



# AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

*(Name and location or address)*

Section 00 72 13 of all General Work of the Owner as of April 2019

THE OWNER:

*(Name, legal status and address)*

Tennessee Board of Regents

THE ARCHITECT:DESIGNER:

*(Name, legal status and address)*

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

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

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECTDESIGNER
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.

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User Notes:

(1131039853)

## INDEX

(Topics and numbers in bold are Section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### Access to Work

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### Allowances

**3.8**

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

**8.3.1, 15.3.2, 15.4** **DESIGNER**

### ARCHITECT

**4**

~~Architect, Designer~~, Definition of

**4.1.1**

~~Architect, Designer~~, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,

9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,

13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

~~Architect, Designer~~, Limitations of Authority and

Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,

4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,

9.5.4, 9.6.4, 15.1.4, 15.2

~~Architect's Designer's~~ Additional Services and

Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

~~Architect's Designer's~~ Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

~~Architect's Designer's~~ Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

~~Architect's Designer's~~ Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

~~Architect's Designer's~~ Copyright

1.1.7, 1.5

~~Architect's Designer's~~ Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,

7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,

13.4.2, 15.2

~~Architect's Designer's~~ Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

~~Architect's Designer's~~ Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

~~Architect's Designer's~~ Interpretations

4.2.11, 4.2.12

~~Architect's Designer's~~ Project Representative

4.2.10

~~Architect's Designer's~~ Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,

3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,

3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,

9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

~~Architect's Designer's~~ Relationship with

Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

~~Architect's Designer's~~ Representations

9.4.2, 9.5.1, 9.10.1

~~Architect's Designer's~~ Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

**Award of Subcontracts and Other Contracts for**

**Portions of the Work**

**5.2**

### Basic Definitions

**1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,

15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

### Building Information Models Use and Reliance

**1.8**

Building Permit

3.7.1

### Capitalization

**1.3**

Init.

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(1131039853)

Certificate of Substantial Completion  
9.8.3, 9.8.4, 9.8.5  
**Certificates for Payment**  
4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7,  
9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4  
Certificates of Inspection, Testing or Approval  
13.4.4  
Certificates of Insurance  
9.10.2  
**Change Orders**  
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,  
7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,  
9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2  
**Change Orders, Definition of**  
**7.2.1**  
**CHANGES IN THE WORK**  
2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,  
11.5  
**Claims, Definition of**  
**15.1.1**  
Claims, Notice of  
1.6.2, 15.1.3  
**CLAIMS AND DISPUTES**  
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4  
Claims and Timely Assertion of Claims  
15.4.1  
**Claims and Disputes, Resolution of**  
**15.2**  
**Claims for Additional Cost**  
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**  
**Claims for Additional Time**  
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**  
**Concealed or Unknown Conditions, Claims for**  
**3.7.4**  
Claims for Damages  
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,  
11.3.2, 14.2.4, 15.1.7  
Claims Subject to Arbitration  
15.4.1  
**Cleaning Up**  
**3.15**, 6.3  
Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**  
**Commencement of the Work, Definition of**  
**8.1.2**  
**Commissioning Consultant**  
**3.10.5**  
**Communications**  
3.9.1, **4.2.4**  
Completion, Conditions Relating to  
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
9.10, 12.2, 14.1.2, 15.1.2  
**COMPLETION, PAYMENTS AND**  
**9**

Completion, Substantial  
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,  
9.10.3, 12.2, 15.1.2  
Compliance with Laws  
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1,  
13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8,  
15.4.2, 15.4.3  
Concealed or Unknown Conditions  
3.7.4, 4.2.8, 8.3.1, 10.3  
Conditions of the Contract  
1.1.1, 6.1.1, 6.1.4  
Consent, Written  
3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,  
15.4.4.2  
**Consolidation or Joinder**  
**15.4.4**  
**CONSTRUCTION BY OWNER OR BY**  
**SEPARATE CONTRACTORS**  
1.1.4, **6**  
**Construction Change Directive, Definition of**  
**7.3.1**  
**Construction Change Directives**  
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**,  
9.3.1.1  
Construction Schedules, Contractor's  
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
**Contingent Assignment of Subcontracts**  
**5.4**, 14.2.2.2  
**Continuing Contract Performance**  
**15.1.4**  
**Contract, Definition of**  
**1.1.2**  
**CONTRACT, TERMINATION OR**  
**SUSPENSION OF THE**  
5.4.1.1, 5.4.2, 11.5, **14**  
Contract Administration  
3.1.3, 4, 9.4, 9.5  
Contract Award and Execution, Conditions Relating  
to  
3.7.1, 3.10, 5.2, 6.1  
**Contract Bond**  
**11.4**  
**Contract Documents, Copies Furnished and Use of**  
1.5.2, 2.3.6, 5.3  
**Contract Documents, Definition of**  
**1.1.1**  
**Contract Sum**  
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,  
**9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,  
12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**  
**Contract Sum, Definition of**  
**9.1**  
Contract Time  
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,  
7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,  
8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,  
14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

**Contract Time**, Definition of  
8.1.1

**CONTRACTOR**  
**3**  
Contractor, Definition of  
**3.1, 6.1.2**  
**Contractor's Construction and Submittal Schedules**  
**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2  
Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1  
**Contractor's Liability Insurance**  
**11.1**  
Contractor's Relationship with Separate Contractors and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4  
Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4  
Contractor's Relationship with the ~~Architect~~ **Designer**  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1  
Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2  
Contractor's Responsibility for Those Performing the Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8  
Contractor's Review of Contract Documents  
3.2  
Contractor's Right to Stop the Work  
2.2.2, 9.7  
Contractor's Right to Terminate the Contract  
14.1  
Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3  
Contractor's Superintendent  
3.9, 10.2.6  
Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4  
Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1  
Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11  
Copyrights  
1.5, **3.17**  
Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1  
**Correlation and Intent of the Contract Documents**  
**1.2**

**Cost**, Definition of  
**7.3.4**  
Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14  
**Cutting and Patching**  
**3.14**, 6.2.5  
Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7  
Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2  
**Date of Commencement of the Work**, Definition of  
**8.1.2**  
**Date of Substantial Completion**, Definition of  
**8.1.3**  
**Day**, Definition of  
**8.1.4**  
Decisions of the ~~Architect~~ **Designer**  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2  
**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3  
Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1  
Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1  
**Delays and Extensions of Time**  
**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5  
**Digital Data Use and Transmission**  
**1.7**  
**Direct Personnel Expense (DPE)**  
**7.3.4.2**  
Disputes  
6.3, 7.3.9, 15.1, 15.2  
**Diversity-Owned Businesses, Participation of**  
**3.20**  
**Documents and Samples at the Site**  
**3.11**  
**Drawings**, Definition of  
**1.1.5**  
Drawings and Specifications, Use and Ownership of  
3.11  
Effective Date of Insurance  
8.2.2

## **Emergencies**

### **10.4, 14.1.1.2, 15.1.5**

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

### **Failure of Payment**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

### **Final Completion and Final Payment**

4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

## **Financial Records**

### **3.21**

## **GENERAL PROVISIONS**

### **1**

### **Governing Law**

#### **13.1**

Guarantees (See Warranty)

### **Hazardous Materials and Substances**

#### **10.2.4, 10.3**

Identification of Subcontractors and Suppliers  
5.2.1

### **Illegal Immigrants, Prohibition of**

#### **3.4.5**

### **Indemnification**

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

### **Information and Services Required of the Owner**

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

### **Initial Decision**

#### **15.2**

### **Initial Decision Maker, Definition of**

1.1.8

~~Initial Decision Maker, Decisions~~

~~14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5~~

~~Initial Decision Maker, Extent of Authority~~

~~14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5~~

### **Injury or Damage to Person or Property**

#### **10.2.8, 10.4**

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

### **Instructions to Bidders**

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

### **Instruments of Service, Definition of**

#### **1.1.7**

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

### **Insurance, Boiler and Machinery**

#### **11.3.2**

### **Insurance, Contractor's Liability**

#### **11.1**

Insurance, Effective Date of

8.2.2, 14.4.2

### **Insurance, Loss of Use**

#### **11.3.3**

### **Insurance, Owner's Liability**

#### **11.2**

### **Insurance, Property**

**10.2.5, 11.2, 11.4, 11.5, 11.3,**

Insurance, Stored Materials

9.3.2

## **INSURANCE AND BONDS**

### **11**

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

### **Interest**

#### **13.5**

### **Interpretation**

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

### **Labor and Materials, Equipment**

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,

15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,

Init.

/

4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1

#### Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

#### **Liquidated Damages**

##### **9.12**

#### **Materials, Hazardous**

##### 10.2.4, **10.3**

#### Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

#### Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

#### Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

#### **Mediation**

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

#### **Minor Changes in the Work**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

#### **MISCELLANEOUS PROVISIONS**

##### **13**

#### **Modifications, Definition of**

##### **1.1.1**

#### Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

#### **Mutual Responsibility**

##### **6.2**

#### **Nonconforming Work, Incomplete or Acceptance of**

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

#### **Non-Discrimination in Employment**

##### **3.4.6**

#### **Notice**

**1.6**, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

#### Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

#### **Notice of Claims**

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

#### Notice of Testing and Inspections

13.4.1, 13.4.2

#### Observations, Contractor's

3.2, 3.7.4

#### Occupancy

2.3.1, 9.6.6, 9.8

#### Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

#### **Overhead and Profit**

##### **7.3.11**

#### **OWNER**

##### **2**

#### **Owner, Definition of**

##### **2.1.1**

#### **Owner, Evidence of Financial Arrangements**

**2.2**, 13.2.2, 14.1.1.4

#### **Owner, Information and Services Required of the**

**2.1.2, 2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

#### Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

#### **Owner's Insurance**

##### **11.2**

#### Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

#### **Owner's Representatives, Relations with**

##### **3.19**

#### **Owner's Right to Carry Out the Work**

**2.5**, 14.2.2

#### **Owner's Right to Clean Up**

##### **6.3**

#### **Owner's Right to Perform Construction and to Award Separate Contracts**

##### **6.1**

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

##### **2.4**

#### Owner's Right to Suspend the Work

14.3

#### Owner's Right to Terminate the Contract

14.2, 14.4

#### **Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

#### **Partial Occupancy or Use**

9.6.6, **9.9**

#### **Patching, Cutting and**

**3.14**, 6.2.5

#### Patents

3.17

#### **Payment, Applications for**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3



## **Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

## **Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

## **Payment, Final**

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

## **Payment Bond, Performance Bond and**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

## **Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

## **PAYMENTS AND COMPLETION**

### **9**

#### **Payments to Subcontractors**

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

#### **PCB**

10.3.1

#### **Performance Bond and Payment Bond**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

#### **Permits, Fees, Notices and Compliance with Laws**

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

## **PERSONS AND PROPERTY, PROTECTION OF**

### **10**

#### **Polychlorinated Biphenyl**

10.3.1

#### **Product Data, Definition of**

**3.12.2**

#### **Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

#### **Progress and Completion**

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

#### **Progress Payments**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

#### **Project, Definition of**

**1.1.4**

#### **Project Representatives**

4.2.10

#### **Project Manual**

**1.1.9**

#### **Property Insurance**

10.2.5, **11.2**

#### **Proposal Requirements**

1.1.1

## **PROTECTION OF PERSONS AND PROPERTY**

### **10**

#### **Provide or Provided**

**1.1.10**

#### **Regulations and Laws**

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

#### **Rejection of Work**

4.2.6, 12.2.1

#### **Releases and Waivers of Liens**

9.3.1, 9.10.2

#### **Representations**

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

#### **Representatives**

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

#### **Responsibility for Those Performing the Work**

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

#### **Retainage**

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

#### **Review of Contract Documents and Field**

#### **Conditions by Contractor**

**3.2**, 3.12.7, 6.1.3

#### **Review of Contractor's Submittals by Owner and**

#### **Architect/Designer**

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

#### **Review of Shop Drawings, Product Data and Samples**

by Contractor

3.12

#### **Rights and Remedies**

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,

6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,

12.2.4, **13.3**, 14, 15.4

#### **Royalties, Patents and Copyrights**

**3.17**

#### **Rules and Notices for Arbitration**

15.4.1

#### **Safety of Persons and Property**

**10.2**, 10.4

#### **Safety Precautions and Programs**

3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

#### **Samples, Definition of**

**3.12.3**

#### **Samples, Shop Drawings, Product Data and**

3.11, **3.12**, 4.2.7

#### **Samples at the Site, Documents and**

**3.11**

#### **Schedule of Values**

**9.2**, 9.3.1

#### **Schedules, Construction**

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

#### **Scheduling Assistance**

**3.10.4**

#### **Separate Contracts and Contractors**

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

#### **Separate Contractors, Definition of**

**6.1.1**

#### **Shop Drawings, Definition of**

**3.12.1**

#### **Shop Drawings, Product Data and Samples**

3.11, **3.12**, 4.2.7

#### **Site, Use of**

**3.13**, 6.1.1, 6.2.1

#### **Site Inspections**

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

#### **Site Visits, Architect's/Designer's**

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

#### **Special Inspections and Testing**

4.2.6, 12.2.1, 13.4

#### **Specifications, Definition of**

**1.1.6**

Init.

/

## Specifications

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

### State Prevailing Wage

#### **3.4.7**

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, ~~10.2.4~~

~~Subcontractor~~, Subcontractor, Definition of

#### **5.1.1**

### **SUBCONTRACTORS**

#### **5**

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

### Subcontracts

#### **3.4.9**

### **Subcontractual Relations**

**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

### **Subrogation, Waivers of**

6.1.1, **11.3**

### **Substances, Hazardous**

#### **10.3**

### **Substantial Completion**

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

**Substantial Completion**, Definition of

#### **9.8.1**

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of ~~Architect~~Designer

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

**Sub-subcontractor**, Definition of

#### **5.1.2**

Subsurface Conditions

3.7.4

### **Successors and Assigns**

#### **13.2**

### **Superintendent**

**3.9**, 10.2.6

### **Supervision and Construction Procedures**

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

### **Suspension by the Owner for Convenience**

#### **14.3**

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

### **Taxes**

3.6, 3.8.2.1, 7.3.4.4

### **Termination by the Contractor**

**14.1**, 15.1.7

### **Termination by the Owner for Cause**

5.4.1.1, **14.2**, 15.1.7

### **Termination by the Owner for Convenience**

#### **14.4**

Termination of the ~~Architect~~Designer

2.3.3

Termination of the Contractor Employment

14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14**

### **Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

### **TIME**

#### **8**

### **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

### **Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

### **12**

### **Uncovering of Work**

#### **12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Init.



## Use of Site

3.13, 6.1.1, 6.2.1

## Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect/Designer

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

## Waivers of Subrogation

6.1.1, 11.3

## Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

### 1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the ~~Architect-Designer~~. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the ~~Architect-Designer~~ or the ~~Architect's-Designer's~~ consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the ~~Architect-Designer~~ or the ~~Architect's-Designer's~~ consultants, or (4) between any persons or entities other than the Owner and the Contractor. The ~~Architect-Designer~~ shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the ~~Architect's duties-Designer's~~ duties.

§ 1.1.2.1 Presentation by Owner of an unexecuted Agreement or Modification does not constitute a commitment by Owner to execute the subject document and does not provide Owner authorization to any person or entity to proceed as if document will be executed.

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors. The Project is identified in the first page of the Agreement with an Owner's project number in the format of 999/999-99-9999. This project number may differ from the number as used on other Contract Documents. This Owner's project number is to be shown in all correspondence related to the Project.

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the ~~Architect-Designer~~ and the ~~Architect's-Designer's~~ consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the ~~person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith-Designer.~~

Init.

### **§ 1.1.9 Project Manual**

The Project Manual is a volume or set that may include portions of the Contract Documents and other documents.

### **§ 1.1.10 Provide or Provided**

"Provide" or "Provided" as used in Contract Documents includes furnishing and installing a thing, product, system or the like.

## **§ 1.2 Correlation and Intent of the Contract Documents**

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

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

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

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

**§ 1.2.4** Within the Specifications, the sections of Division One (01) are General Requirements, and apply to all sections of the Specifications.

## **§ 1.3 Capitalization**

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

## **§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

**§ 1.5.1** The ~~Architect-Designer and the Architect's-Designer's~~ consultants shall be deemed the authors and owners of their respective Instruments of Service, ~~including the Drawings and Specifications, except the design and the Contract Documents, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The design and the Contract Documents are property of the State of Tennessee, and may be used again only for the benefit of the State and on authority of the State Building Commission (SBC). The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Service, the design, or the Contract Documents.~~ Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of ~~the Architect's or Architect's-consultants'~~ reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of ~~Service-Service, the design, or the Contract Documents~~ provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. ~~All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service.~~ The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of ~~Service-Service, the design, or the Contract Documents~~ on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the ~~Owner, Architect, and the Architect's consultants.~~ Owner with respect to the design and the

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Contract Documents, and the Designer and the Designer's consultants with respect to the Instruments of Service other than the design and the Contract Documents.

### § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.transmission. .

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

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the ~~transmission and use~~ development, use, transmission, and exchange of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~ form

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols ~~set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form,~~ shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the ~~Architect-Designer~~ does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 ~~The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. Public construction projects are not subject to mechanic's liens in Tennessee. The remedy afforded to laborers and furnishers of material on State projects is referenced in Section 15.2.8.~~

### § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended ~~appropriately.~~ The SBC project number constitutes verification that funding has been established as a matter of public record.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due;

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or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

~~§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

~~§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

### **§ 2.3 Information and Services Required of the Owner**

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

**§ 2.3.2** ~~The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. "Designer" is the licensed prime design professional or firm lawfully practicing architecture, landscape architecture, or engineering, identified in Bidding Documents and Agreement form for project, or the authorized representative thereof.~~

~~§ 2.3.3 If the employment of the Architect terminates, Designer is terminated, the Owner shall employ a successor to whom the Contractor has no reasonable objection and Designer whose status under the Contract Documents shall be that of the Architect. Designer.~~

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor will be furnished, free of charge, such copies of Contract Documents as are reasonably necessary for execution of the Work.~~

### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.



### § 2.5 Owner's Right to Carry Out the Work

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~ § 2.5.1 If Contractor defaults or neglects to carry out the Work in accordance with Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies.

§ 2.5.2 If the Contractor fails to complete the Work in accordance with the time limit stipulated in the Certificate of Substantial Completion, then Owner may take over the completion of Work without advance notice to Contractor and without prejudice to any other remedy that Owner may have.

§ 2.5.3 In such cases as described in Sections 2.5.1 and 2.5.2, an appropriate modification will be issued deducting from the Contract Sum the reasonable cost of correcting such deficiencies or completing such Work, regardless of whether Owner actually undertakes completing such Work, in which case the deduction shall be based on the Designer's estimate in accordance with Section 7.3.7, including Owner's expenses and compensation for the Designer's additional services made necessary by such default, neglect, or failure. Such action by the Owner and amounts charged to Contractor are both subject to prior approval of the Designer. If the unpaid balance of the Contract Sum is not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5.4 In the case of a Contract Sum based upon a Guaranteed Maximum Price that includes a GMP Contingency, the unused GMP Contingency shall not be included in the calculation required by Section 2.5.3 of unpaid balance of the Contract Sum, and the reduction in the Contract Sum shall not be applied to the GMP Contingency.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's term "Contractor" means the Contractor or the Contractor's authorized representative. When the Agreement is a Construction Services Agreement between the Owner and a Construction Manager / General Contractor, the term "Contractor" means Construction Manager / General Contractor or its authorized representative.

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

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

§ 3.1.4 At the time of bid and award, Contractor shall not be currently disqualified from participating in State construction projects under the supervision of the SBC. Such disqualification extends to succeeding or related corporations, partnerships, joint ventures, and other business organizations having substantial factual or legal connections, continuity, or identity with those that have been disqualified.



### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect may require~~ Designer may require prior to proceeding with the work. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform construction activity when Contractor knows, in exercise of reasonable diligence, that the activity involves error, inconsistency, or omission in Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~ Designer may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the ~~Architect~~ Designer issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or ~~3.2.3~~ 3.2.3 with reasonable diligence, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such ~~obligations~~ obligations with reasonable diligence. If the Contractor performs those ~~obligations~~ obligations with reasonable diligence, the Contractor shall not be liable to the Owner or ~~Architect~~ Designer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

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

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Contractor shall receive neither material, equipment, labor, nor services from one who submitted a competing general bid for the same contract and subsequently withdrew, reneged, or otherwise failed to enter into the contract.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the ~~Architect-Designer~~ in accordance with Section 3.12.8 or ordered by the ~~Architect-Designer~~ in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the ~~Architect-Designer~~ and in accordance with a Change Order or Construction Change Directive. Specified materials, equipment, and systems are essential elements of the Contract. If Contractor desires to use another material, equipment, or system in lieu thereof, Contractor shall request approval in writing and shall submit samples and data, including an estimate of difference in cost, as required for Designer's consideration. No substitution shall be made without approval in writing from Designer. Owner will be final judge of acceptability of substitution.

**§ 3.4.2.1** Not later than 21 days after award of contract, Contractor shall provide a list showing names of manufacturers proposed for each specified project, and applicable name of installer, whether Contractor or subcontractor. Designer will within 14 days reply in writing to Contractor stating whether Owner or Designer, after due investigation, has reasonable objection to any such manufacturer or installer. If adequate data on proposed manufacturer or installer is not available, designer may state that action will be deferred until Contractor provides further data. Contractor shall not make use of a manufacturer, or installer to which Owner or Designer has reasonably objected. Contractor shall receive appropriate adjustment in Contract Sum, Contract Time, or both for making such change unless objection was based on failure of manufacturer or installer to meet requirements of Contract Documents, in which case neither Contract Sum nor Contract Time shall be adjusted. Failure to object to a manufacturer shall not constitute waiver of requirements of Contract Documents. Projects furnished by listed Contractor's manufacturers must conform to requirements of Contract Documents.

**§ 3.4.3** 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 properly skilled in tasks assigned to them.

**§ 3.4.4** Contractor shall disclose existence and extent of financial interests, whether direct or indirect, which Contractor has in proposed subcontractors and material suppliers.

### **§ 3.4.5 Prohibition of Illegal Immigrants**

**§ 3.4.5.1** The requirements of Public Acts of 2006, Chapter Number 878, of the State of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the State of Tennessee, shall be material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, including termination of this Contract.

**§ 3.4.5.2** The Contractor by entering into this contract attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor or consultant who will utilize the services of any illegal immigrant in the performance of this Contract.

**§ 3.4.5.3** The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law provides for the prohibition of a Contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a Contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

**§ 3.4.5.4** For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a lawful permanent resident, or a person whose physical presence in the United States is authorized or allowed by the Department of Homeland Security and who, under Federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

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### **§ 3.4.6 Non-Discrimination in Employment**

**§ 3.4.6.1** Contractor shall not discriminate against any employee nor applicant for employment because of race, creed, color, religion, sex, age, or national origin as defined in Tennessee Code Annotated (TCA) § 4-21-401, et seq, nor because of handicap, in accordance with TCA § 8-50-103.

**§ 3.4.6.2** Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to handicap, race, creed, color, religion, sex, age, or national origin, including but not limited to practices in recruitment, recruitment advertising, employment, selection for training or apprenticeship, rates of pay or other forms of compensation, upgrading, demotion, transfer, layoff, or termination.

**§ 3.4.6.3** Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination.

**§ 3.4.6.4** Solicitations or advertisements for employees placed by or in behalf of Contractor shall state that qualified applicants shall receive consideration for employment without regard to handicap, race, creed, color, religion, sex, age, or national origin.

### **§ 3.4.7 State Prevailing Wage**

**§ 3.4.7.1** On contracts determined by the Department of Labor and Workforce Development to be "Highway Construction", Contractor is required to comply with policies, conditions and rules of the Tennessee Department of Labor pursuant to TCA §12-4-401, et. seq., and pay prevailing highway wage scale to laborers and mechanics employed on the Work or designated portion thereof, as set forth in said rules, policies, and statute, and to furnish weekly payrolls with the decision number noted on each to the Tennessee Department of Labor and Workforce Development.

**§ 3.4.7.2** Owner and Designer shall have endeavored to provide current state highway prevailing wage decision and rate scale as an attachment to this section; however, their failure to do so shall not relieve Contractor of responsibility to comply with the requirement. If state highway prevailing wage decision and rate scale applicable to Project changes during the course of Project, or differs from rate scale provided in Contract Documents, there shall be an equitable adjustment of Contract Sum.

**§ 3.4.7.3** When a federal wage scale applies to the Project, it will also be included in the Contract Documents, and the Contractor shall pay not less than the rates set forth therein; and so, shall pay the higher of the state rate and the federal rate if a labor classification exists in both wage scales applicable to the same worker.

### **§ 3.4.8 Payrolls and Basic Records**

**§ 3.4.8.1** Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the government until 3 years after contract completion. Records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. If federal wage rates and record-keeping apply, the records need not duplicate those required for federal compliance.

**§ 3.4.8.2** Contractor and its subcontractors shall allow authorized representatives of the government to inspect, copy, or transcribe records maintained these requirements, and shall allow authorized representatives of the government to interview employees in the workplace during working hours.

### **§ 3.4.9 Subcontracts**

Contractor shall insert these provisions in subcontracts and require subcontractors to include these provisions in any lower tier subcontracts. Contractor shall be responsible for compliance with the provisions set forth herein by direct subcontractors and lower tier subcontractors.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect-Designer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. defects. Work,

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materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the ~~Architect, Designer~~, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### **§ 3.6 Taxes**

~~The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~

§ 3.6 Taxes**§ 3.6.1** The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**§ 3.6.2** If the State of Tennessee enacts, after bids are received or negotiations concluded, a change in sales, consumer, use, or similar state tax for the Work or a portion thereof provided by the Contractor, the Contract Sum shall be accordingly adjusted by appropriate modification or the Owner may make other lawful provision to mitigate the change.

**§ 3.6.3** Neither Contract Sum nor Contract Time shall be adjusted for impacts resulting from a change in a tax by a governmental body other than the State of Tennessee, regardless of when the tax is enacted or goes into effect.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** ~~The Contractor~~ Contractor, except as provided in Section 3.7.3, shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** ~~If the Contractor~~ Contractor, except as provided in this section, performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Owner is an agency of state government, and as such has sovereign immunity from the laws, ordinances, rules, regulations, and lawful orders of local governments within the state; however, the Contractor shall obtain all normal permits whenever possible as if the Owner had no such immunity. If a delay or denial in securing a local permit occurs, the Contractor shall continue the Work, inform the Designer and the Owner of the situation, propose corrective measures, and continue to pursue the customary permits.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents taking into account that unless otherwise stipulated in Contract Documents, excavations and other subsurface construction activity shall be considered unclassified down to design depth, regardless of substrate and abandoned or inactive infrastructure, or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the ~~Architect before conditions are disturbed~~ Designer in accordance with Section 15.1.4 before continuing activities that could lead to a claim for additional cost and in no event later than 14 days after first observance of the conditions. The ~~Architect~~ Designer will promptly investigate such conditions and, if the ~~Architect~~ Designer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend ~~that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect~~ an adjustment in the Work,

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Contract Sum and/or Contract Time. If the Designer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect-Designer shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's-Designer's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly ~~by Change Order.~~ by Modification. The amount of the ~~Change Order~~ Modification shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under ~~Section 3.8.2.2.~~ Section 3.8.2.2; and
- .4 Contractor shall monitor the costs included in allowances, and shall not incur excess costs without first obtaining a Modification adjusting the allowance sufficient for the excess.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

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

~~§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 The Contractor shall not employ a ~~proposed~~ superintendent to whom the Owner or Architect-Designer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's-Designer's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the

Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the ~~Architect's~~ Designer's approval. The ~~Architect's~~ Designer's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the ~~Architect~~ Designer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect~~ Designer.

#### **3.10.4 Scheduling Assistance**

Owner may provide the Scheduling Assistance. If provided, such services will be set forth in the specifications of Progress Schedules.

#### **§ 3.10.5 Commissioning Consultant**

Owner may provide the services of a Commissioning Consultant, either as a consultant engaged by the Owner, or as Subcontractor under a specified allowance and selected by the Owner. If provided, such services will be set forth in the Specifications. The Contractor retains full responsibility for compliance with the Contract Documents. Contractor shall fully cooperate in commissioning, and shall require the necessary forces assisting the Contractor to likewise cooperate fully. If commissioning activities are included in the Work they shall not be a cause for delay or cost claims.

#### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the ~~Architect~~ Designer and Owner, and delivered to the ~~Architect~~ Designer for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

#### **§ 3.12 Shop Drawings, Product Data and Samples**

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

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

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

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

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the ~~Architect~~ Designer, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the ~~Architect~~ Designer or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

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**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and ~~Architect-Designer~~ that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, so prior to providing that which is the subject of the submittal, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. If a portion of Work demonstrated by a submittal deviates from the requirements of the contract Documents, the Contractor shall specifically identify the deviation and its difference in cost as part of the submittal.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the ~~Architect-Designer~~.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the ~~Architect's-Designer's~~ approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the ~~Architect-Designer~~ of such deviation and its difference in cost at the time of submittal and (1) the ~~Architect-Designer~~ has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the ~~Architect's-Designer's~~ approval thereof.

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

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

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the ~~Architect-Designer~~ will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the ~~Architect-Designer~~. The Owner and the ~~Architect-Designer~~ shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and ~~Architect-Designer~~ have specified to the Contractor the performance and design criteria that such services must satisfy. ~~Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.~~

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

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

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

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

### § 3.16 Access to Work

The Contractor shall provide the Owner and ~~Architect-Designer~~ with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall ~~defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, indemnify and hold harmless the Owner, Designer, Designer's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from alleged infringement of copyrights and patent rights,~~ but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or ~~Architect-Designer~~. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect-Designer~~.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants,~~ and agents and employees of ~~any of them~~ the Owner from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible ~~property~~ property, including loss of use resulting therefrom (other than the Work itself), but only to the extent caused by the willful or negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Contractor agrees to indemnify the Designer and Designer's consultants based on the willful or negligent acts or omissions of the Contractor, except that Contractor shall not indemnify the Designer and Designer's consultants based on design mistakes and errors or omissions.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 3.19 Relations with Owner's Representatives**

**§ 3.19.1** Contractor, subcontractors, material suppliers, and sub-subcontractors shall neither offer nor give a product, service, payment, negotiable instrument, gift, gratuity, or other compensation in connection with this project to a representative or employee of the State of Tennessee, the Designer, or the Designer's consultants without Owner's consent. Evidence of a violation of this requirement may be cause for termination of this Contract.

### **§ 3.20 Participation of Diversity-Owned Businesses**

**§ 3.20.1** It is the express desire of the State Building Commission to include an emphasis on diversity in its contractual relationships with contractors for the construction, demolition or renovation of State projects under the jurisdiction of the Commission. Refer to Item 5 in the State Building Commission Policy.

**§ 3.20.2** To the extent that the Contractor or a subcontractor is a Diversity-Owned Business, the Contractor shall report to the State its own status in this regard and the names and amounts of contracts entered into with Diversity-owned Businesses on the State projects in order for the State to collect data on such participation.

### **§ 3.21 Financial Records**

**§ 3.21.1** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

## **ARTICLE 4 DESIGNER**

### **§ 4.1 General**

**§ 4.1.1** The ~~Architect-Designer~~ is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the ~~Architect-Designer~~ as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and ~~Architect-Designer~~. Consent shall not be unreasonably withheld.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The ~~Architect-Designer~~ will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative ~~during construction until the date the Architect issues the final Certificate for Payment. The Architect (1) during construction, (2) until final payment is due, and (3) at the Owner's request during the one-year period for correction of Work described in Section 12.2. The Designer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.~~

**§ 4.2.2** The ~~Architect-Designer~~ will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the ~~Architect-Designer~~ will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect-Designer~~ will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, ~~since these which~~ are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the ~~Architect-Designer~~ will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The ~~Architect-Designer~~ will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect-Designer~~ will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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#### § 4.2.4 Communications

The Owner and Contractor shall include the ~~Architect-Designer~~ in all communications that relate to or affect the ~~Architect's-Designer's~~ services or professional responsibilities. The Owner shall promptly notify the ~~Architect-Designer~~ of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the ~~Architect's-Designer's~~ consultants shall be through the ~~Architect-Designer~~. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the ~~Owner-Owner or the Designer~~. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the ~~Architect's-Designer's~~ evaluations of the Contractor's Applications for Payment, the ~~Architect-Designer~~ will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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

§ 4.2.7 The ~~Architect-Designer~~ will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, ~~but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.~~ The Architect's checking for compliance with the requirements and conformance with the intent of the Contract Documents. The ~~Designer's~~ action will be taken in accordance with the submittal schedule approved by the ~~Architect-Designer~~ or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the ~~Architect's-Designer's~~ professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The ~~Architect's-Designer's~~ review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The ~~Architect's-Designer's~~ review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The ~~Architect's-Designer's~~ approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 ~~The Architect will prepare-~~ Designer will assist the Owner in preparing Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The ~~Architect-Designer~~ will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The ~~Architect-Designer~~ will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The ~~Architect-Designer~~ will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The ~~Architect's-Designer's~~ response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

**§ 4.2.13** The ~~Architect's-Designer's~~ decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.14** The ~~Architect-Designer~~ will review and respond to requests for information about the Contract Documents. The ~~Architect's-Designer's~~ response to such requests will be made in writing within any time limits agreed upon or otherwise ~~with reasonable promptness~~ within 14 days. If appropriate, the ~~Architect-Designer~~ will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

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

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

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, ~~as soon as practicable within 21 days~~ after award of the Contract, shall notify the Owner and ~~Architect-Designer~~ of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the ~~Architect-Designer~~ may notify the Contractor whether the Owner or the ~~Architect-Designer~~ (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the ~~Architect-Designer~~ to provide notice within the 14-day period shall constitute notice of no reasonable objection. No construction activity shall be commenced by a person or entity in question until all objections have been resolved. If required, Contractor shall furnish evidence satisfactory to Designer, showing each proposed Subcontractor is competent to execute work covered by the subcontract. Subcontractors identified as part of Contractor's bid for this Project shall be used in the capacity listed, unless otherwise approved by the Owner in accordance with State Building Commission policy.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or ~~Architect-Designer~~ has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or ~~Architect-Designer~~ has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or ~~Architect~~ has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.~~ Designer has no reasonable objection.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or ~~Architect-Designer~~ makes reasonable objection to such substitution.

**§ 5.2.5** Contractor shall not award subcontract to one who submitted a competing general bid for the same Contract and subsequently withdrew, renege, or otherwise failed to enter into contract.

**§ 5.2.6** Contractor shall not allow work under the Contract to be performed contrary to the requirements of Section 3.4.5 nor by a Contractor or Subcontractor that has been disqualified from participating in State construction projects under the supervision of the State Building Commission. Such disqualification extends to succeeding or related

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corporations, partnerships, joint ventures, and other business organizations having substantial factual or legal connections, continuity, or identity with those that have been disqualified. If such a participant is discovered, Contractor shall immediately discontinue the participation and provide a suitable substitute at no additional cost to the Owner, and provide documentation to the Owner of the action taken to comply with this requirement.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and ~~Architect-Designer~~. Each subcontract agreement shall preserve and protect the rights of the Owner and ~~Architect-Designer~~ under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

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

Assignment is at the option of Owner, and creates no duty or obligation upon Owner to exercise this option, nor is any right created for any subcontractor to expect or rely upon such assignment. When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction



schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### **§ 6.2 Mutual Responsibility**

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

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

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.1.4.

### **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect-Designer~~ will allocate the cost among those responsible.

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

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and ~~Architect-Designer~~. A Construction Change Directive requires agreement by the Owner and ~~Architect-Designer~~ and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the ~~Architect-Designer~~ alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the ~~Architect~~ and signed by the Owner, Contractor, and ~~Architect-Designer~~ stating their agreement upon all of the following:

- .1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum; and that the price includes all eligible overhead and profit, and represents all direct and indirect costs associated with the change; and

.3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2.** Unless otherwise agreed in writing by Owner and Contractor, the method of determining adjustments in Contract Sum shall be by one or more of the methods set forth in Section 7.3.3, and shall be based on reasonable expenditures and savings as set forth in Section 7.3.4.

**§ 7.2.3** When the Owner and Contractor agree with a determination made by the Designer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, the Owner may issue a written approval of the adjustment(s) prior to being recorded in a Change Order. Such approval shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

### **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order ~~prepared by the Architect and~~ signed by the Owner and ~~Architect, Designer,~~ directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect~~ Designer shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount in accordance with Section 7.3.11. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect~~ Designer may prescribe, an itemized accounting together with appropriate supporting data. ~~Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:~~

**§ 7.3.4.1** Costs for the purpose of this Section 7.3.4 shall be limited to the following:

- .1 ~~Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;~~ Direct personnel expense (DPE);
- .2 ~~Costs of materials, supplies, and equipment, including cost of transportation, thereof, whether incorporated or consumed;~~
- .3 ~~Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~ Machinery and equipment costs based on (1) rental costs for rental of machinery and equipment rented from others and (2) costs for machinery and equipment owned by the Contractor limited to not more than eighty percent (80%) of the applicable average rental rate as listed in the current edition of the AED Green Book for Rental Rates and Specifications for Construction Equipment;
- .4 ~~Costs of premiums for all bonds and insurance, insurance to the extent required by Contract Documents, permit fees, and sales, use, or other similar taxes, directly related to the change; and~~
- .5 ~~Costs of supervision and field office personnel directly attributable to the change.~~ Additional DPE of superintendence directly attributable to authorized overtime; and,

- .6 Reasonable DPE of project manager and clerical work directly attributable to estimating and coordinating the change.
- .7 The following items are "Class 1 Time-Related Expenses", and shall be considered as costs when Contract Time is extended due to additional work or a Class 1 cause defined in Section 8.3, and solely to the extent directly attributable to extension of time; field offices, sheds, phones/communication devices, sanitary facilities, dumpsters, trash collection and disposal, on-site utilities, drinking items, supplies, cleaning, safety programs, and all other construction facilities, temporary controls and fixtures not specifically required for additional work; costs of superintendence; superintendent's vehicle; and other general use vehicles, being those requiring a class D, H, or M license, and excluding those requiring a class A, B, or C license, as set forth in the Tennessee Driver Handbook or comparable current successor publication of the Tennessee Department of Safety and Homeland Security. The daily maximum amount allowed for Class 1 Time-Related Expenses shall be calculated as, and equal to four and one-half percent (4.50%) of the original Contract Sum divided by the original Contract Time.
- .8 If the Contract Sum is a Guaranteed Maximum Price between the Owner and a Construction Manager / General Contractor, the costs for project manager, clerical work, and Class 1 Time-Related Expenses included by Sections 7.3.4.1.6 and 7.3.4.1.7 and the extra five percent (5%) for the Contractor in Section 7.3.11.1 shall not apply. In such cases, the CM/GC Fee and General Conditions costs shall apply in accordance with the Master Contract provisions for Modifications and Change in GMP.

**§ 7.3.4.2 Direct Personnel Expense (DPE)**

§ 7.3.4.2.1 Direct personnel expense (DPE) costs delineated in Sections 7.3.4.1, 7.3.4.1.5, 7.3.4.1.6, and 7.3.4.1.7 shall be limited to base salary or hourly wage plus a maximum of thirty-nine percent (39%) of base salary or hourly wage, and further limited to a maximum of \$155 per hour, including all labor burden.

§ 7.3.4.2.2 If the Contract sum is a Guaranteed Maximum Price between the Owner and a Construction Manager / General Contractor, and the proposal on which the CM/GC Master Contract is based identified a Labor Burden multiplier as a cost consideration, then the thirty-nine percent (39%) maximum in Section 7.3.7.2.1 shall not apply, and the Labor Burden multiplier provided in the Proposal shall be used.

§ 7.3.4.3 Specifically excluded from costs and included in overhead or general requirements are: corporate, home office, and branch office overhead, rent, mortgage, off-site utilities, project management, and personnel not otherwise mentioned; capital expenses and interest on capital; hand tools; and the items of cost listed in Section 7.3.4.1.7 when Contract Time is not extended due to additional work or a Class 1 clause.

§ 7.3.4.4 To facilitate checking for increases or decreases in the Contract Sum, proposals, shall be accompanied by Contractor's complete itemization of costs of work including labor, materials and equipment, plus an amount for overhead and profit.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the ~~Architect-Designer~~ of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the ~~proposed~~-adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect-Designer~~. When both additions and credits covering related Work or substitutions are involved in a change, the ~~allowance~~ amount for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. ~~The~~

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Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect-Designer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a and shall be recorded by preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

### **§ 7.3.11 Overhead and Profit**

**§ 7.3.11.1** The amount recoverable as overhead and profit on costs stipulated in Section 7.3.4 shall be limited to the following:

- .1 For Contractor performed work, the Contractor shall be entitled to overhead of ten percent (10%) of the cost of the self-performed work (the "Overhead") and profit of five percent (5%) of the sum of the cost of the self-performed work and the Overhead. The Contractor's Overhead of ten percent (10%) is not applied to the Class I Time Related Expenses in § 7.3.4.1.7.
- .2 For Subcontractor performed work:
  - .a The Contractor shall be entitled to profit of five percent (5%) of the sum of all Subcontractor's itemized costs, Subcontractor Overhead, and Subcontractor Profit. The Contractor shall not be entitled to recover any overhead on work performed by a Subcontractor.
  - .b The Subcontractor shall be entitled to overhead of ten percent (10%) of its itemized cost ("Subcontractor Overhead") and profit of five percent (5%) of the sum of its itemized cost and the Subcontractor Overhead ("Subcontractor Profit").
- .3 For Sub-subcontractor performed work, a Subcontractor shall be entitled to profit of five percent (5%) of the sum of all Sub-subcontractor's cost. The Subcontractor shall not be entitled to recover any overhead on work performed by its Sub-subcontractors.

**§ 7.3.11.2** When the Contract Sum is a Guaranteed Maximum Price between the Owner and a Construction Manager / General Contractor, the extra five percent (5%) for the Contractor in Section 7.3.11.1 shall not apply. In such cases, the CM/GC Fee shall apply in accordance with the Master Contract provisions for Modifications and Change in GMP.

### **§ 7.4 Minor Changes in the Work**

The Architect-Designer may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's-Designer's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect-Designer and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's-Designer's order for a minor change without prior notice to the Architect-Designer that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

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

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

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

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



## § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time in accordance with the Agreement.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 ~~If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. The basis exists for an extension of time if Contractor is delayed in performing Work, but solely to the extent that delays are unforeseeable, unavoidable, and beyond the control and without fault or negligence, in whole or in part, of Contractor, subcontractors, sub-subcontractors, and suppliers at every tier, and said delays directly impact the Contractor's ability to achieve Substantial Completion in accordance with the Contract Time requirements, and said delays cannot be made up by reasonable efforts otherwise and said delays stem from the following causes:~~

§ 8.3.1.1 Class 1 causes: an act or failure to act that is contrary to the Contract Documents on the part of Owner or Designer or an employee of either, or of a separate Contractor employed by Owner, or an injunction against Owner or Owner's representatives; any impact to the Contractor that requires an adjustment in the Contract Sum and Contract Time.

§ 8.3.1.2 Class 2 causes: abnormal weather, acts of God, riots, civil commotion, acts of War, fire, unavoidable casualties, epidemics, quarantine restrictions, labor disputes, unusual delay in transportation, freight embargoes, or insolvency of subcontractors, sub-subcontractors, or suppliers.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. If the basis exists for an extension of time under Section 8.3.1, Owner may either:

- 1 in the case of additional work or a Class 1 cause, assign the Class 1 Time-Related Expenses, defined in Section 7.3.4.1.7, plus the overhead and profit allowed in Section 7.3.11, to a special allowance that can be earned based upon the extent of actual use of the related Time Extension in completion of the Work;
- 2 accept the reasonable and appropriate time extension as determined by Designer to cover such delay, and in the case of a Class 2 cause, there will be no corresponding adjustment in Contract sum, and the sole recourse of Contractor will be entitlement to time extension as provided by Designer regardless of actual source or cause of delay;
- 3 order Contractor to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, and adjusting the Contract Sum in accordance with Article 7 to compensate Contractor for such directed acceleration; however, direct costs used in determining such compensation shall be limited to properly substantiated and documented premium or overtime labor costs; or
- 4 employ a combination of the above remedies.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Extension of Contract Time due to Class 2 causes shall be applied to the Contract Time prior to the application of Class 1 time.

§ 8.3.4 Neither Owner nor Designer will be obligated or liable to Contractor for, and Contractor hereby expressly waives claims against Owner and Designer on account of damages, costs, expenses, or related impacts which Contractor, subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause

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enumerated in Section 8.3.1. Contractor's sole and exclusive remedy and full compensation in such event shall be extension of Contract Time in accordance with provisions of the Contract Documents. Contractor likewise waives claims of damages, costs, or expenses due to a delay resulting from a Class 1 cause except and solely to the extent of costs allowed under Section 7.3.4.

**§ 8.3.5** Claims relating to time shall be made in accordance with applicable provisions of Article 15 or shall receive no consideration. If monthly Weather Delay Reports are required by the specifications, then claims for time extension based upon weather delays will be denied if a submitted report does not corroborate the Claim or if no report was submitted when it was required, and Contractor waives the right to such claims.

**§ 8.3.6** Extensions of time shall be implemented in accordance with Article 7.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum is not subject to change due to commodity, equipment, or labor cost fluctuations.

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

### **§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the ~~Architect-Designer~~ before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the ~~Architect-Designer~~. This schedule, unless objected to by the ~~Architect-Designer~~, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the ~~Architect-Designer~~ and supported by such data to substantiate its accuracy as the ~~Architect-Designer~~ may require, and unless objected to by the ~~Architect-Designer~~, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** ~~At least ten days before~~ Prior to the date established for each progress payment, the Contractor shall submit to the ~~Architect-Designer~~ an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, ~~if required,~~ and supported by all data substantiating the Contractor's right to payment that the Owner or ~~Architect-Designer~~ require, such as copies of requisitions, and releases ~~and waivers of liens~~ from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, ~~or by interim determinations of the Architect,~~ but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, ~~for such materials and equipment stored off the site, extent those costs have been included in the Contract Sum and actually incurred.~~ Additional costs, which may be attendant to the off-site storage, are the responsibility of the Contractor, and cannot be claimed by Contractor against Owner.

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**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner ~~no later than the time of payment~~ at the time payment is received by the Contractor. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of ~~liens~~, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

**§ 9.3.4** In Applications for Payment, the amount represented as total completed and stored to date shall reflect that portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and materials and equipment suitably stored in accordance with Section 9.3.2, and not exceed the Contract Sum less the value of incomplete Work and corrections required. This total completed and stored to date shall not be construed to define completion as determined by Substantial Completion or final completion of the Work according to Sections 9.8, 9.9, or 9.10.

**§ 9.3.5** Applications for Payment shall indicate retainage withheld from the total completed and stored to date as follows: five percent (5%) until acceptance of a certificate of Substantial Completion; and, thereafter two percent (2%) until final payment. The resulting amount shall be indicated as the total earned less retainage. Applications that reduce retainage shall be accompanied by Consent of Surety, if a bond was required according to Section 11.4.

**§ 9.3.6** Applications for Payment shall indicate the total earned less retainage, and the aggregate of previous payments made subtracted therefrom, and an amount requested.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The ~~Architect-Designer~~ will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the ~~Architect-Designer~~ determines is properly due, and notify the Contractor and Owner of the ~~Architect's-Designer's~~ reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the ~~Architect's-Designer's~~ reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the ~~Architect-Designer~~ to the Owner, based on the ~~Architect's-Designer's~~ evaluation of the Work and the data in the Application for Payment, that, to the best of the ~~Architect's-Designer's~~ knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the ~~Architect-Designer~~. However, the issuance of a Certificate for Payment will not be a representation that the ~~Architect-Designer~~ has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 Decisions to Withhold Certification**

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

~~Architect's-Designer's~~ opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
- .7 ~~repeated failure to carry out the Work in accordance with the Contract Documents.~~ Documents, or
- .8 potential liquidated damages and other unsettled claims.

§ 9.5.2 When either party disputes the ~~Architect's-Designer's~~ decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When any of the reasons for withholding certification are removed, certification will be made for respective amounts previously withheld.

§ 9.5.4 If the ~~Architect-Designer~~ withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the ~~Architect-Designer~~ and the Contractor shall reflect such payment on its next Application for Payment.

#### § 9.6 Progress Payments

§ 9.6.1 After the ~~Architect-Designer~~ has issued a Certificate for Payment, the Owner shall make payment in ~~the manner and within the time provided in the Contract Documents, and shall so notify the Architect.~~ accordance with TCA § 12-4-701 et seq. as may from time to time be amended.

- .1 Payment is due not later than 45 days after an undisputed Certificate for Payment has been received by Owner. Owner will endeavor to make payment within 21 days, but shall not be obligated to do so.
- .2 Based upon Certificates for Payment issued by the Designer, correcting the Application for Payment as appropriate, the Owner shall make progress payments to the Contractor as provided in the Contract Documents.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of entitled for the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor ~~Architect-Designer~~ shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

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**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. When Contract Sum meets the statutory threshold, pursuant to TCA § 66-34-104, the Contractor shall comply with the procedures established by the Tennessee State Treasurer and Department of Finance and Administration for establishment of an interest-bearing retainage escrow account.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any ~~lien claim or other claim~~ for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a ~~lien claim or other claim~~ for payment, the Owner shall notify the ~~Contractor~~ Contractor and the Designer. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the ~~lien or other claim~~ for payment has been asserted. The Designer may act in accordance with Section 9.5 or the Contractor may furnish acknowledgement of the claim from the Surety satisfactory to the owner to indemnify the Owner in making payment to the Contractor without reduction of the claim.

### **§ 9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date payment is due as established in the Contract Documents, the amount ~~certified by the Architect or awarded by binding dispute resolution, currently due as of that date pursuant to the terms of the Contract Documents (including certification by the Designer),~~ then the Contractor may, upon seven additional days' notice to the Owner and ~~Architect, Designer,~~ stop the Work until payment of the amount ~~owing due~~ has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. In order to occupy or utilize the Work for its intended use, Owner must have received from the State Fire Marshal the Certificate of Occupancy, or in the case of renovations the Project Completion Form, and the Owner must have received substantially complete Product Data, Operating and Maintenance Data, orientation, and training, as may be required by specifications.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the ~~Architect-Designer~~ a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the ~~Architect-Designer~~ will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's Not later than at the time of this inspection, the Contractor will submit its application for payment commensurate with Substantial Completion. If the Designer's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect-Designer. In such case, the Contractor shall then submit a request for another inspection by the Architect-Designer to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the ~~Architect-Designer~~ will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the ~~Certificate.~~ the Certificate, subject

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to the provisions of Section 9.12.2. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

### **§ 9.9 Partial Occupancy or Use**

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

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

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect-Designer~~ will promptly make such inspection. When the ~~Architect-Designer~~ finds the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect-Designer~~ will promptly issue a final Certificate for Payment stating that to the best of the ~~Architect's Designer's~~ knowledge, information and belief, and on the basis of the ~~Architect's-Designer's~~ on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The ~~Architect's-Designer's~~ final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect-Designer~~ (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of ~~liens~~-claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor ~~may furnish a bond~~ shall furnish acknowledgement of the matter from the Surety satisfactory to the Owner to indemnify the Owner against such ~~lien, claim, security interest, or encumbrance~~ matter in lieu of such a release or waiver. If such matter remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the ~~lien, claim, security interest, or encumbrance~~, such matter, including all costs and reasonable attorneys' fees.



**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the ~~Architect-Designer~~ so confirms, the Owner shall, upon application by the Contractor and certification by the ~~Architect-Designer~~, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the ~~Architect-Designer~~ prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall not constitute a waiver of Claims by the Owner ~~except those arising from for the following:~~

- .1 ~~liens~~, Claims, security interests, or encumbrances arising out of the Contract Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract ~~Documents;~~ Documents, irrespective of when such failure is discovered;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final ~~payment by the Contractor, a Subcontractor, or a supplier,~~ payment, shall constitute a waiver of claims ~~by that payee~~ except those previously made in writing and identified ~~by that payee~~ as unsettled at the time of final Application for Payment.

**§ 9.10.6** Final payment constituting the entire unpaid balance of Contract Sum, shall be paid by Owner to Contractor when Work has been completed, the Contract fully performed, and a final Certificate for Payment issued by Designer.

**§ 9.10.7** If there is no Contract Bond, the final Certificate may be withheld until the prospect of final payment is advertised once, 30 days prior to issuance of the final payment, for the benefit of those to whom the Contractor may be indebted.

### **§ 9.11 Method of Payment**

**§ 9.11.1** Payments to Contractor shall be made through Owner's automated clearing house wire transfer system. Contractor shall have completed an Authorization Agreement for Automatic Deposits ACH Credits Form prior to commencing Work and prior to submitting a first application for payment. At the Owner's option, other payment options may be utilized.

**§ 9.11.2** Debit entries to correct errors authorized by the Authorization Agreement for Automatic Deposits ACH Credits Form shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. Corrections shall be made within two banking days of the effective date of the original transaction. Other errors detected at a later date shall take the form of a refund, or in some instances, a credit memo if additional payments are to be made.

**§ 9.11.3** The Owner reserves the right to deduct from amounts which are or shall become due and payable to Contractor under this or any contract between the parties any amounts which are or shall become due and payable to the State by the Contractor.

### **§ 9.12 Liquidated Damages**

**§ 9.12.1** Time being of the essence, Contractor further agrees to accept conditions for Liquidated Damages in the amount set forth in Contract Documents for each calendar day in excess of allotted time for Substantial Completion, or approved extension thereof, parties agreeing that the amount of damages resulting from delay would be uncertain and difficult to prove, and further agreeing that such Liquidated Damages set forth in the Owner-Contractor Agreement are a reasonable estimate of those damages which could result from delay.

**§ 9.12.2** If a portion of the Work is certified Substantially Complete, the amount of Liquidated Damages applicable to the remaining Work may be reduced by Written mutual agreement.

**§ 9.12.3** Secondary Liquidated Damages shall be twenty-five percent (25%) of that originally required by the Contract Documents, and shall accrue until such time that Work has been completed and the Contract fully performed if:

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.1 the time for completion stipulated in the Certificate of Substantial Completion has passed; or, if no such time was stipulated, then 30 calendar days has passed following the certified date of Substantial Completion and;

.2 the Contract Time, including approved extensions, plus 30 calendar days, has passed.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 Safety of Persons and Property**

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

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

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or ~~Architect~~ Designer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. Owner reserves the right to make repairs to damaged property and deduct all costs from the Contract Sum. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

### **§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ 14 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and ~~Architect-Designer~~ of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, pursuant to circumstances described in Section 10.3.1, Owner will have the option to either terminate the contract as provided in Article 14, proceed with Contractor in a mutually agreed plan of action, or as follows: the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and ~~Architect-Designer~~ the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the ~~Architect-Designer~~ will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or ~~Architect-Designer~~ has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the ~~Architect-Designer~~ have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. ~~By Change Order, Following claim and modification processes in~~ accordance with Articles 15 and 7, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the ~~Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~ Contractor may file claim under Article 15 for consideration.

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's ~~Liability Insurance and Bonds~~

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract

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Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents, from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance required by the Contract Documents as will protect the Contractor and the Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property on or away from the site, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until four years after Substantial Completion. Specific lines of coverage and limits of liability provided by the Contractor shall be written in a comprehensive form satisfactory to the Owner in the following minimum requirements:

- .1 Commercial General Liability, with limits for bodily injury and property damage of

<u>Each Occurrence</u>	<u>\$1,000,000</u>
<u>Annual Aggregate</u>	<u>\$2,000,000</u>

and including:
  - premises & operations;
  - underground, explosion, & collapse;
  - products & completed operations;
  - contractual;
  - independent contractors; and,
  - personal injury (employment exclusion deleted).

The General Aggregate shall apply specifically to this project, using ISO form CG 2503 or the equivalent. The policy will contain a Waiver of Subrogation endorsement in favor of the Owner.

- .2 The Contractor will maintain a Contractor's Pollution Liability policy with limits of

<u>Each Occurrence</u>	<u>\$1,000,000</u>
<u>Annual Aggregate</u>	<u>\$2,000,000</u>

Coverage will commence prior to the beginning of the Work and will be maintained until four years after Substantial Completion. The policy will be written on a primary and non-contributory basis and will name the Owner as an additional insured for both on-going and completed operations. Coverage will apply to all construction operations, transit and disposal of material at non-owned disposal sites performed by or on behalf of the Contractor. The Policy shall not contain coverage exclusions related to asbestos, lead, silica or mold/microbial matter. The policy will contain a Waiver of Subrogation endorsement in favor of the Owner.

- .3 Commercial Automobile Liability, with combined single limits for bodily injury and property damage of Each Occurrence **\$1,000,000** and including owned, hired, and non-owned vehicles; or, if there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles. The policy will be written on a primary and non-contributory basis and will name the Owner as an additional insured, and will contain a Waiver of Subrogation endorsement in favor of the Owner.
- .4 Workers Compensation and Employer's Liability, (without restriction as to whether covered by Worker's Compensation law), with Workers Compensation according to statute, and Employer's Liability: **\$500,000 per occurrence** for bodily injury, **\$500,000** per employee for bodily injury by disease and a **\$500,000** policy limit for bodily injury by disease. The policy will contain a Waiver of Subrogation endorsement in favor of the Owner.
- .5 If an exposure exists, Aircraft and Watercraft Liability (owned & non-owned), with limits approved by Owner shall be provided.
- .6 The Contractor will maintain Excess or Umbrella Liability coverage that is as broad or broader than the required Commercial General Liability, Commercial Automobile Liability and Employer's Liability with minimum limits of \$5,000,000 per Occurrence, \$5,000,000 Annual Aggregate. The Excess or Umbrella policy will be written on a primary and non-contributory basis and will name the Owner as an additional insured.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to Owner's execution of the Agreement and thereafter upon renewal or replacement of each required policy of insurance. Certificate(s) of insurance provided to attest to coverage shall specifically cite each element of coverage and not less than limits set forth in Section 11.1.2, as confirmation of complete coverage, and shall identify Contractor, Producer, Insurance Carrier, Project, and certificate holder, and state Producer's notice requirements as set forth in Section 11.1.4. The term "Commercial General Liability" shall mean all of the coverage listed in Section 11.1.2.1a unless specifically noted otherwise in the certificate. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. The Contractor and its subcontractors shall cause the commercial general liability, auto, pollution and excess/umbrella coverage required by the Contract Documents to include (1) the Owner, the Designer and the Designer's consultants as additional insureds on a primary and non-contributory basis for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations using ISO form CG 2010 (07/04); and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations, using ISO form CG 2037 (07/04) edition.

#### **§ 11.2 Owner's Insurance**

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon

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receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.1.5** Contractor shall notify Owner in writing of changes in coverage or carrier not later than ten days after notification of Contractor by Producer, or ten days before Contractor makes a change, whichever occurs first. By way of an endorsement to the policy, the Insurer will be required to provide written notice if policies are cancelled or modified before expiration date thereof.

**§ 11.1.6** If professional design services or certifications by an appropriately licensed design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, as referenced in Sections 3.12.10.1 and 3.12.10.2, then that professional(s) shall maintain Professional Liability Insurance in the amount of: Each Claim \$ 1,000,000, Annual Aggregate \$1,000,000. The Professional Liability Insurance coverage shall be maintained for four years after the date of Substantial Completion of the Project. The Contractor is responsible for requiring that the Professional Liability Insurance is acquired and maintained.

## **§ 11.2 (Deleted)**

### **§ 11.3 Waivers of Subrogation Property Insurance**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. Contractor shall purchase from and maintain, with a company or companies licensed to do business in Tennessee by the

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Department of Commerce and Insurance, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum plus value of subsequent Contract modifications for the covered project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall specify the Owner as named insured, and the Contractor, Subcontractors and Sub-subcontractors as insureds under the policy.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

#### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§ 11.5 Adjustment and Settlement of Insured Loss**

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

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

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, and debris removal and shall cover reasonable compensation for Designer's services and Contractor's work required as a result of such insured loss. The policy will be written to include a waiver of subrogation applying to all parties.

**§ 11.3.1.2** For Work stored off the site, or in transit, the Contractor shall provide insurance upon such Work to protect the Owner's Interest.

**§ 11.3.1.3** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or

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companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ 11.3.1.4** Builder's Risk Insurance (BRI) for the full amount of the Contract Sum, unless the Work consists entirely of hazardous materials abatement or other demolition with no constructive patching or renovating, in which case there will be no BRI.

**§ 11.3.1.5** The Contractor will be responsible for maintaining its own insurance for owned, leased and borrowed tools and equipment. The policy will contain a Waiver of Subrogation endorsement in favor of the Owner.

### **§ 11.3.2 Boiler and Machinery Insurance**

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

### **§ 11.3.3 Loss of Use Insurance**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

**§ 11.3.4** Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the Issuing company will endeavor to provide ten days written notice to the Owner should the policy be canceled prior to the expiration date.

**§ 11.3.5** A loss insured under the Contractor's property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.6** If after an insured loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor.

### **§ 11.4 Contract Bond**

**§ 11.4.1** If the initial Contract Sum as awarded exceeds \$100,000, Contractor shall provide Contract Bond, in the amount of one hundred percent (100%) of Contract Sum covering faithful performance of contract and payment of obligations arising thereunder. If a Contract Bond is required, and a Three Year Roof Bond is also stipulated in the Bidding Documents, then the Three Year Roof Bond shall be provided as stipulated. Bond(s) shall be executed on Tennessee State Building Commission Standard Form(s) exhibited in Bidding Documents for project, and subject to provision of Section 11.4.3.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.4.3** Surety is the person or entity identified as such in a bond and is referred to throughout the Contract Documents as if singular in number. The term "Surety" means the Surety or the Surety's authorized representative. Surety Company issuing Bond shall be licensed to transact business in Tennessee by Department of Commerce and Insurance. Bonds shall have certified and current Power-of-Attorney for the Surety's Attorney-in-Fact attached. Attorney-in-Fact who executes bond on behalf of Surety shall be one who is licensed by Tennessee as a resident agent, and shall affix license number to bond; or, countersignature by and license number of a licensed resident agent shall be affixed to the bond in addition to the signature of the Attorney-in-Fact.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the ~~Architect's-Designer's~~ request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the ~~Architect, Designer,~~ be uncovered for the ~~Architect's-Designer's~~ examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the ~~Architect-Designer~~ has not specifically requested in writing to examine prior to its being covered, the ~~Architect-Designer~~ may request in writing to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering and recovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the ~~Architect-Designer~~ or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the ~~Architect's-Designer's~~ services and expenses made necessary thereby, shall be at the Contractor's expense.

#### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor of known noncomplying Work and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct ~~noneonforming noncomplying~~ Work within a reasonable time ~~during that period~~ after receipt of notice from the Owner or ~~Architect, Designer,~~ the Owner may correct it in accordance with Section 2.5. If Three Year Roof Bond has been provided, then with regard to the total roofing system, its installation, and materials, the one year time period hereunder is extended for two additional years for a total period of three years. Until such time as the three years hereunder have expired, Contractor's obligations hereunder shall be joint and several with Company as defined and set forth in the Roofing System Warranty. For the purpose of Section 12.2.2, all of Company's actions, whether of omission or commission, pursuant to the Roofing System Warranty are likewise actions of contractor hereunder and shall in no way negate or reduce the responsibilities of Contractor hereunder.

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for

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correction of Work as described in Section 12.2.2 and time period of applicable special warranties relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Incomplete or Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its completion or removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is ~~located, excluding that jurisdiction's~~ choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. located..~~

### § 13.2 Successors and Assigns

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

§ 13.2.2 ~~The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.~~

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, ~~Architect, Designer,~~ or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.3.3 If procedures within the Contract fail to satisfy a Claim against the Owner, further action is to be taken up with the Tennessee Claims Commission, pursuant to TCA § 9-8-101, et seq. Damages recoverable against the State shall be limited expressly to claims awarded by the Commission, or any appellate decision of such claim awarded by the Commission.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the ~~Contractor-Designer~~ shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public ~~authority, and authority.~~ The Owner shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the ~~Architect-Designer~~ timely notice of when and where tests and inspections are to be made so that the ~~Architect-Designer~~ may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the ~~Architect, Designer,~~ Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the ~~Architect-Designer~~

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will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the ~~Architect-Designer~~ of when and where tests and inspections are to be made so that the ~~Architect-Designer~~ may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the ~~Architect's-Designer's~~ services and expenses, shall be at the Contractor's expense.

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

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

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

### **§ 13.5 Interest**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is ~~due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located, past due as stated in Section 9.6.1 in accordance with TCA § 12-4-704 as may from time to time be amended.~~

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the ~~Architect-Designer~~ has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than ~~100 percent~~ one hundred percent (100%) of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and ~~Architect-Designer~~, terminate the Contract and recover from the Owner payment for Work executed, ~~as well as reasonable overhead and profit on Work not executed, and costs including eligible overhead, profit, and costs as defined in Section 7.3.4~~ incurred by reason of such termination. and costs including eligible overhead, profit, and costs as defined in Section 7.3.4

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the ~~Architect-Designer~~, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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## § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly-refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly-disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the ~~Architect-Designer~~ that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the ~~Architect's-Designer's~~ services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the ~~Initial Decision-Maker, Designer,~~ upon application, and this obligation for payment shall survive termination of the Contract.

## § 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

## § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the ~~Work;~~ Work, including materials for which Owner has paid and which are stored off-site; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In ~~ease-the event~~ of such termination for the Owner's convenience, the ~~Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~ Contractor's sole and exclusive remedy shall

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be to receive payment for the reasonable value of the completed portion of Work plus a portion ("P") of the remaining balance of the Contract Sum calculated under the following formula.

$$"P" = [(Remaining\ Balance\ of\ Contract\ Sum) \times (.05)] \times [(Value\ of\ the\ Work\ Completed) / (Contract\ Sum)]$$

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Time Limits on Claims

The ~~Owner and Contractor~~ shall commence all Claims and causes of action against the ~~other Owner~~ and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the ~~binding dispute resolution method selected in the Agreement~~ Contract Documents and Section 13.3.3 and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The ~~Owner and Contractor waive~~ Contractor waives all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

~~§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by shall be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Designer. . Claims by either party under this Section 15.1.3.1 shall be initiated within 21-14 days after occurrence of the event giving rise to such Claim or within 21-14 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. If the effect of the condition giving rise to the Claim cannot be fully evaluated, a preliminary notice of pending claim shall be made within the stated time limit subject to further action in a timely manner.~~

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

#### § 15.1.4 Continuing Contract Performance

~~§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Designer will issue recommendations for change orders and certificates for payment in accordance with its decisions issued pursuant to Section 15.2.5.~~

~~§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

#### § 15.1.5 Claims for Additional Cost

~~If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. written notice as required by the Contract Documents shall be given to the Owner by the Contractor, and written notice received by the Contractor from Owner acknowledging the claim and authorizing construction activity to proceed, before the Contractor shall proceed to execute the construction activity giving rise to the claim; thence, the claim shall be addressed under provisions of Section 15.2. Documentation of claims shall conform to the requirements of Article 7.~~

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Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay. To make Claim for an increase in Contract Time, Contractor shall give written notice as provided herein, and include an estimate of cost, which shall be limited to that allowed by Section 8.3.3, and an explanation of the cause and probable effect on progress of the Work. In the case of a continuing delay, only one Claim is necessary-necessary, and Contractor shall subsequently detail the full scope of the delay.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other-waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 — damages incurred by the Contractor for principal office expenses-Contract including but not limited to either party's termination in accordance with Article 14, principal office expenses, including the compensation of personnel stationed there, at the principal office, and any damages for losses of financing, business-business, and reputation, and for loss of profit, except anticipated profit arising directly from the Work.profit.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision Resolution of Claims and Disputes

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision Claims shall be referred to the Designer for initial decision. An initial decision or other action by the Designer in accordance with Section 15.2.2 shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.Claims or action pursuant to remedies provided by law for Claims between Owner and Contractor, unless the Designer fails to timely comply with Section 15.2.2.

§ 15.2.2 The Initial Decision Maker-Designer will review Claims and within ten days of the receipt of a Claim or information preliminary or pursuant to a Claim or modification to a Claim and take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker-Designer is unable to resolve the Claim if the Initial Decision Maker-Designer lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker-Designer concludes that, in the Initial Decision Maker's-Designer's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Designer to resolve the Claim. If Designer approves or rejects the Claim, parties have ten days to request reconsideration based upon additional information, or the decision shall be final. If Designer suggests compromise, parties have ten days to respond. If the Designer declines to resolve the claim, the Owner may, but is not obligated to, take the lead in resolving the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker-Designer may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial

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~~Decision Maker-Designer~~ in rendering a decision. The ~~Initial Decision Maker-Designer~~ may request the Owner to authorize retention of such persons at the Owner's expense.

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

~~§ 15.2.5~~ The ~~Initial Decision Maker~~ will render an initial decision approving or rejecting the Claim, or indicating that the ~~Initial Decision Maker~~ is unable to resolve the Claim. This initial decision ~~Designer will render an initial decision which shall~~ (1) be in writing; (2) state the reasons therefor; and (3) notify the parties ~~and the Architect, if the Architect is not serving as the Initial Decision Maker,~~ of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution ~~the provisions in Section 15.2.2, and thereafter to mediation if consented to by both parties, and to remedies as otherwise provided by law.~~

~~§ 15.2.6~~ Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

~~§ 15.2.8~~ If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. ~~As a matter of law, the State of Tennessee and its property are not subject to mechanic's and material suppliers liens. Subcontractors, suppliers, and other claimants are protected through the Contract Bond as required by TCA § 12-4-201 et seq., and Section 11.4 of these Conditions. Specific requirements for notice of Claims on the bond are set forth in the TCA § 12-4-205.~~

### ~~§ 15.3 Mediation~~

~~The State of Tennessee is not subject to mandatory mediation.~~

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

~~§ 15.3.2~~ The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 15.3.3~~ Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the

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other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### **§ 15.4 Arbitration**

The State of Tennessee is not subject to mandatory arbitration.

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 11:29:19 CT on 04/03/2019 under Order No. 7747877912 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*