its

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terms and take reasonable steps to protect the Work covered by the order during the period of work suspension. The order shall contain the reason or reasons for suspension which may include, but is not limited to, latent field conditions, substantial program revisions, acquisition of rights of way or real property, financial crisis, labor disputes, civil unrest, expired insurance, court order, public health emergency or acts of God.

- B. Upon receipt of a Suspend Work Order, the Contractor shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such Work from loss or damage.
- C. The Contractor specifically agrees that such suspension of the Work shall not increase the cost of the Work. However, to the extent that the suspension of the Work is through no fault of the Contractor, the Owner may consider requests for compensation provided that the Contractor complies with General Conditions Article 10 – Claims and Disputes.
- D. The date of Substantial Completion of the Work may be extended by Change Order to compensate the Contractor for the time lost by the suspension.
- E. The Owner may terminate the Suspend Work Order by a written direction to the Contractor or through the issuance of a Resume Work Order, or may invoke any other provision of General Conditions Article 11 – Termination or Suspension.

### **Section 11.05 – Stoppage of Work**

- A. Should the Contractor fail to comply with the terms of the Contract, including but not limited to the insurance requirements of the Contract, the Owner may at any time, in its sole discretion, issue a Stop Work Order requiring the Contractor to stop all or any part of the Work. Upon receipt of the order, the Contractor shall immediately comply with its terms and take reasonable steps to protect the Work covered by the order during the period of work stoppage. The Owner, at its option, shall either:
  - 1. Cancel the Stop Work Order after the Contractor has successfully remedied the cause of the Stop Work Order; or
  - 2. Invoke any other provision of General Conditions Article 11 – Termination or Suspension.
- B. The Contractor shall not be entitled to an increase in time or costs as a result of the Stop Work Order. Owner may, in its sole discretion, consider requests for an increase in time or costs provided that the Contractor complies with General Conditions Article 10 – Claims and Disputes.

## **ARTICLE 12 -- BENEFICIAL OCCUPANCY**

### **Section 12.01 - Occupancy Prior to Substantial Completion**

- A. If, before Substantial Completion, the Owner desires Beneficial Occupancy of any part of the Work, the Owner shall have the right to do so, and the Contractor shall in no way interfere with or object to Beneficial Occupancy. Payment for operational costs of Project systems for the part of the Work subject to Beneficial Occupancy from the time of Beneficial Occupancy to Substantial Completion shall be borne by the Owner, unless otherwise specified by the Contract.
- B. Said Beneficial Occupancy (1) shall not constitute acceptance of space, systems, materials, or elements of the Work and (2) shall not affect the obligations of the Contractor for Work which is not in

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accordance with the requirements of the Contract or other obligations of the Contractor under the Contract.

The Contractor shall continue the performance of the Work in a manner that shall not unreasonably interfere with said use, occupancy, and operation by the Owner.

### **ARTICLE 13 -- INSPECTION**

#### **Section 13.01 - Access to the Work**

The Owner shall at all times have access to the Work and the Contractor shall provide proper facilities for access. If the Contractor schedules or performs any Work on a day or at a time which results in a Dormitory Authority employee assigned to the Project receiving overtime compensation or an additional charge to the Dormitory Authority from an Other Contractor for such Work, the Dormitory Authority, in its sole and exclusive discretion, may deduct such overtime compensation and such additional charge from moneys due the Contractor. If the Contractor intends to schedule any Work, including but not limited to any testing or inspection, outside the regular operating hours for the Project, the Contractor must provide the Owner and any Other Contractor involved in such Work at least fifteen (15) calendar days written notice of the scheduled date for such Work. The Owner, in its sole and exclusive discretion, may reduce the required number of days of notice for one or more occasions by written notice to the Contractor and to any involved Other Contractors.

#### **Section 13.02 - Notice for Testing and Inspection**

If the Contract Documents, the Owner's instructions, laws, rules, ordinances, or regulations require that any Work be inspected or tested, the Contractor shall give the Owner a minimum of five (5) calendar days, unless otherwise specified, written notice of readiness of the Work for inspection or testing and the date fixed for said inspection or testing.

#### **Section 13.03 - Reexamination of Work**

Reexamination of any part of the Work may be ordered by the Owner, and if so ordered the Work shall be uncovered by the Contractor. If said Work is found to be in accordance with the Contract, the Owner shall pay the cost of reexamination. If said Work is not found to be in accordance with the Contract, the Contractor shall pay the cost of reexamination and replacement.

#### **Section 13.04 - Inspection of Work**

All Work, all materials whether incorporated in the Work or not incorporated in the Work, all processes of manufacture, and all methods of construction shall be, at all times and places, subject to the inspection of the Owner, and the Owner shall be the final judge of the quality and suitability of the Work, materials, processes of manufacture, and methods of construction for the purposes for which said Work, materials, processes of manufacture, and methods of construction are used. Any Work not approved by the Owner shall be reconstructed, made good, replaced, or corrected immediately by the Contractor including all work of Other Contractors destroyed or damaged by said removal or replacement. Rejected material shall be removed immediately from the Site. Acceptance of material and workmanship by the Owner shall not relieve the Contractor from the Contractor's obligation to replace all Work that is not in full compliance with the Contract.

#### **Section 13.05 - Defective or Damaged Work**

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If, in the opinion of the Owner, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work damaged or not performed in accordance with the Contract Documents, the Contract amount shall be reduced by an amount, which in the judgment of the Owner, shall be deemed equitable.

### **Section 13.06 – Testing of Work**

All materials and equipment used in the Work shall be subject to testing in accordance with accepted standards to establish conformance with the Contract Documents and suitability for intended use or as directed by the Owner. Any Work covered or concealed without the approval or consent of the Owner, shall be uncovered for examination. No testing by the Owner or by a testing laboratory on behalf of the Owner relieves the Contractor of the responsibility to maintain quality control of materials, equipment, and installation to conform to the requirements of the Contract Documents. The Owner may order additional testing for any test results below specified minimums, above specified maximums or otherwise unacceptable. Additional cost for testing, professional services and any other expenses related to the additional testing shall be at the Contractor's expense. The Owner may deduct such costs from moneys due the Contractor.

### **Section 13.07 - Final Completion**

No previous inspection shall relieve the Contractor of the obligation to perform the Work in accordance with the Contract. No payment, either partial or full, by the Owner to the Contractor shall excuse any failure by the Contractor to comply fully with the Contract Documents. The Contractor shall remedy all defects and deficiencies at the Contractor's expense, paying the cost of any damage to other Work, the work of Other Contractors and the property of the Owner or Client. No Work is completed and accepted until the Owner issues the Notice of Contract Completion and Acceptance. Contract Completion and Acceptance is limited to the Work described in the Notice of Contract Completion and Acceptance.

### **Section 13.08 - Guarantee**

The Contractor shall, in all respects, guarantee the Work to the Owner and be responsible for all material, equipment, and workmanship of the Work. The Contractor shall forthwith repair, replace or remedy in a manner approved by the Owner, at the Contractor's expense, any material, equipment, workmanship, or other part of the Work found by the Owner to be defective or otherwise faulty and not in compliance with the Contract Documents, which defect or fault appears during the minimum period of one (1) year, or such longer period as may be prescribed by the Contract, from the date of Substantial Completion determined by the Owner. For items of Work performed after the date of Substantial Completion, the minimum period of one (1) year in the preceding sentence shall begin with the date of Physical Completion. The Contractor shall also pay for any damage to the Work, any damage to the work of Other Contractors and any damage to the property of the Owner or Client resulting from said defect or fault.

## **ARTICLE 14 -- PROTECTION OF PERSONS AND PROPERTY**

### **Section 14.01 – Site Safety and Protection**

- A. The Contractor and each Subcontractor shall comply with all applicable rules, regulations, codes, and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended. The Contractor and each Subcontractor shall comply with all Client safety requirements. The Contractor and each Subcontractor shall comply with

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all City of New York safety requirements for Projects within the City of New York constructed in accordance with the Building Code of the City of New York.

- B. The Contractor and each Subcontractor, and only the Contractor and each Subcontractor, shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work and the Contractor shall require each Subcontractor to initiate, maintain and supervise its own safety precautions and programs for any portion of the Work for which the Subcontractor is responsible and to generate safety reports for days when safety inspections occur. The Contractor shall prepare and submit to the Owner a written safety plan for the Site showing how all safety requirements of applicable law and the Contract will be implemented for the duration of the Contract. The Contractor shall designate a responsible person at the Site whose duties shall include maintaining site safety pursuant to OSHA and any other applicable requirements including NYS EO 202, conducting weekly tool box meetings with its workers, implementing the Site safety plan and providing the Owner with a copy of such meeting minutes.
- C. The Owner shall provide the Contractor with copies of the Owner's safety orientation booklet. The Contractor shall provide a copy to each of its workers and to each worker of its Subcontractors prior to each worker starting Work. The Contractor shall maintain documentation that each worker received a copy of the Owner's safety orientation booklet prior to the worker starting Work.
- D. The Contractor and each Subcontractor shall, at all times: (1) guard the Owner's property from damage or loss in connection with the Work; (2) guard and protect the Contractor's Work and adjacent property; (3) replace or make good any said loss or damage unless said loss or damage is caused directly by the Owner; and (4) guard the lives and health of all persons on and in the vicinity of the Site.
- E. The Contractor and each Subcontractor shall protect all adjoining property and shall repair or replace any said property damaged or destroyed during the progress of the Work.
- F. The Contractor is responsible for ensuring that each Subcontractor executes the Subcontractor's obligations in this General Conditions Section 14.01.

### **Section 14.02 - Protection of Work**

- A. The Contractor shall be responsible for the safety, efficiency and adequacy of the Contractor's Work, plant, appliances, and methods, and for any damage which may result from the failure or the improper construction, maintenance, or operation of such Work, plant, appliances, and methods.
- B. The Contractor shall have full responsibility to protect and maintain all materials on and off site in proper condition and forthwith repair, replace and make good any damage thereto until Physical Completion. The Contractor shall maintain an inventory of all materials for the Project that are delivered to the Site or approved for off-site storage facilities pursuant to General Conditions Section 8.01 G. All tools, spare parts, extra materials, attic stock and similar items delivered by the Contractor after Physical Completion shall be in proper condition and Contractor shall forthwith repair, replace, and make good any damage thereto until the later of Contract Completion and Acceptance or the expiration of one year from delivery.
- C. The Contractor shall immediately report any loss, theft, burglary, vandalism, or damage of materials or installed work to the Owner by phone and email as soon as it is discovered. If vandalism, theft, or burglary is suspected as the cause of the loss, the Contractor shall notify Site security personnel and the municipal police, protect the place of the loss until released from protection by the Owner, and insure that no potential evidence relating to the loss is removed from the place of the loss.

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- D. Any insurance claim alleging damage to the Work shall be submitted to the Owner pursuant to General Conditions Section 10.03.
- E. A claim for damage to the Work shall include the following in addition to the requirements of General Conditions Section 10.03:
  - 1. A copy of a police report (if applicable).
  - 2. A complete inventory of damages or lost items including:
    - a. Description of each item.
    - b. Purchase date and proof of delivery of each item.
    - c. Supplier from whom purchased.
    - d. Serial number (if applicable).
    - e. Price of each item.
  - 3. The name, address and telephone number of the person who controlled the lost or damaged items immediately before the loss or damage.
  - 4. The name, address and telephone number of the person who discovered the loss or damage.
  - 5. A written description of how the loss or damage occurred.
- F. The Owner may deny any claim from the Contractor under this General Conditions Section 14.02 if all items required by this General Conditions Section 14.02 are not provided or are not satisfactory to the Owner.

### **Section 14.03 - Protection of Lives and Health**

- A. The Contractor and each Subcontractor shall be responsible for the safe performance of the Work and their Means and Methods of Construction and for any injury or loss that shall occur from a failure to meet such responsibility.
- B. The Contractor shall, within twenty-four (24) hours, notify the Owner and each Subcontractor shall, within twenty-four (24) hours, notify the Contractor of any incident, accident, illness, or injury that occurred on the Project Site. The Contractor shall follow-up and provide the Owner with a copy of Form C-2, Employers Report of Injury/Illness within twenty-four (24) hours of any incident, accident, illness, or injury, a copy of the recorded OSHA Log and any and all reports and statements pertaining to such incident, accident, illness, or injury.
- C. The Contractor and each Subcontractor shall maintain a record of all cases of death, illness or injury requiring medical attention, hospitalization, or causing loss of time from work, arising out of and in the course of performance of Work of the Contract.
- D. The Contractor and each Subcontractor shall preserve and safeguard the area of any incident, accident, illness, or injury where the person required emergency medical treatment. The Contractor shall secure



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the area and not allow any material object or property to be altered, changed, moved, or removed from the area and post a person at the area to protect it. Safeguarding and protecting the area shall only be abandoned by the Contractor upon release by the Owner. The Contractor shall provide the Owner, within twenty-four (24) hours, a list of witnesses which includes the full name, home address, occupation and telephone number of each person and all maintenance records, tool box meeting records and daily reports reflecting the work performed on the day of the incident. The Contractor shall provide, within twenty-four (24) hours of learning of the actual or potential existence of any other witnesses, the Owner with updated information which includes the full name, home address, occupation, and telephone number of each additional witness.

- E. If, in the performance of the Work, a harmful hazard is created for which appliances or methods of elimination have been approved by regulatory authorities, the Contractor shall install, maintain, and operate said appliances or methods.
- F. The Contractor and each Subcontractor shall provide, in accordance with the terms of the relevant insurance policies and, as soon as practicable, within five (5) calendar days, written notice to each of its liability insurers (primary, excess and umbrella) of any such incident, accident, illness, injury, or death on the Project Site on behalf of itself, the Owner, the Client, and the Construction Manager. This provision does not remove the obligation of each insured to provide notice to its liability insurers. The Contractor and each Subcontractor shall provide to the Owner, the Client and the Construction Manager, a copy of such notice at the time such notice is given to each insurer as well as confirmation of receipt of such notice by each insurer.
- G. The Contractor is responsible for ensuring that each Subcontractor executes the Subcontractor's obligations in this General Conditions Section 14.03.
- H. Drug Testing Policy:
  - 1. The Contractor shall undertake or continue, and ensure each Subcontractor shall undertake or continue, a drug testing policy designed to maintain a safe working environment.
  - 2. The Contractor shall submit to the Owner, within seventy-two (72) hours after the date of the execution of this Contract, its drug testing policy in connection with the Project. Owner reserves the right in its sole discretion to direct that the Contractor's drug testing policy, at a minimum, contains a requirement to drug test any employee involved in an incident on the Project involving any reported bodily injury or any property damage over \$1000 in value. Owner may also require random drug testing when appropriate in accordance with law along, with certifications to Owner regarding the status of the testing.
  - 3. The Contractor shall not allow any worker or employee on a work site who is under, appears to be under, or is suspected of being under the influence of drugs or alcohol. Such employee shall not be allowed on site until drug testing has occurred and Owner has approved.
- I. Professional Conduct:
  - 1. The Contractor acknowledges and agrees that professionally appropriate conduct is a material obligation of this Contract. All employees, officers and representative of Contractor shall conduct themselves professionally in all communications in connection with the Project, including but not limited to communications with Subcontractors and other contractors.

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2. Use of abusive, threatening, vulgar or other offensive language, whether written or oral, is a breach of the obligation set forth in paragraph (1) of this section 14.03 (I).
3. Contractor will receive a warning in writing from Owner upon breach of the obligation set forth paragraph (1) of this section 14.03 (I). Contractor agrees that any subsequent breach of paragraph (1) of this section 14.03 (I) committed after receipt of the written warning is grounds for the Owner to terminate this Contract for cause, or for the Owner to avail itself of any other remedy at law.
4. The Contractor shall include the provisions set forth in paragraphs (1) and (2) of this section 14.03 (I) in every subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.

### J. Sexual Harassment:

1. As a condition to the award of this Contract, Contractor affirms that it has implemented (i) a written policy addressing sexual harassment prevention in the workplace and that (ii) it provides or will provide annual sexual harassment training to all of its employees, both of which meet the requirements of New York law including Section 201-g of the New York State Labor Law. The policy shall equal or exceed the standards set forth by the New York Department of Labor pursuant to the model sexual harassment prevention policy in connection with New York Labor Law Section 201-g (1). The Contractor shall ensure that all its employees receive a copy of the sexual harassment prevention policy pursuant to New York law and shall provide a copy to owner upon request.
2. The Contractor shall submit to the Owner, within seventy-two (72) hours after the date of the execution of this Contract, its sexual harassment prevention policy. The Owner may direct Contractor to revise its sexual harassment prevention policy to the extent that the Owner determines that the policy fails to meet the standards set forth in paragraph (1) of this section. Owner's failure to direct Contractor to revise its policy does not constitute a determination or representation that the policy satisfies New York law nor that the policy meets the standards set forth in paragraph (1) of this section.
3. The Contractor shall include the provisions set forth in paragraph (1) of this section 14.03 (J) in every subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.

K. Failure of the Contractor to comply with provisions of this General Conditions Section 14.03 shall be deemed a material breach of Contract and the Owner may impose a payment penalty on the Contractor for any act of non-compliance. The payment penalty shall not exceed one twentieth (1/20) of the contract price or a maximum of One Thousand Dollars (\$1,000) for each time the Contractor fails to perform or to provide the information, reports, forms, etc. required in this General Conditions Section 14.03. This payment penalty is not exclusive; the Owner may avail itself of any other contractual remedy available.

### **Section 14.04 - Risks Assumed by the Contractor**

The Contractor agrees that each duty set forth in this General Conditions Section 14.04 is separate, distinct, and independent from the other duties in this General Conditions Section 14.04.

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- A. To the fullest extent permitted by law, the Contractor solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, of the Owner, of the Client, of any Subcontractor, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the performance of the Work, whether said risks are within or beyond the control of the Contractor and whether said risks involve any legal duty, primary or otherwise, imposed upon the Owner or Client, regardless of the presence or absence of culpable conduct on the part of the Contractor, excepting only risks which arise from faulty designs as shown by the Drawings and Specifications or from the percentage of negligence attributed to the Owner, the Client or the Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the loss, damage or injuries hereinafter set forth:
1. To the fullest extent permitted by law, the risk of loss or damage, including direct or indirect damage or loss, of whatever nature to the Work or to any plant, equipment, tools, materials or property furnished, used, installed or received by the Owner, the Construction Manager, the Contractor or any Subcontractor, materialman or worker performing services or furnishing materials for the Work regardless of the presence or absence of any culpable conduct on the part of the Contractor, excepting only risks which arise from the percentage of negligence attributed to the Owner, Client or Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the loss or damage. The Contractor shall bear said risk of loss or damage until Physical Completion or until completion or removal of said plant, equipment, tools, materials or property from the Site and the vicinity thereof, whichever event occurs last. In the event of said loss or damage, the Contractor immediately shall repair, replace, or make good any said loss or damage.
  2. To the fullest extent permitted by law, the risk of claims, just or unjust, by third persons against the Contractor, the Owner, the Client, or the Construction Manager on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work by the Contractor or any Subcontractor, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the operations of the Contractor or any Subcontractor or presence at or in the vicinity of the Site of the Contractor or any Subcontractor, regardless of the presence or absence of any culpable conduct on the part of the Contractor. The Contractor shall bear the risk for all deaths, injuries, damages or losses sustained or alleged to have been sustained prior to Physical Completion of the Work excepting only the percentage of negligence attributed to the Owner, Client or Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the deaths, losses, damages or injuries, regardless of the presence or absence of any culpable conduct on the part of the Contractor. The Contractor shall bear the risk for all deaths, injuries, damages, or losses sustained or alleged to have been sustained after Physical Completion resulting from the Contractor's negligence or alleged negligence.
  3. To the fullest extent permitted by law, the Contractor assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all persons, whether employees of the Contractor or otherwise, and to all property, arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work by the Contractor or any Subcontractor, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Contractor's or any Subcontractor's operations or presence at or in the vicinity of the Site, regardless of the presence or absence of any culpable conduct on the part of the Contractor. If any person shall make said claim for any damage or injury, including death resulting therefrom, or any alleged breach of any statutory duty or obligation on

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the part of the Owner, the Client, Construction Manager, or any of the servants and employees of the Owner, Client or Construction Manager, the Contractor shall indemnify and hold harmless the Owner, the Client, the Construction Manager, and any of such servants and employees, for any and all loss, damage or injury that the Owner, the Client Construction Manager, or any such servants and employees, may sustain as the result of any claim, provided however, the Contractor shall not be obligated to indemnify and hold harmless the Owner, the Client Construction Manager, and any such servants and employees for their own negligence, if any. In the event that any negligence is attributed to the Owner, Client, Construction Manager or any such servants or employees, then that particular entity or person shall be indemnified and held harmless for all of its liability minus the percentage of negligence attributed to that particular entity or person.

4. Notwithstanding any contrary provision of the Contract, and to the fullest extent permitted by law, the Contractor shall, within ten (10) calendar days of notice from the Owner, Client or Construction Manager, assume the obligation to defend and represent the Owner, the Client, the Construction Manager, and any of the servants and employees of the Owner, Client or Construction Manager, with counsel selected by the Owner, in all claims by third parties arising out of or alleged to arise out of or as a result of or in any way associated with the duties, obligations or requirements of the Contractor or any Subcontractor pursuant to the Contract, or the presence of the Contractor or any Subcontractor on the Site. This obligation to defend applies immediately and is separate and independent of and distinct from the enforceability of any obligation of Contractor or any Subcontractor to indemnify or hold harmless the Owner, the Client, the Construction Manager and the servants or employees of the Owner, Client, and Construction Manager. The Contractor's obligation to defend includes, but is not limited to, payment of any legal fees associated with defending the Owner, the Client, the Construction Manager and any such servants and employees, all costs of investigation, expert evaluation, and any other costs. If the Contractor fails to so defend and represent the Owner, the Client, the Construction Manager, or any such servants and employees with counsel selected by the Owner, the Owner may proceed to defend and represent itself, the Client, the Construction Manager and any such servant and employee with counsel selected by Owner. Contractor shall make payment of the selected counsel's fees and expenses and all other defense costs incurred by Owner immediately upon receipt of Owner's demand.
- B. The Contractor's obligations under this General Conditions Article shall not be deemed waived, limited or discharged by the enumeration or procurement of any insurance for liability for damages. The Contractor shall notify its insurance carrier within twenty-four (24) hours after receiving a written notice of loss or damage or claim from the Owner, the Client, or the Construction Manager. The Contractor shall make a claim to its insurer specifically under the provisions of the contractual liability coverage and any other coverage afforded the Owner, the Client or Construction Manager including those of being a named insured or an additional insured where applicable.
- C. Neither Contract Completion and Acceptance of the Work nor making any payment shall release the Contractor from the Contractor's obligations under this General Conditions Article. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which the Contractor is responsible shall not be deemed to limit the effect of the provisions of this General Conditions Article or to imply that the Contractor assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this General Conditions Article nor the enumeration elsewhere in the Contract of particular risks assumed by the Contractor or particular claims for which the Contractor is responsible shall be deemed to limit the risks which the Contractor would assume or the claims for which the Contractor would be responsible in the absence of said enumerations.

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- D. Notwithstanding any provision of the Contract to the contrary, and to the fullest extent permitted by law, if the Contractor does not fulfill one or more of Contractor's obligations under General Conditions Articles 14 and 15 to defend, indemnify, hold harmless, and procure insurance for the Owner, Client and Construction Manager, and the Owner, Client or Construction Manager commences a court action to enforce one or more of the Contractor's obligations to defend, indemnify, hold harmless and procure insurance for the Owner, Client and Construction Manager, the Contractor, in addition to its other obligations, shall pay the costs of the Owner, Client and Construction Manager to bring and prosecute the court action, including but not limited to attorney and consultant fees, expenses and court fees. If the Owner, Client, or Construction Manager commences a court action against an insurance company to obtain coverage under an insurance policy which the Contractor represented would provide coverage to the Owner, Client or Construction Manager, the Contractor, in addition to its other obligations, shall pay the costs of the Owner, Client, and Construction Manager to bring and prosecute the court action, including but not limited to attorney and consultant fees, expenses, and court fees.

### **ARTICLE 15--INSURANCE AND BONDS**

#### **Section 15.01 - General Provisions**

- A. The Contractor and Subcontractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the Owner and of the insurance companies issuing such policies.
- B. The Contractor and Subcontractors shall maintain in force all insurance required to be procured by them under this Contract until issuance of the Notice of Physical Completion by the Owner except where this Contract requires an insurance policy to be maintained for a period beyond issuance of the Notice of Physical Completion in which case the Contractor and Subcontractors shall maintain such insurance policy in force for the specified period beyond issuance of the Notice of Physical Completion.
- C. All insurance required to be procured and maintained by the Contractor and Subcontractors under this Contract shall be procured from insurance companies licensed to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company, or meet such other requirements as are acceptable to the Owner in its sole and exclusive discretion.
- D. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that the policy shall not be canceled, materially changed, or not renewed without at least thirty (30) calendar days written notice to the Owner except for non-payment in which case notice to the Owner shall be provided as required by law.
- E. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that at least thirty (30) calendar days prior to the expiration of the policy, evidence from the carrier of renewal or replacement of the policy by the carrier, with terms and limits no less favorable than the expiring policy, or written notice from the carrier that the policy will not be renewed or replaced by the carrier, shall be delivered to the Owner.
- F. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall be written on an occurrence basis except where this Contract explicitly allows otherwise.
- G. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that the Owner and the Client shall not be responsible for any claim expenses and loss payments within the deductible or the self-insured retention

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and that the Contractor or Subcontractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. At any time this Contract requires the Contractor or any Subcontractor to maintain an insurance policy, the Owner may require the Contractor or any Subcontractor to provide proof, acceptable to the Owner in its sole discretion, that the Contractor or Subcontractor has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the Contractor or Subcontractor may be liable under the claims pending or reasonably possible against the Contractor or Subcontractor at the time the Owner requires the proof. A failure of the Contractor or Subcontractor to provide such proof is a failure of the Contractor or Subcontractor to maintain the insurance required by the Contract or to provide the Owner with evidence of valid and in-force insurance coverage required by the Contract for purposes of General Conditions Section 15.05.

- H. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that there shall be no right of subrogation against the Owner, Client, or Construction Manager. If any of the Contractor's policies or any of the policies of any Subcontractor prohibit such a waiver of subrogation, the Contractor or Subcontractor shall secure the necessary permission to grant this waiver of subrogation. Any and all such permission shall be confirmed by a manuscript endorsement to the relevant insurance policy or policies and a certified copy of the endorsement shall be provided to the Owner and Construction Manager.
- I. Each liability and protective liability insurance policy required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that the coverage afforded the Owner, Client and Construction Manager under such policy shall be primary and non-contributory and that such policy shall be primary to any other insurance policy maintained by the Owner, by the Client or by the Construction Manager. Any other insurance policy maintained by the Owner, by the Client or by the Construction Manager shall be in excess of and shall not contribute with the Contractor's or Subcontractor's insurance policy, regardless of the "other insurance" clause contained in the Owner's, Client's or Construction Manager's own policy of insurance or the Contractor's or Subcontractor's insurance policies.
- J. Any other Contract Document, including but not limited to the Information for Bidders, but excluding Change Orders, may require any of the Contractor and Subcontractors to provide at its or their expense any other form or limit of insurance necessary to secure the interests of the Owner or Client.
- K. Notwithstanding any other provision of the Contract, the Owner, in a Change Order or Contract Amendment, may require the Contractor and any or all Subcontractors to provide, at the expense of the Owner, any other form or limit of insurance in addition to the insurance requirements of the original Contract necessary to secure the interests of the Owner, Client, or Construction Manager.
- L. Neither the procurement nor the maintenance of any type of insurance by the Owner, the Client, the Contractor or the Construction Manager shall in any way be construed or deemed to limit, discharge, waive or release the Contractor or any Subcontractor from any of the obligations or risks accepted by the Contractor and Subcontractors or to be a limitation on the nature or extent of said obligations and risks or to be a limitation of any obligation to defend, indemnify, hold harmless and procure insurance for the Owner, Client and Construction Manager.
- M. All provisions of General Conditions Article 14 - Protection of Persons and Property and General Conditions Article 15 – Insurance and Bonds are to the fullest extent permitted by law. One purpose of this Contract is to allocate, to the fullest extent permitted by law, all risk of loss to the Contractor, each Subcontractor, and the insurers of each. Each insurance company from which Owner or Client

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has directly purchased an insurance policy is a third-party beneficiary of the Contractor's and each Subcontractor's obligations to procure insurance.

- N. Contractor is responsible for ensuring that each Subcontractor obtains and maintains in the required amount each type of insurance policy required by this Contract and that such insurance policy provides the Owner, Client and Construction Manager with the coverage required by this Contract.
- O. Contractor agrees and acknowledges that, because the Contractor (and not the Owner or Client) is responsible for performance of the duties and obligations set forth in this Contract for completion of the Project, the Contractor, through the use of insurance, intends to allocate all losses to such insurance to protect itself and the Owner and Client.

### **Section 15.02 - Submission of Insurance**

- A. Owner will not execute the Contract unless the Contractor shall submit to the Owner or the Owner's designee proof of insurance in such forms as requested and deemed acceptable by the Owner, indicating the Project, and showing evidence of all insurance required under the Contract. Upon the Owner's request, the Contractor shall provide a copy of each insurance policy required by the Contract certified by the insurance carrier as a true and complete copy. The Owner may request such a certified copy of a policy at any time and may make such requests as often as the Owner, in its sole and exclusive discretion, deems necessary. Each request may be for a certified copy of one or more policies. In addition, the Contractor shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the Owner, constitute a warranty by the Contractor and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- B. The Contractor shall submit to the Owner or Owner's designee insurance certificates (Accord 25, or equivalent as determined by the Owner), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the Owner, Client, and Construction Manager, and such other documents requested by the Owner as proof of insurance for the Contractor. All insurance submittals must be approved by the Owner or the Owner's designee prior to the Contractor's commencement of Work.
- C. Upon the Owner's request, the Contractor shall submit to the Owner or Owner's designee proof of insurance for one or more Subcontractors, in such forms as requested and deemed acceptable by the Owner, indicating the Project, and showing evidence of all insurance required under the Contract. Upon the Owner's request, the Contractor shall provide a copy of each insurance policy of the Subcontractor or Subcontractors required by the Contract and certified by the insurance carrier as a true and complete copy. The Owner may request such a certified copy of a policy at any time and may make such requests as often as the Owner, in its sole and exclusive discretion, deems necessary. Each request may be for a certified copy of one or more policies for one or more Subcontractors. In addition, the Contractor shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance of the Subcontractors, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the Owner by the Contractor, constitute a warranty by the Contractor, the Subcontractor and the Subcontractor's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- D. Upon request of the Owner made any time after bids are opened, the Contractor shall submit insurance certificates (Accord 25 and 855, or equivalent as determined by the Owner), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the Owner, Client, and Construction Manager, and such other

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documents requested by the Owner as proof of insurance for a Subcontractor. Owner may request proof of insurance for one or more Subcontractors at the same or at different times and may request proof of insurance for a particular Subcontractor as often as Owner, in its sole and exclusive discretion, determines is necessary.

### Section 15.03 - Insurance Provided by Contractor

- A. Prior to award of the Contract, the Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times required by this Contract all of the insurance required under this Contract. Each Subcontractor shall procure, at its sole cost and expense, prior to the Contractor submitting to the Owner the name of such Subcontractor and prior to such Subcontractor commencing performance of any of the Work, and each Subcontractor shall maintain in force at all times required by this Contract all of the insurance required under this Contract. The insurance that the Contractor and each Subcontractor shall procure and maintain under this Contract includes, but is not limited to, the following:
1. Workers' Compensation (including occupational disease) and Employer's Liability insurance. Full New York State Workers' Compensation and Employer's Liability coverage shall be provided and evidenced by one of the following certificates (**Acord certificates are not acceptable**):
    - a. C-105.2 (September '15, or most current version) - Certificate of NYS Workers' Compensation Insurance Coverage. The insurance carrier shall provide a completed form as evidence of in-force coverage.
    - b. U-26.3 – (or any replacement) NYS Insurance Fund Certificate of Workers' Compensation Coverage. The NYS Insurance Fund shall provide a completed form as evidence of in-force coverage.
    - c. GSI-105.2(2/02 or most current version) - Certificate of Participation in Workers' Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Group Self Insurance Administrator shall provide a completed form.
    - d. SI-12 (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Self Insurance Administrator shall provide a completed form.
  2. Disability Benefits insurance. Full New York State Disability Benefits coverage for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law shall be provided and evidenced by one of the following certificates:
    - a. DB-120.1 (September 15, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
    - b. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall provide a completed form.
    - c. CE 200 Certificate of Attestation of Exemption. (Note: this form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. The Dormitory Authority of the State of New York will not accept this as an exemption from providing Worker's Compensation Insurance.) The Certificate may be obtained from the NYS



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Workers Compensation Board's website at <http://www.web.state.ny.us>. The CE 200 cannot be used for multiple projects; therefore, a new form shall have to be completed prior to award of any subsequent contract.

3. Commercial General Liability (CGL) insurance. The CGL insurance policy shall cover the liability of the Contractor or Subcontractor for bodily injury, property damage, and personal/advertising injury arising from performance of the Work or operations or presence at or in the vicinity of the Site of the Contract. The limits under such policy shall not be less than the following: the limit for each occurrence shall be at least \$2,000,000; the general aggregate limit shall be at least \$4,000,000; the personal and advertising injury limit shall be at least \$1,000,000; ; the Fire Damage Legal Liability shall be at least \$1,000,000; and the Products Completed Operations limit shall be at least \$4,000,000. The limits may be provided through a combination of primary and umbrella and/or excess liability policies. Coverage shall provide and encompass at least the following:
  - a. If the Contractor or Subcontractor proposes the use of a policy other than the ISO form CG 00 01 12 07, the Contractor or Subcontractor shall provide the proposed policy to the Owner which, in its sole and exclusive discretion, will determine whether the proposed policy provides equivalent coverage. The Contractor or Subcontractor shall pay Owner any attorney fees and other costs incurred by Owner in determining whether the proposed policy provides equivalent coverage. Owner will select the attorney providing advice on the proposed policy.
  - b. ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, or their equivalents, specifically naming as additional insureds the Dormitory Authority, Client, any other entities as required by the Contract Documents, and if applicable, the Construction Manager and for form CG 20 37 04 13 or its equivalent, specifically listing the Project location. In the event said endorsements or equivalents are not able to be provided, the Owner may accept, at the Owner's sole discretion, CG 20 38 04 13 or its equivalent or other manuscript endorsements providing equivalent coverage.
  - c. If the Contractor or Subcontractor proposes the use of an endorsement or endorsements other than the ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, the Contractor or Subcontractor shall provide the proposed endorsement(s) to the Owner or the Owner's designee which, in its sole and exclusive discretion, will determine whether the proposed endorsements provide equivalent coverage. Contractor and Subcontractor shall pay Owner any attorney fees and other costs incurred by Owner in determining whether the proposed endorsements provide equivalent coverage. Owner will select the attorney providing advice on the proposed endorsements.
  - d. Additional insured status for Owner, Client, Construction Manager and any other entities as required by the Contract Documents shall apply during the Products/Completed Operations phase as well as during the course of performance of the Work.
  - e. The policy provisions required by General Conditions Section 15.01.
  - f. Excavation, Collapse and Underground Hazards.
  - g. Independent contractors/subcontractors.
  - h. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the Contract, and covering tort liability of another assumed in a contract.

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- i. Products and completed operations coverage for a term no less than three years commencing upon issuance by the Owner of the Notice of Physical Completion.
  - j. Premises liability.
  - k. Defense and/or indemnification obligations, including obligations assumed under this Contract.
  - l. Cross liability for additional insureds.
  - m. Contractor and Subcontractor means and methods.
  - n. Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
  - o. ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit separately to the Project.
  - p. The maximum deductible or self-insured retention shall be \$50,000.
  - q. No endorsement or provision in the policy shall exclude coverage for Owner, Client, or Construction Manager for any liability when the injured party is an employee of Contractor or any Subcontractor.
  - r. No endorsement or provision in the policy shall require privity of contract between the Owner and Subcontractor or between the Client and the Contractor or Subcontractor or between the Construction Manager and the Contractor or Subcontractor in order for the Owner, the Client, or the Construction Manager to have coverage as an insured on such insurance policy.
  - s. If the Contractor or Subcontractor must provide a Railroad Protective Liability insurance policy, the CGL exclusion for work within fifty (50) feet of railroad property must be deleted.
  - t. No endorsement or provision in the policy shall have a height limitation or exclusion.
  - u. No endorsement or provision in the policy shall have a classification exclusion with respect to work performed for the Owner, Client, and Construction Manager.
  - v. Owner, Client, and Construction Manager shall be covered for any and all liability arising out of acts or omissions of Contractor and any Subcontractor.
4. Commercial Automobile Liability insurance. The Commercial Automobile Liability insurance policy shall cover liability arising out of the use of any motor vehicle in connection with the Contract, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the laws of NYS to bear, license plates. The policy shall have a combined single limit for bodily injury and property damage of at least \$1,000,000. The limit may be provided through a combination of primary and umbrella and/or excess liability policies. If the Contract involves the removal of hazardous waste or otherwise transporting Hazardous Materials, pollution liability coverage for covered autos shall be provided by endorsement CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.

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5. Umbrella and/or Excess Liability insurance. When the limits of the CGL, Commercial Auto Liability or Employers' Liability policies procured are insufficient to meet the limits specified in the preceding paragraphs, Commercial Umbrella or Excess Liability policies shall be procured and maintained provided, however, that the total amount of insurance coverage is at least equal to the requirements specified in the preceding paragraphs. The Commercial Umbrella or Excess Liability policies shall follow the same form as the CGL, Commercial Automobile Liability and Employers Liability insurance policies required in the preceding paragraphs. The Umbrella and/or Excess Liability policies shall be primary to any other insurance maintained by the Owner or Client or Construction Manager or any other additional insured. Any other insurance maintained by the Owner, the Client, the Construction Manager, or any other additional insured shall be in excess of and shall not contribute with the Contractor's or Subcontractor's Umbrella or Excess Liability insurance policies, regardless of the "other insurance" clause contained in the Owner's or Client's or Construction Manager's or other additional insured's own policy of insurance or the Contractor's or Subcontractor's insurance policies.
  6. The Contractor shall secure, pay for, and maintain property insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed, or rented by the Contractor. The requirement to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not render the Owner, Client and, if applicable, the Construction Manager and other entities specified as additional insureds on the sample certificate of insurance provided by the Owner in the bidding documents or their agents and employees responsible for any losses; and the Owner, Client and, if applicable, the Construction Manager and other entities specified as additional insureds on the sample certificate of insurance provided by the Owner in the bidding documents and their agents and employees shall have no such liability.
- B. Notwithstanding any other provision of the Contract to the contrary and to the fullest extent permitted by law, Contractor shall be liable for all costs and fees, including counsel fees, incurred by or on behalf of the Owner, the Client or the Construction Manager in any action brought by or against the Owner, Client or Construction Manager concerning insurance coverage owed to Owner, Client or Construction Manager by any insurer for which Contractor or any Subcontractor represented that the Owner, Client and Construction Manager would be an insured or would benefit in any way if a claim was brought against Owner, Client and Construction Manager .

### **Section 15.04 - Other Insurance Provided by Contractor**

The Contractor and each Subcontractor shall also procure and maintain as required by General Conditions Sections 15.01 B and 15.03 A the following insurance:

- A. United States Longshore and Harbor Workers' Compensation Act and Jones Act: When, to perform the Work, the Contractor or any Subcontractor is engaged in activities on or near a shoreline or on or near the navigable waterways of the United States or when any part of the Work is connected to water related activities, the Workers' Compensation policy referenced above of the Contractor and any such Subcontractor shall be endorsed to provide Jones Act and United States Longshore and Harbor Workers' Act coverage.
- B. Contractor's Pollution Liability insurance: When the Work includes abatement, removal, repair, replacement, enclosure, encapsulation or disposal of any pollutants, which include but are not limited to, petroleum, petroleum products, mold, asbestos, lead or any other Hazardous Material, the Contractor or any Subcontractor performing Work involving any of the pollutants, shall procure and maintain in

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full force and effect pollution legal liability insurance with limits of at least \$2,000,000 providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured and coverage that encompasses at least the following:

1. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client, and if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents.
  2. The policy provisions required by General Conditions Section 15.01.
  3. A maximum deductible or self-insured retention of \$50,000.
  4. Coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the Owner, Client or Construction Manager arising from the Work.
  5. Coverage shall be provided until three years after the Owner issues the Certificate of Physical Completion.
- C. Railroad Protective Liability insurance: If any Work of the Contract is to be performed on or within fifty (50) feet of a railroad property or railroad right of way or will require entrance upon railroad property or right of way or will require assignment of a railroad employee, the Contractor shall provide and maintain a Railroad Protective Liability policy with the policy limits required by the owner(s) of the railroad. For purposes of this paragraph, a subway is a railroad. The policy form shall be ISO-RIMA or an equivalent form approved by the owner(s) of the railroad. The railroad owner(s) shall be the named insured on the policy and the definition of "physical damage to property" shall mean direct and accidental loss of or damage to all property of any named insured and all property in any named insured's care, custody, or control. If the Contractor shall provide a Railroad Protective Liability insurance policy, the Contractor and any Subcontractor performing on or within fifty (50) feet of railroad property or railroad right of way or entering railroad property or right of way or requiring assignment of a railroad employee shall have their CGL insurance policy endorsed to delete the exclusion of coverage for Work within fifty (50) feet of railroad property.
- D. Professional Liability insurance: Each of the Contractor and any Subcontractor performing any Work which involves delegation of design shall procure and maintain Error and Omissions Liability Insurance for the delegated design Work with a minimum insurance limit of not less than two (2) million dollars issued to and covering damage for liability imposed on the Contractor or Subcontractor by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. This insurance may be issued on a claims-made policy form and shall be maintained for no less than three (3) years after issuance by the Owner of the Notice of Physical Completion. The policy, at the sole expense of the Contractor or Subcontractor, shall have extended Discovery Clause coverage of at least three (3) years after issuance by the Owner of the Notice of Physical Completion if the policy is cancelled or not renewed. The maximum deductible or self-insured retention is \$100,000.
- E. Unmanned Aircraft System (UAS) Insurance: Any Contractor or Subcontractor proposing the use of any Unmanned Aircraft System for any purpose on a Project, including but not limited to investigation, surveying, photography, inspections or observation, shall comply with all of Owner's policies and procedures regarding such use and shall provide coverage, in the form of an Unmanned Aircraft System (UAS) endorsement to the Commercial General Liability Coverage required above or Aircraft Liability

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Coverage with a minimum limit of \$1,000,000. Such coverage shall name the Owner and any required third parties as additional insureds.

- F. Marine Protection & Indemnity insurance and Hull & Machinery insurance: Each of the Contractor and any Subcontractor performing any Work on navigable water or connected to water-related activities or with marine operations, shall procure and maintain Marine Protection & Indemnity insurance and Hull & Machinery insurance. Hull & Machinery coverage shall be provided for the total value of the watercraft and equipment used in the Work on navigable water or connected to water-related activities or with marine operations. The Contractor shall obtain a Marine Protection & Indemnity Liability insurance policy for all navigable water, water-related or marine activities or operations under the Contract with a minimum limit of \$2,000,000. The Owner, the Client and, if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents shall be additional insureds on the Marine Protection & Indemnity Liability insurance policy. The Marine Protection & Indemnity Liability insurance policy shall provide coverage that encompasses at least the following:
5. The policy provisions required by General Conditions Section 15.01.
  2. A maximum deductible or self-insured retention of \$50,000.
  3. Coverage shall be provided until the Owner issues the Certificate of Physical Completion.
  4. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client, and if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents.

### **Section 15.05 - Stop Work Order - Insurance**

- A. All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. The Contractor shall be responsible to submit updated insurance certificates to the Owner or the Owner's designee thirty (30) calendar days prior to any insurance certificate expiration date.
- B. Failure of the Contractor or any Subcontractor to maintain the insurance required by the Contract or to provide the Owner or the Owner's designee with evidence of valid and in-force insurance coverage required by the Contract shall result in a Stop Work Order pursuant to General Conditions Article 11 – Termination or Suspension and/or withholding of payment to the Contractor.
- C. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the Contractor or Subcontractor shall immediately cease Work on the Project. The Contractor or Subcontractor shall not resume Work on the Project until authorized to do so by the Owner or the Owner's designee.
- D. Any delay or time lost as a result of the Contractor or Subcontractor not having proper insurance required by this General Conditions Article or not providing the Owner or the Owner's designee with evidence of valid and in force insurance required by the Contract shall not give rise to a delay Claim or any other Claim against the Owner. Further, the Contractor may be liable to other contractors for costs incurred by reason of the Contractor's or Subcontractor's failure to provide insurance.

### **Section 15.06 – Builder's Risk**

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- A. The Owner will provide Builder's Risk insurance for all projects, except for those projects listed in paragraph B of this General Conditions Section 15.06.
1. The Owner shall, except as otherwise specified, at all times beginning with the Notice to Proceed and until Substantial Completion, procure and maintain, at the Owner's sole cost and expense, "All Risk" Builder's Risk insurance. The Contractor and Subcontractors will be covered for the Work of the Contract, except losses up to and including the deductible shall be borne by the Contractor. The Owner shall, at the Owner's sole discretion, have the power to adjust and to settle with the insurer any loss or claim under the Builder's Risk insurance. Reimbursement for loss, if any, shall be made payable to the Owner. The deductible is stated in the Information for Bidders.
  2. Coverage shall include sub limits for property in transit and for property in storage on and off the Site. Specific higher limits for transit or for storage may be available as circumstances may require upon written request by the Contractor or any Subcontractor to the Owner at least 30 calendar days before such higher limit would take effect if the request is granted. Owner in its sole and exclusive discretion may grant or deny the request for a higher limit for transit or storage. If the Owner denies the request, the Contractor or Subcontractor shall have no Claim against the Owner for any cost or damage. If the Owner grants the request, the Owner may condition the grant upon the Contractor or Subcontractor paying the additional cost for the higher limit for transit or storage.
  3. No coverage shall be provided to the Contractor or any Subcontractor under any property insurance policy of the Owner or Client which only covers completed, occupied structures.
- B. The Contractor shall procure and maintain, at its sole cost and expense, Builder's Risk insurance for all OMH, OPWDD, OASAS, NYCHA, and HTFC-GOSR projects, or when otherwise specified, as provided below.
1. The Contractor shall maintain until the date of Physical Completion, an All Risk Builder's Risk Completed Value Form insurance policy, with coverage for at least the value of the Work of the Contract except for excavation work, planting and seeding, and Work buried in the ground other than wiring and walking tunnels, but including debris removal costs and architect, engineering and other costs to evaluate damage and provide any design or other services necessary to correct or minimize damage in the event of damage to the Work covered by the policy or such higher amount of coverage as required by the Owner in this Contract. Debris removal costs shall include demolition as may be necessary by the operation of any law, ordinance, or regulation. The policy shall cover property of the Owner or Client when in the Contractor's care, custody, or control. The policy shall name as insureds the Owner, Client and Contractor and shall include such soft costs coverage for the Owner and Client as specified in this Contract. The extended coverage endorsement may include a loss deductible of \$10,000 or less. The Contractor shall bear all losses up to and including the deductible provision.
  2. Coverage shall also include sub limits for equipment, material, and other property in transit or in storage on or off the Site. Specific higher limits of coverage for property in transit or storage, at Contractor's expense, may be required by the Owner due to circumstances of the Project.

Each Builder's Risk insurance policy shall include the following endorsement:

*"It is made a condition of this insurance that until the Owner issues the Notice of Physical Completion to the Contractor, occupancy of the premises shall not require consent of the insurer, nor shall such occupancy be the basis for a rate adjustment."*

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3. Builder's Risk insurance policy shall name the Dormitory Authority and the Contractor Loss Payees in order of precedence, as their interests may appear and shall run until the date of Physical Completion. Policies expiring on a fixed date before Physical Completion shall be renewed not less than thirty (30) calendar days before such expiration date. Such policy shall not be changed by endorsement without the knowledge and consent of the Owner and in particular, shall provide that no notice of cancellation by the insurer shall be effective until sixty (60) calendar days after such notice is received by the Owner. If the policy is issued by a mutual insurance company, the policy shall provide that the Owner and the Client shall not be liable for any premium or assessment under the policy; the Contractor shall be responsible for all premiums and assessments.
4. The Owner may withhold the Contractor's payment for Work which is required to be insured until original binder or policies for the Builder's Risk insurance are provided to the Owner pursuant to General Conditions Section 15.06.

### **Section 15.07 - Bonds Provided by Contractor**

- A. The Contractor shall provide the Performance Bond in an amount at least equal to 100% of the Contract sum as security for the faithful performance of the Contract. The Contractor shall also provide the Payment Bond in an amount at least equal to 100% of the Contract sum for the payment of all persons performing labor or providing materials in connection with the Work of the Contract. The Contractor shall execute the Performance Bond form and the Payment Bond form included in the Contract Documents.
- B. If at any time the Owner, in its sole and exclusive discretion, shall become dissatisfied with any surety or sureties upon the Performance Bond or the Payment Bond, or if for any other reason said bonds shall cease to be adequate security to the Owner, the Contractor shall, within five (5) calendar days after written notice from the Owner to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The Contractor shall pay the premiums on said bond or bonds. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond or bonds to the Owner.
- C. The surety company, on all bonds, shall be authorized to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company, or meet such other requirements as are acceptable to the Owner in its sole and exclusive discretion.

## **ARTICLE 16 -- GENERAL PROVISIONS of the CONTRACT**

### **Section 16.01 - General Law Provisions**

- A. This Contract and its enforcement, and any controversy arising out of or relating to the making or performance of this Contract, shall be governed by and construed in accordance with the law of the State of New York, without regard to the New York principles of conflicts-of law and except where the United States supremacy clause requires otherwise.
- B. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall read and shall be enforced as though so included therein.
- C. The Contractor shall comply fully with all applicable laws, rules, and regulations, and as applicable, Building Code of New York State or Building Code of the City of New York.

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- D. The Contractor agrees that the Contract shall be deemed executory to the extent of moneys available from either: (1) the proceeds of bonds issued by the Dormitory Authority for the Contract, (2) moneys made available by the Client to the Owner for the Contract, (3) other moneys made available to the Owner from whatever source specifically for the Contract and no liability shall be incurred by the Owner beyond moneys available therefore.
- E. The relationship created by the Contract between the Owner and the Contractor is one of an independent contractor and it is no way to be construed as creating an agency relationship between the Owner and the Contractor nor is it to be construed as, in any way or under any circumstances, creating or appointing the Contractor as an agent of the Owner for any purpose whatsoever.
- F. Except as provided herein, this Contract and each and every provision hereof and thereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing in the Contract shall create or shall give to third parties any claim or right of action against the Owner, the State of New York, the Client, or any institution at which the Work is being carried out beyond such as may legally exist irrespective of the Contract; however, it is understood that the Client is an intended third party beneficiary of the Contract for the purposes of recovering any damages caused by the Contractor.
- G. The Contractor shall not assign the Contract in whole or in part without prior written consent of the Owner. Any attempt to assign the Contract in whole or in part without prior written consent of the Owner is null and void. As a condition to consent to the assignment, the Owner shall require each proposed assignee to establish, to the satisfaction of the Owner in its sole and exclusive discretion, that the assignee is responsible and, if applicable, has the experience to perform the Work. If the Owner consents to an assignment and if the Contractor assigns all or part of any moneys due or to become due under the Contract, the instrument of assignment shall contain a clause substantially to the effect that the Contractor and assignee agree that the assignee's right in and to any moneys due or to become due to the Contractor shall be subject to all prior claims for services rendered or materials supplied in connection with the performance of the Work. The Owner reserves the right to assign this Contract in whole or in part without the consent of the Contractor. Unless otherwise agreed by the Parties hereto in a separate writing, no permitted assignment described in this Section shall relieve the assigning Party from any of its obligations under this Contract. However, the assignee may be required by the assigning Party to agree to indemnify and hold harmless the assigning Party from some or all of its obligations under this Contract.
- H. This Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assignees.
- I. The Owner is exempt from the terms of fair-trade agreements for sales to the Contract.
- J. Inasmuch as the Contractor can be compensated adequately by money damages for any breach of the Contract which might be committed by the Owner, the Contractor agrees that no default, act or omission of the Owner shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the Contract or to suspend or abandon performance of the Contract; and the Contractor hereby waives any and all rights and remedies to which the Contractor might otherwise be or become entitled to because of any wrongful act or omission of the Owner saving only the Contractor's right to money damages.
- K. No action or proceeding shall lie or shall be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any Claim arising out of or based upon the Contract, relating to the giving of notices or information.



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- L. No action or proceeding shall lie in favor of or shall be maintained by the Contractor against the Owner unless such action shall be commenced within one year after the earliest following event:
  - 1. The date the Owner executes the Notice of Physical Completion.
  - 2. Receipt, by the Owner, of the Contractor's final Application for Payment, if no Notice of Physical Completion is issued.
  - 3. The date of termination if the Owner terminates the Contract.
- M. The Owner and Contractor agree to submit to the exclusive jurisdiction of the Commercial Division, New York Supreme Court, which shall hear any dispute, Claim or controversy arising in connection with or relating to this Contract, including, but not limited to the validity, breach, enforcement, or termination thereof.
- N. No action or proceeding shall be brought against the Owner in any location other than Albany County unless the Owner specifically consents, in writing, to a change of venue.
- O. If the Contractor obtains a judgment against the Owner in any action or proceeding, the Contractor agrees to accept no more than three percent (3%) interest, per annum, on the amount of the judgment.
- P. Neither Contractor nor its Subcontractors shall place or maintain, or permit to be placed or maintained, any sign, bill, or poster on or about the Premises without the prior consent of Owner's Representative.
- Q. Each Party has reviewed and discussed this Contract with counsel and agrees that this Contract shall not be construed by applying any rule of construction providing for interpretation against the drafting Party.

### **Section 16.02 - Diesel Emissions Reduction**

- A. The Contractor shall certify that heavy duty vehicles, as defined in the NYS Environmental Conservation Law (ECL) Section 19-0323 and Title 6 of the New York Codes Rules and Regulations, Part 248 (6 NYCRR 248), will comply with the rules, regulations and provisions pursuant to ECL Section 19-0323, and 6 NYCRR 248, which requires the use of Best Available Retrofit Technology and Ultra Low Sulfur Diesel to the extent required by law unless specifically waived by the NYS Department of Environmental Conservation (DEC). Qualification for a waiver will be the responsibility of the Contractor.
- B. Annually, as required by DEC, but no later than March 1st, the Contractor shall complete and submit directly to the Owner, via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and the Contractors Annual Report Form, found on the DEC website <http://www.dec.state.ny.gov> for vehicles used on the Project for the preceding calendar year.
- C. The Contractor shall certify to the Owner, and submit with each Application for Payment, the Contractor and Subcontractor Certifications form, which states that the Contractor agrees to comply with the provisions of General Conditions Section 16.02.

### **Section 16.03 – State and Federal Labor Law Provisions**

- A. All applicable provisions of NYS Labor Law shall be carried out in the performance of the Work.

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- B. The Contractor specifically agrees, as required by NYS Labor Law, Sections 220 and 220-d as amended, that:
1. No worker, in the employ of the Contractor, any Subcontractor or any other person doing or contracting to do the whole or any part of the Work contemplated by the Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day and more than five (5) days in any one week, except in the extraordinary emergencies set forth in NYS Labor Law.
  2. The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by NYS Labor Law. Each laborer, worker or mechanic employed by the Contractor, any Subcontractor or any other person doing or contracting to do the whole or any part of the Work contemplated by the Contract shall be paid not less than the prevailing rate of wages as defined by NYS Labor Law and shall be provided not less than the supplements as required by NYS Labor Law.
  3. The minimum hourly rate of wage to be paid and supplements provided shall be not less than that required by the NYS Labor Law and as shall be designated by the Commissioner of Labor of the State of New York.
  4. The Contractor and all Subcontractors shall post in a prominent and accessible place on the Site, a legible statement of all minimum wage rates and supplements to be paid or provided for the various classes of workers engaged in the performance of the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by any worker so engaged.
  5. The Contractor and all Subcontractors shall provide each worker a written notice of the prevailing wage rate for each of the worker's particular job classifications on each pay stub and, as required by the NYS Labor Law, written notice that includes the telephone number and address for the Department of Labor and a notice informing all workers of their right to contact the Department of Labor if a worker is not receiving the proper prevailing rate of wages and/or supplements for a worker's particular job classification.
  6. The Contractor shall be responsible for obtaining prevailing wage rate updates directly from the NYS Department of Labor, either by accessing its website <http://www.labor.state.ny.us> or a written request to the Bureau of Public Works.
- C. The minimum wage rates, if any, specified for apprentices shall apply only to persons working with the tools of the trade which such persons are learning under the direct supervision of journeyman mechanics as an individual registered in an apprenticeship program which is duly registered with the Commissioner of Labor of the State of New York in conformity with the NYS Labor Law. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the Contractor or any Subcontractor shall not exceed the number permitted by the applicable standards of the NYS Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employers' association of the respective trades or occupations.
- D. All workers of the Contractor and all Subcontractors shall be paid in accordance with the provisions of the NYS Labor Law. The Contractor and all Subcontractors shall submit to the Owner original copies of the Contractor and Subcontractor Certifications form and Certified Payroll forms in accordance with payment procedures and otherwise upon request. The Contractor and all Subcontractors shall prepare and keep original payrolls or transcripts thereof in compliance with NYS Labor Law Section 220, subdivision 3-a, and shall file transcripts of such payrolls with the Owner as required by NYS Labor

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Law Section 220, subdivision 3-a. Filing the transcripts of such payrolls with the Owner as required by NYS Labor Law Section 220, subdivision 3-a is a condition precedent to payment of any sums due and owing Contractor or any Subcontractor for Work performed upon the Project.

- E. The Contractor agrees that, in case of underpayment of wages to any worker engaged in the Work by the Contractor or any Subcontractor, the Owner shall withhold from the Contractor out of payments due an amount sufficient to pay such worker the difference between the wages required to be paid under the Contract and the wages actually paid such worker for the total number of hours worked, and that the Owner may disburse such amount so withheld by the Owner for and on account of the Contractor to the worker to whom such amount is due. The Contractor further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the amounts and percentages to be retained by the Owner pursuant to other provisions of the Contract.
- F. Pursuant to subdivision 3 of Section 220 and Section 220-d of the NYS Labor Law the Contract shall be forfeited and no sum paid for any Work done thereunder upon a Contractor's or Subcontractor's second conviction for willfully paying or providing less than:
  - 1. The stipulated wage scale or supplement as established by the fiscal officer.
  - 2. The stipulated minimum hourly wage scale and supplements as designated by the Commissioner of Labor of the State of New York.
- G. If the project is Federally funded in part or whole and therefore subject to the requirements of the Davis Bacon Act, the U.S. Department of Labor's government-wide implementation of the Act, or to Federal program legislation, the Contractor shall pay the higher of either NYS Department of Labor prevailing wage rates or wages established for the locality of the project by the U.S. Department of Labor.
- H. The Contractor specifically agrees that all workers engaged on the Site, whether employees of the Contractor, Subcontractor, or other person performing or contracting to do any part of the Work, shall be certified, prior to performing any Work, as having successfully completed at a minimum the OSHA 10-hour construction safety and health course as required by NYS Labor Law Section 220-h, unless additional certifications, courses or training are required by the project specific jurisdiction or as required to complete the Work of the Contract.

### **Section 16.04 – Nondiscrimination**

- A. To the extent required by Article 15 of the NYS Executive Law (also known as the Human Rights Law) and all other NYS and United States statutory and constitutional non-discrimination provisions, the Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence status.
- B. If the Contractor is directed to do so by the Owner, the Contractor shall request each employment agency, labor union or authorized representative of workers with which the Contractor has a collective bargaining agreement or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations under Articles 15 and 15A of the NYS Executive Law.

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- C. The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status.
- D. The Contractor shall include the provisions of paragraphs A, B, and C of this General Conditions Section 16.04 in every Subcontract and purchase order in such a manner that such provisions will be binding upon each Subcontractor and vendor as to the operations for the Contract to be performed within the State of New York.
- E. Pursuant to NYS Labor Law, Section 220-e, the Contractor specifically agrees:
  - 1. That in the hiring of employees for the performance of Work under the Contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, but limited to operations performed within the territorial limits of the State of New York, no Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates.
  - 2. That no Contractor, Subcontractor, nor any person on behalf of such Contractor or Subcontractor shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under the Contract on account of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status.
  - 3. That there may be deducted from the amount payable to the Contractor, by the Owner under the Contract, a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of the Contract.
  - 4. That the Contract may be canceled or terminated by the Owner and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this Section 16.04 E of the Contract.

### **Section 16.05 - Domestic Steel**

The Dormitory Authority is required to comply with all provisions of Title 4 of Article 9 of the NYS Public Authorities Law, including NYS Public Authorities Law Section 2603-a, and in accordance therewith, if the amount of the Contract exceeds \$100,000, the Owner requires that all structural steel, reinforcing steel or other major steel items to be incorporated in to the Work of the Contract be produced or made in whole or substantial part in the United States, its territories, or possessions. The Owner, in its discretion, may grant waivers of this requirement in accordance with NYS Public Authorities Law Section 2603-a. Contractor must request a waiver in writing and obtain a written waiver of this requirement from Owner before using in performance of the Contract any steel not produced or made in whole or substantial part in the United States, its territories, or possessions.

**Section 16.06 - Failure to Comply with Article 16**

The Owner will not be responsible for any Claim arising from compliance with this General Conditions Article 16.

**ARTICLE 17—RECORDS/AUDITS/INVESTIGATIONS/ETHICS**

**Section 17.01 – Preparation of Records/Owner's Right to Inspect Records and to Audit**

The Contractor shall, concurrently with performance of the Contract, prepare substantiating records regarding performance of the Contract, including records of Subcontractors and material suppliers. General Conditions Section 17.03 describes the records and other data to be maintained by Contractor, Subcontractors, and material suppliers. The Contractor shall maintain and keep, for a period of at least six (6) years after the date of payment of the final Application for Payment, all records and other data relating to the Work, including records of Subcontractors and material suppliers. Upon seven (7) calendar days' written notice, the Contractor shall make its records (including records of Subcontractors and material suppliers) available during normal business hours to the Owner or its authorized representative(s). Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Contractor's records, including but not limited to all documents, electronic records and recordings, (including records of Subcontractors and material suppliers) at the Owner's reasonable expense, within adequate workspace at the Contractor's facilities. The Owner shall also have the right to have Owner or its authorized representative audit all records and other data of the Contractor, Subcontractors and material suppliers relating to the Work.

**Section 17.02- False Statements/Information/Disclosure**

Failure to comply with General Conditions Section 17.01, providing False Representations, false statements or inaccurate information submitted in accordance with Contract Documents, including but not limited to, an Application for Payment, a Claim or a Change Order, a filing or system entry related to MWBE participation requirements or False Representations, false statements, or inaccurate information submitted to the Owner, or a determination that the Contractor participated in the kick-back of wages may result in one or more of the following actions:

- A. Termination of the Contract for cause, pursuant to General Conditions Section 11.01.
- B. Rejection of future bids or disapproval of a contract or subcontract.
- C. Withholding of payments.
- D. Criminal prosecution.
- E. Civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.
- F. Rejection of a Claim or Change Order.
- G. Deduction of the Owner's cost of an audit from the Contract amount.

**Section 17.03 - Owner's Right to Conduct Investigations**

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- A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Owner.
- B. The Contractor shall grant the Owner the right to examine all books, records, files, accounts, computer records, documents, and correspondence, including electronically-stored information, in the possession or control of the Contractor, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the Contractor, relating to the Contract. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; daily reports of Work completed that day; schedules; reports; audits; vendor qualification records; original estimate files; Change Order/Contract Amendment estimate files; detailed worksheets; Subcontractor, consultant and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns; and the supporting documentation for the aforesaid books and records.
- C. At the Owner's request, said materials shall be provided in a computer readable format, where available. At the request of the Owner, the Contractor shall execute such documents, if any, as are necessary to give the Owner access to Contract-related books, documents, or records, which are, in whole or part, under control of the Contractor but not currently in the Contractor's physical possession. The Contractor shall not enter in to any agreement with a Subcontractor, consultant, or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the Owner. The Contractor shall assist the Owner in obtaining access to past and present Subcontractor, consultant, and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, consultants and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.
- D. The Contractor shall assist the Owner in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by the Contractor, for purposes of the Contract.
- E. The Contractor shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractors, consultants, and suppliers, in connection with the Contract, a right-to-audit clause in favor of the Owner conferring rights and powers of the type outlined in this General Conditions Section 17.03. The Contractor shall not enter in to any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision. The Contractor shall not make any payments to a Subcontractor, consultant, or supplier from whom the Contractor has failed to obtain and supply to the Owner complete, accurate, and truthful information in compliance with a request from the Owner to the Contractor.
- F. Any violation of the provisions of this General Conditions Article 17 shall justify termination of this Contract and may result in the Owner's rejection of the Contractor's bids or proposals for future contracts and the deduction of the Owner's cost of an audit from the Contract amount.

### **Section 17.04 - Disclosure of Criminal Investigation**

- A. The Contractor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Contractor, or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2), are subpoenaed or questioned in connection with any business-related criminal investigation, whether or not the owner, partner, director, officer or employee is, or is believed to be, the subject or target of such investigation, or is notified or otherwise learns that any owner, partner, director, officer or employee of the Contractor or its affiliated

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companies is under investigation for an alleged business-related violation of criminal law, or in the event that any premises or records of the Contractor are searched pursuant to a search warrant seeking evidence of a crime or crimes, unless otherwise precluded by law enforcement authorities.

- B. The Contractor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Contractor or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2), the firm itself, or one of its affiliated companies is indicted or charged in an accusatory instrument for any business-related violation of local, state or federal criminal law, unless otherwise precluded by law enforcement authorities.
- C. In the event that any owner, partner, director, officer, or employee of the Contractor is indicted or charged in an accusatory instrument for any business-related violation of local, state, or federal criminal law relating to this Contract or any other Dormitory Authority contract, the Owner may require the Contractor to remove said owner, partner, director, officer, or employee from any direct involvement in the affairs of the Contractor as it relates to this Contract and all other Dormitory Authority contracts until the criminal matter is resolved. In the event that any owner, partner, director, officer, or employee of the Contractor is convicted of a business-related violation of local, state, or federal criminal law, the Owner may require the Contractor to permanently remove said individual from any direct involvement in the affairs of this Contract and all other Dormitory Authority contracts.
- D. In the event that the Contractor or any owner, partner, director, officer, or employee of the Contractor is convicted or enters into an agreement as a remedy to the alleged commission of a criminal act of a business-related violation of local, state, or federal criminal law or regulatory violation, the Owner may schedule a hearing with the Contractor to determine the Contractor's responsibility to continue work under this Contract and other Dormitory Authority contracts. Following this hearing, the Owner may, at its sole discretion, take one or more of the following actions:
  - 1. Terminate this Contract.
  - 2. Require the Contractor, at its own expense, to hire an independent private-sector inspector general to monitor its activities, institute procedures and conduct internal inquiries, in a manner prescribed by the Owner.
  - 3. Increase retainage to an amount not to exceed ten percent (10%).
  - 4. Take any other remedial action deemed appropriate.

### **Section 17.05 - Anti-Riot Provisions**

- A. The Contractor agrees that no part of the Contract funds shall be used to make payments, give assistance, or supply services, in any form, to any individual convicted in any federal, state, or local court of competent jurisdiction for inciting, promoting, or carrying on a riot, or engaging in any group activity resulting in material damage to property or injury to persons found to be in violation of federal, state or local laws designed to protect persons or property.
- B. The Contractor and each Subcontractor shall notify their employees of all rules and regulations adopted pursuant to Article 129-A of the NYS Education Law. The Contractor shall post notices containing the text of the aforementioned rules and regulations at the Site.

**Section 17.06 - Ethical Conduct**

- A. Officers and employees of the Owner are bound by Sections 73, 73-a and 74 of the NYS Public Officers Law. In addition, no officer, employee, architect, attorney, engineer, inspector, or consultant of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative, supervisory, or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.
- B. Section 73(5) of the NYS Public Officers Law expressly prohibits the Contractor, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the Owner under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties or was intended as a reward for the employee's official action.
  - 1. In addition to the prohibition of Section 73(5) of the NYS Public Officers Law, the Dormitory Authority has a "zero tolerance" policy with respect to the solicitation, acceptance, or receipt of gifts from disqualified sources. Therefore, the Contractor and its agents shall refrain from offering or giving anything of value to an employee of the Owner. Employees of the Owner may not solicit any gift, gratuity, stipend, or thing of value from the Contractor or its agents. Violations of these gift provisions may be grounds for immediate Contract termination and/or referral for civil action or criminal prosecution.
- C. To promote a working relationship with the Owner based on ethical business practices, the Contractor is expected to:
  - 1. Furnish all goods, materials and services to the Owner as contractually required and specified.
  - 2. Submit complete and accurate reports to the Owner and its representatives as required.
  - 3. Not seek, solicit, demand or accept any information, verbal or written, from the Owner or its representatives that provides an unfair advantage over a competitor.
  - 4. Not engage in any activity or course of conduct that restricts open and fair competition on Owner-related projects and transactions.
  - 5. Not engage in any course of conduct with Owner employees or its representatives that constitutes a conflict of interest, in fact or in appearance.
  - 6. Not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- D. The Owner encourages the Contractor to advance and support ethical business conduct and practices among its directors, officers, and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.
- E. Although the Contractor may employ relatives of Owner employees, the Owner shall be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The Owner reserves the right to request that the Contractor modify the work assignment of a relative of an Owner employee where a conflict of interest, or the appearance thereof, is deemed to exist.



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- F. The Contractor may hire former employees of the Owner. However, as a general rule, former employees of the Owner may neither appear nor practice before the Owner, nor receive compensation for services rendered on a matter before the Owner, for a period of two years following their separation from service with the Owner. In addition, former employees of the Owner are subject to a “lifetime bar” from appearing before the Owner or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the Owner.
- G. The Contractor agrees to notify the Owner’s Office of Internal Affairs at 518-257-3193 of any activity by an employee of the Owner that is inconsistent with the contents of this General Conditions Section 17.06.
- H. Any violation of this General Conditions Section 17.06 shall justify termination of this Contract and may result in Owner’s rejection of the Contractor’s bids or proposals for future agreements.

### **Section 17.07 – Continuing Integrity**

- A. The Contractor shall, at all times during the Contract term, remain responsive and responsible. The Contractor shall also monitor all Subcontractors for responsiveness and responsibility at all times during the Contract term. The Contractor agrees, if requested by the President of Owner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The Contractor shall immediately notify Owner of any material or adverse information pertaining to the Contractor or any Subcontractor, regardless of tier.
- B. The President of Owner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls in to question the responsibility of Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor shall comply with the terms of the suspension order. Contract activity may resume at such time as the President of Owner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- C. Notwithstanding any other provision of this Contract, upon written notice to Contractor, and a reasonable opportunity to be heard with the appropriate Owner officials or staff, the Contract may be terminated by the President of Owner or his or her designee at Contractor’s expense where Contractor is determined by the President of Owner or his or her designee to be non-responsible. In such event, the President of Owner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.

### **Section 17.08 – Iran Divestment**

- A. By entering into this Contract, Contractor certifies, under the penalties of perjury, that Contractor is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the NYS State Finance Law. Contractor further certifies that Contractor will not utilize on this Contract any subcontractor that is identified on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the NYS State Finance Law.
- B. During this Contract, should Owner receive information that a person (as defined in NYS State Finance Law §165-a) is in violation of the above-referenced certifications, Owner will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its

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engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then Owner shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

### **ARTICLE 18 -- 2005 PROCUREMENT LOBBYING LAW**

#### **Section 18.01 - Procurement Lobbying Law**

Bidders shall affirm their understanding of and agree to comply with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with NYS State Finance Law § 139-k (5), disclose prior non-responsibility determinations under NYS State Finance Law § 139-j, and shall certify that the information they provide with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate. Contractor hereby reaffirms its understanding of an agreement to comply with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), re-certifies its compliance with NYS State Finance Law § 139-k (5) and recertifies that the information it provided with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate.

#### **Section 18.02 - Contractor's Certifications**

For any contract \$15,000 or more each Contractor shall submit, with its bid, on the form provided herewith, the *2005 Procurement Lobbying Law – Certification*, pursuant to NYS State Finance Law § 139-j and § 139-k. The information contained in the *2005 Procurement Lobbying Law – Certification*, pursuant to NYS State Finance Law § 139-j and § 139-k will serve as an informational resource to aid the Owner in making an award determination.

#### **Section 18.03 - Termination Provisions**

The Owner reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with NYS State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, the Owner may exercise its right pursuant to General Conditions Section 11.01 – Termination for Cause.

### **ARTICLE 19 -- EXECUTIVE ORDER No. 125**

#### **Section 19.01 - Determination of Contractor Responsibility**

In order to assist the Owner in determining the responsibility and reliability of the lowest bidder for the Contract and to effectuate the directives of Executive Order No. 125, dated May 22, 1989, (9 NYCRR §4.125) the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among contracting agencies.

#### **Section 19.02 – NYS Vendor Responsibility Questionnaire**

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- A. For any Contract valued at \$10,000 or more, the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for the Contractor or for any Subcontractor shall be submitted as requested by the Owner. Owner may request an updated NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for the Contractor or for any Subcontractor as often as the Owner, in its sole and exclusive discretion, deems necessary to carry out the Owner's duties and responsibilities under this Contract.
- B. The information contained in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) will serve as an informational resource to aid the Owner in making an award determination and in making other determinations for this Contract.

### **ARTICLE 20 -- OPPORTUNITY PROGRAMS**

#### **Section 20.01 - General Provisions**

- A. The Dormitory Authority is required to implement the provisions of NYS Executive Law Article 15-A and Parts 140 through 145 of Title 5 of the NYCRR for all State contracts (as defined in such statute and regulations) with a value:
  - 1. in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing; or
  - 2. in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Owner, to fully comply and cooperate with the Owner in the implementation of NYS Executive Law ARTICLE 15-A, PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS, and the regulations promulgated thereunder. These requirements include: equal employment opportunities for minority group members and women (EEO), and contracting opportunities for NYS certified minority and women-owned business enterprises (MWBES). The Contractor's demonstration of good faith efforts pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by NYS Executive Law Article 15 (the Human Rights Law) and other applicable federal, state and local laws.
- C. Failure to comply with all requirements in this General Conditions Article 20 may result in a finding of non-responsiveness, non-responsibility, breach of contract or any combination of the foregoing leading to the assessment of liquidated damages pursuant to General Conditions Section 20.06 and other remedies available to the Owner pursuant to the Contract and applicable law.

#### **Section 20.02 – Equal Employment Opportunity (EEO)**

- A. The provisions of NYS Executive Law Article 15-A, and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. The Contractor shall:
  - 1. Undertake or continue, and ensure each Subcontractor shall undertake or continue, existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age,

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disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. Submit an EEO policy statement to the Owner within seventy-two (72) hours after the date of the Letter of Intent to award the Contract.
3. Adopt a model EEO policy statement and require each Subcontractor to adopt a model EEO policy statement if the Contractor or Subcontractor does not have an existing EEO policy statement, and if the Owner requires the Contractor or Subcontractor to adopt a model EEO policy statement.
4. Have a Contractor's EEO policy statement that shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
5. The Contractor shall include the provisions of paragraphs a. through c. of this General Conditions Section 20.02 B. 4. and Subdivision E of this General Conditions Section 20.02, which provides for relevant provisions of the Human Rights Law, in every Subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.

C. To ensure continuous compliance with General Conditions Section 20.02:

1. The Contractor shall submit a Workforce Utilization Report, and shall require each Subcontractor to submit a Workforce Utilization Report, in such form as shall be required by the Owner on a monthly basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and each Subcontractor.
3. Pursuant to Executive Order 162 (9 NYCRR 8.162) dated January 9, 2017, the Contractor and its Subcontractors are required to submit monthly *E.O. 162 Workforce Utilization Reports* for contracts with a total contract value of Twenty-Five Thousand 00/100 Dollars (\$25,000.00) or more. All *E.O. 162 Workforce Utilization Reports* are to be submitted within 10 days of the end of each month by following the online reporting process set forth in section 20.02 (4). The *E.O. 162*

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*Workforce Utilization Reports* will require the Contractor and its and Subcontractors, among other things, report the gross wages paid to each of their employees for the work performed by such employees in connection with the Contract.

4. For monthly reporting in connection with Executive Order 162, reports are to be submitted electronically as follows:
  - a. Log-in (<https://ny.newnycontracts.com>) or visit the NYSCS Account Look Up (<https://ny.newnycontracts.com/frontend/usersearchpublic.asp>) and follow the on-screen directions to look up your firm's account and then access the secure System. Contact Customer Support via any of the System links if you have any questions while attempting to access your account.
  - b. Go to View>> My Workforce Audits.
  - c. View Workforce Audits by status, dates, contract, and contract type (Prime/Subcontractor).
  - d. The System will notify contractors to log in to review and record the workforce details for the applicable audit.
  - e. Complete all required reporting on a timely basis.
- D. The Contractor shall comply with the provisions of the NYS Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and each Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the NYS Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

### **Section 20.03 – Opportunities for Minority and Women-Owned Business Enterprises (MWBE)**

- A. The Owner has established goals for the participation in this Contract of NYS certified minority-owned business enterprises (“MBE”) and NYS certified women-owned business enterprises (“WBE” and collectively with MBEs, “MWBE”). The goals (collectively, MWBE Contract Goals) are set forth in the Information for Bidders Section 8.0 – Opportunity Programs Requirements.
- B. The Contractor represents and warrants that, as a condition for award of the Contract, the Contractor has submitted a Statewide Utilization Management Plan (“SUMP”) via the NYS Contract System (NYSCS) which lists all proposed Subcontractors including an identification of the NYS certified MWBE subcontractors and suppliers the Contractor intends to use to perform the Work of the Contract and to achieve the MWBE Contract Goals established in the Contract Documents. In addition, or alternatively, Contractor may have submitted a request for a waiver. Prior to award of the Contract, the Owner approved Contractor’s plan to achieve the MWBE Contract Goals established in the Contract Documents (MWBE Utilization Plan) to the extent the Owner did not approve Contractor’s request for a waiver of part or all of the MWBE Contract Goals. Owner approval of the MWBE Utilization Plan approves a Subcontractor only for the purpose of the MWBE Utilization Plan.
- C. Contractor agrees to adhere to the MWBE Utilization Plan in the performance of the Contract. Contractor shall not change the Utilization Plan without the prior written approval of the Owner. Contractor further agrees that failure to adhere to the MWBE Utilization Plan shall constitute a material breach of the Contract and upon such breach, the Owner shall be entitled to any remedy provided in the Contract or by law, including but not limited to a finding that the Contractor is non-responsible.

- D. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1 may be applied towards the achievement of the applicable MWBE Contract Goal. The portion of a subcontract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the subcontract. The portion of a subcontract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. The Owner will audit the Contractor's efforts to achieve the MWBE Contract Goals through the NYSCS.

**Section 20.04 - Good Faith Efforts**

- A. The Contractor shall document good faith efforts pursuant to 5 NYCRR § 142.5 to provide meaningful participation by MWBEs as Subcontractors (which includes material suppliers, other vendors, and others; see definition of Subcontractor in General Conditions Article 1 - Definitions) in the performance of the Contract, to comply with the requirements of the Contract and to enable the Owner to determine compliance with the provisions of this General Conditions Article 20. Guidelines for documentation of good faith efforts are at <https://www.dasny.org/forms> under MWSBE.
- B. If the Contractor fails to adequately document good faith efforts, it may result in a finding of non-compliance.

**Section 20.05 - Waivers**

- A. If the Contractor, after making good faith efforts satisfactory to the Owner, is unable to achieve the MWBE Contract Goals, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Owner. The request for a waiver must be supported by evidence of the good faith efforts by the Contractor to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Owner shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- B. If the Owner, upon review of the SUMP, the MWBE Utilization Plan, the NYSCS and any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regard to such non-compliance, the Owner may issue a notice of deficiency to the Contractor. The Contractor shall respond to the notice to deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

**Section 20.06 – Damages - MWBE Participation**

- A. If the Owner determines that the Contractor is not in compliance with the requirements of this General Conditions Article 20 and the Contractor refuses to comply with the requirements of this General Conditions Article 20, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE Contract Goals, then: (1) the Contractor shall be obligated to pay the Owner liquidated damages; or (2) the Contractor shall be obligated to pay the Owner other appropriate damages; or (3) the Owner shall receive one or more other appropriate remedies, unless the Owner elects to pursue its remedies under NYS Executive Law Section 316. If the Owner declines to pursue its remedies under NYS Executive Law Section 316, the Owner may elect to pursue one or more of liquidated damages, other appropriate damages, and one or more other appropriate remedies.

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- B. If the Owner decides to assess liquidated damages, the Contractor shall be obligated to pay to the Owner liquidated damages in an amount equal to the difference between all sums identified for payment to MWBEs if the Contractor had achieved the MWBE Contract Goals and all sums actually paid to MWBEs for performance of Work under the Contract. If such liquidated damages have not been withheld by the Owner, the Contractor shall pay such liquidated damages to the Owner within sixty (60) days after they are assessed. provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR §142.2, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process. The liquidated damages are intended to compensate the Owner only for the Owner's damage if the Owner determines that the Contractor is not in compliance with the requirements of General Conditions Sections 20.03, 20.04 and 20.05 and the Contractor refuses to comply with the requirements of General Conditions Sections 20.03, 20.04 and 20.05, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE Contract Goals. In addition, the Contractor shall be liable to the Owner to the fullest extent permitted by law for:
- a. whatever other appropriate damages the Owner may incur; or
  - b. any other appropriate remedy to which the Owner may be entitled as a result of the Contractor's refusal to comply with the requirements of this General Conditions Article 20 outside the requirements of General Conditions Sections 20.03, 20.04, 20.05 and the MWBE Contract Goals.

Other appropriate damages include, but are not limited to, the expenses for personnel, supplies and overhead incurred by the Owner to administer and enforce the requirements of this General Conditions Article 20 other than the requirements of General Conditions Sections 20.03, 20.04, 20.05 and the MWBE Contract Goals.

### **Section 20.07 – Reporting to Owner**

The Contractor shall complete the reports and submit as indicated to establish and update EEO requirements during the life of the Contract. Reports not submitted at such time shall be cause for the Owner to delay payment to the Contractor. The listed reports are a requirement of the Contract and copies are included in the Contract Documents and template forms are also available on the Dormitory Authority's web site. *The Contractor shall submit to the Owner all executed agreements and purchase orders for ALL MWBE/SDVOB subcontractors/suppliers who were approved on the Utilization Plan no later than 30 days after award of the Contract.*

## **ARTICLE 21- SERVICE-DISABLED VETERAN OWNED BUSINESSES**

### **Section 21.01 – General Provisions**

Article 17-B of the NYS Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran – Owned Businesses (SDVOB), thereby further integrating such businesses in to New York State's economy. The Dormitory Authority recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of Dormitory Authority contracts.

### **Section 21.02 – Contract with Goals**

- A. If the Information for Bidders established an overall goal for SDVOB participation in this Contract and Contractor submitted an SDVOB Utilization Plan that was accepted by the Dormitory Authority, Contractor shall follow the accepted SDVOB Utilization Plan. Contractor, by award of the Contract,

## GENERAL CONDITIONS

certified that Contractor shall follow the submitted and accepted SDVOB Utilization Plan for the performance of SDVOBs on the Contract.

- B. Contractor shall not change the accepted SDVOB Utilization Plan without the prior written consent of the Dormitory Authority. Any modifications or changes to the accepted SDVOB Utilization Plan after award of the Contract to the Contractor shall be reported to the Dormitory Authority on a revised SDVOB Utilization Plan. As part of a revised SDVOB Utilization Plan, the Contractor may request a partial or total waiver of the goal for SDVOB participation but such request must be made prior to submission of the Application for Payment for the final payment on the Contract. Contractor shall make and shall document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract. The revised SDVOB Utilization Plan is not effective unless and until it is accepted by the Dormitory Authority. If the revised SDVOB Utilization Plan is not accepted by the Dormitory Authority, the Dormitory Authority shall issue a notice of deficiency and the Contractor shall proceed as set forth in paragraph D of this General Conditions Section 21.02
- C. Contractor shall report to the Dormitory Authority Monthly SDVOB Contractor Compliance during the Contract documenting the preceding month's progress towards implementing the accepted SDVOB Utilization Plan and achieving the SDVOB goals for the Contract. This information shall be submitted to the Dormitory Authority in the manner and at the times directed by the Dormitory Authority.
- D. If the Dormitory Authority, upon review of the SDVOB Utilization Plan and the Monthly SDVOB Contractor Compliance reports determines that the Contractor is failing or refusing to comply with the Contract SDVOB goals and no waiver has been issued with respect to such non-compliance, the Dormitory Authority may issue a notice of deficiency to the Contractor. The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the Contract SDVOB goals.
- E. Contractor shall make and shall document its good faith efforts to utilize SDVOBs in the performance of the Contract. Evidence of required good faith efforts includes but is not limited to:
  - 1. Copies of solicitations to SDVOBs and any responses thereto;
  - 2. Explanation of the specific reason(s) each SDVOB responding to a Contractor's solicitation was not selected;
  - 3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Dormitory Authority with certified SDVOBs which the Dormitory Authority determined were capable of fulfilling the SDVOB goals in the Contract;
  - 4. Information describing the specific steps undertaken to reasonably structure the scope of subcontracts and material orders for the purpose of subcontracting with, or obtaining materials from, SDVOBs;
  - 5. Other information relevant to the waiver request.
- F. Contractor's failure to use SDVOBs in accordance with the accepted SDVOB Utilization Plan or any accepted revised SDVOB Utilization Plan shall be a material breach of the Contract and upon such breach, the Dormitory Authority shall be entitled to any remedy provided in the Contract, by law or regulation or at law or in equity, including but not limited to a finding the Contractor is non-responsible. If the Dormitory Authority finds the Contractor willfully and intentionally fails to comply with the



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Contract SDVOB goals, the Contractor shall pay damages to the Dormitory Authority as set forth in 9 NYCRR § 252.2(s).

### **Section 21.03 – Contract with No Goals**

If the Information for Bidders does not establish an overall goal for SDVOB participation in this Contract, Contractors are still strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract in recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State. The Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs in performance of the Contract as Subcontractors.

**Exhibit "A"**

RELEASE FORM  
REDUCTION OF RETAINAGE  
DORMITORY AUTHORITY STATE OF NEW YORK

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