

**NORTHEASTERN UNIVERSITY
AGREEMENT BETWEEN
OWNER AND CONSTRUCTION MANAGER
where the Construction Manager is also
THE CONSTRUCTOR
and where the basis of payment is
THE COST OF THE WORK PLUS A FEE
WITH A GUARANTEED MAXIMUM PRICE**

AGREEMENT

made as of the ____ day of ____ in the year 2018.

This Agreement is intended to cover the services of the Construction Manager, whether performed before or after the date of this Agreement.

BETWEEN the Owner:

Northeastern University
360 Huntington Avenue
Boston, MA 02115

and the Construction Manager:

The Project is:

Northeastern University – _____, as will be more fully described in **Exhibit A** (the “Guaranteed Maximum Price Amendment”) to be completed and attached hereto pursuant to the provisions of this Agreement.

The Architect/Engineer is:

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The Owner and Construction Manager agree as set forth below.

DEFINITIONS:

- (1) The term "AV" shall mean equipment that produces a sound and a visual component for the production or use of digital media for presentations, etc. digital projectors, flat screens, sound systems, etc.
- (2) The term "CAD" shall be defined as the use of computer technology to aid in the design and particularly the drafting (technical drawing and engineering drawing) of a part or product, including entire buildings. It is both a visual (or drawing) and symbol-based method of communication whose conventions are particular to a specific technical field.
- (3) The term "Architect/Engineer" shall mean the person or entity identified as such in the Agreement and is referred throughout the Contract Documents as if singular in number and shall include the Architect/Engineer's authorized representative.
- (4) The term "Contractor" shall mean the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and shall include the Contractor's authorized representative. The "Contractor" shall mean or include the Construction Manager when Construction Manager ("CM") agreements are used.
- (5) The term "Commonwealth" means the Commonwealth of Massachusetts and its political subdivisions or agents where the context so requires.
- (6) The term "Cost of Work" shall have the meaning defined in Article 6 of this Agreement.
- (7) The term "Drawings" shall mean the graphic and pictorial portions of the Contract Documents in whatever form, including but not limited to in electronic format, wherever located and whenever issued, showing the design, location and dimensions of the work, generally including plans, elevations, sections, details, schedules and diagrams.
- (8) The term "Hourly Labor Rates" shall mean the rates defined in Section 6.1.4 of this Agreement.

- (9) The terms “Owner”, or Northeastern”, or “University” shall be defined as Northeastern University through the Vice President of Facilities or his/her designee as may be appointed to act as the project manager.
- (10) The term “Project” is the total construction of the Work to be performed under the Contract Documents.
- (11) The term “Project Manager” is the Owner’s representative for the project, as described in Section 3.2 of this Agreement.
- (12) The term “Site” or “Project Site” means the geographical location of the Project as more fully described in the Contract Documents.
- (13) The term “Specifications” is defined as that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work, and performance of related services.
- (14) The term “Substantial Completion” is defined as the state in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner may occupy or utilize the work for its intended use and only minor items which can be completed without substantial interference with the Owner’s use of the work remaining to be completed.
- (15) The term “Telecommunications” shall mean all information systems belonging to Northeastern University to include the network systems, hardware, software, telephone and website capabilities.
- (16) Unless the context clearly intends to the contrary, the terms used in this Agreement that are not specifically defined herein shall have the same meaning as their common usage in the construction industry.

ARTICLE 1 GENERAL PROVISIONS

1.1 CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

1.2 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager’s reasonable skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager’s best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall use reasonable efforts to promote harmony and cooperation among the Owner, Architect/Engineer, Construction Manager and other persons or entities employed by the Owner for the Project.

1.3 GENERAL CONDITIONS

For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, the NU General Conditions shall apply to the Preconstruction Phase only as specifically provided in this Agreement. For the Construction Phase, the General Conditions of the Contract shall be the Northeastern University General Conditions of the Contract for Construction (the "NU General Conditions"), attached hereto. The term "Contractor" as used in the NU General Conditions shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect/Engineer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently.

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program, Project schedule and Project budget requirements, each in terms of the other throughout the Preconstruction Phase, the Construction Manager shall refine and develop its preliminary evaluation. The Construction Manager shall provide in writing, acceptable to the Owner, (1) a detailed evaluation of the Owner's program, Project Budget, Project Schedule, and preliminary design, if any, including an assessment of the Owner's estimates of probable construction costs, (2) review of information provided by the Owner and the Architect and information obtained by the Construction Manager from field observations and other sources, (3) a pre-bid cost estimate to determine if probable construction cost estimates will meet or exceed the project Budget, (4) recommend changes to the Owner's program or preliminary design for the Project that the Construction Manager reasonably expects will reconcile the program, Project Budget and Project Schedule or reduce costs, provide a higher quality Project without exceeding the Project budget.

2.1.2 CONSULTATION

The Construction Manager shall schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect/Engineer regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies. The Construction Manager will assist the Architect and the Owner in developing and completing the Drawings and Specification for the Project or any component of the Project. The Construction Manager shall (1) determine whether the provisions in such documents pertaining to temporary facilities and temporary utilities are adequate and appropriate; (2) review technical specification for consistency with the drawing details and notices; (3) review technical specifications for provisions that inhibit competition among suppliers; (4) review such documents for completeness; (5) provide advice with respect to preparing construction documents in design packages to facilitate the progress of bidding and executing the Work and to minimize conflicts among Subcontractors; and (6) will advise the Owner, as soon as possible, any hidden or latent conditions which could cause unexpected increase in the Cost of the Work or delays in the performance of the Work (7) provided phasing and logistics planning support incorporating access provisions into a comprehensive, sequenced approach addressing all interim conditions including utility operation/maintenance, staging plan and material delivery traffic control plan development. The Construction Manager acknowledges that, at the time of execution of the Agreement, the Owner has not decided upon the ultimate program for the Project. Until Owner has decided on its ultimate program for the Project, the

Construction Manager shall prepare schedules and cost estimates for each of the possible programs which may be developed by the Owner.

2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect/Engineer's review and the Owner's approval. The Construction Manager shall obtain the Architect/Engineer's approval of the portion of the preliminary Project schedule relating to the performance of the Architect/Engineer's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect/Engineer and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information submittal of a Guaranteed Maximum Price proposal preparation and processing of shop drawings and sample delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall take all necessary action to place the work back in accordance with the Project schedule.

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect/Engineer regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect/Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques. If alternative materials and/or systems are proposed, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

2.1.5.2 When Schematic Design Documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare for the review of the Architect/Engineer and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

2.1.5.3 When Design Development Documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect/Engineer and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

2.1.5.4 All such estimates of the Cost of the Work at each of the Schematic Design, Design Development and Construction Documents phases of the design process shall be broken down by trade in CSI format and shall include back-up details.

2.1.5.5 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

2.1.6.1 The Construction Manager shall develop subcontractor interest in the Project and shall furnish to the Owner and Architect/Engineer for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect/Engineer will promptly reply in writing to the Construction Manager if the Architect/Engineer or Owner objects to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect/Engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect/Engineer later to object to or reject any proposed subcontractor or supplier. The Construction Manager shall evaluate Subcontractors with respect to workmanship, performance on past projects and financial capacity. The Construction Manager shall establish and direct a pre-bid conference with all proposed Subcontractors representing the Owner's overall Project objectives.

2.1.6.2 The Construction Manager shall develop bid packages for the components of the Work and prepare a list of qualified bidders for each component of the Work. The bid list and bid packages shall be subject to approval, modification and additions by the Owner or the Architect. The Construction Manager shall obtain at least three bids from qualified bidders for each component of the Work.

2.1.6.3 The Construction Manager shall summarize the bid results for each component of the Work in a spreadsheet format, including all analysis and adjustments necessary to permit a meaningful comparison among bidders. The Construction Manager shall also provide, as appropriate, comments concerning the Subcontractor or suppliers under consideration, including financial strength, past performance, current workload, etc. and recommendations as to Subcontractor and supplier selection. The final selections shall be made by the Construction Manager subject to the Owner's right to reject any Subcontractor or supplier recommended by the Construction Manager.

2.1.7 LONG-LEAD TIME ITEMS

The Construction Manager shall prepare for review by the Owner and Architect/Engineer, a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead time items. If the Construction Manager procures any long-lead items pursuant to this Agreement, the Owner shall have the right to terminate such procurement agreement and the Construction Manager shall use its best efforts so that the termination charges payable by the Owner in the event of such termination shall be minimized. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The parties intend that all such long lead items shall be purchased in the name of the Construction Manager rather than in the name of the Owner.

2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect/Engineer and Owner in writing.

2.1.9 NOTICES AND COMPLIANCE WITH LAWS

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

2.1.10 VALUE ENGINEERING

During the design process, the Construction Manager shall be the lead member of and shall organize and coordinate the efforts of the value engineering task force. This task force will also include Owner's and Architect's representatives. The task force shall (1) evaluate alternative approaches and methods of completing the Work, (2) evaluate alternative materials, products and systems, along with any potential for cost reduction while not sacrificing performance, and (3) make decisions based on such evaluations that allow the Owner's budget, scheduling and program requirements to be satisfied while maximizing quality and achievement of design objectives. Upon the reasonable request of the Owner, the Construction Manager shall, as part of the value engineering process, conduct constructability analyses of alternative materials, products and systems. The Construction Manager shall present the results of such analyses and recommendations related thereto to the Owner and the Architect. The Construction Manager's responsibilities during the pre-construction design phase include:

- .1** Intensively assist in the programming of the Project, meeting as often as required with the Owner, the Architect and other members of the design team to identify and resolve engineering, architectural, construction, phasing and safety issues during the initial weeks of the assignment.
- .2** Verify that the Construction Documents are coordinated by the design team and complete for permitting and construction purposes.
- .3** Develop an information flow format in conjunction with the Owner, the Architect and other members of the design team, and other consultants that will allow the generation of sketches to clarify and provide design solutions.
- .4** Investigate the availability of materials, timely delivery, cost, and overall labor availability based on the design and the preliminary milestone schedule.
- .5** Coordinate with governmental officials, and direct all modifications to the Drawings and Specifications required during the permitting process.
- .6** Meet with permitting officials on a periodic basis to ensure that the Project proceeds smoothly through the permitting process.
- .7** Provide and evaluate alternative design concepts with associated cost.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price proposal for the Work for the Owner's review and acceptance. The Guaranteed Maximum Prices proposed shall be the sum of the estimated Cost of the Work, including so-called "general conditions" costs, the Contingency described in Section 2.2.3, and the Construction Manager's Fee. It is understood and agreed that, if the Owner elects to pursue construction of the Work on a fast-track basis, or elects to pursue phased construction of the Work, the Construction Manager agrees, upon the Owner's directions, to prepare multiple Guaranteed Maximum Price proposals. In such event, the provisions hereof relating to Guaranteed Maximum Price matters shall apply to each such proposal and each related Guaranteed Maximum Price and the Guaranteed Maximum Price Amendment and subsequent Guaranteed Maximum Price Amendments.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect/Engineer that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and qualities of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency (the "Contingency"). The Contingency shall be included in the Guaranteed Maximum Price. The Contingency, when agreed upon by the Owner and the Construction Manager as set forth below and subject to the conditions in this Section 2.2.3, shall be an amount available to reimburse the Construction Manager for unanticipated costs, such as estimating errors and/or omissions, unforeseen construction problems, poor Subcontractor performance (provided however, that the Construction Manager uses its best efforts to first seek recovery for any costs arising from poor Subcontractor performance from the Subcontractor in question), market changes, extraordinary weather conditions, late deliveries, or changes in the manpower resources available to the Construction Manager. Notwithstanding anything to the contrary herein contained: (1) the Contingency may only be used for costs which are included in the Cost of the Work, as defined in Article 6; (2) the Contingency shall not be used for costs which are excluded from the Cost of the Work, as set forth in Article 6; and (3) the Construction Manager shall be required to obtain the Owner's written consent in advance of incurring costs that the Construction Manager proposes be charged to the Contingency. The Owner agrees that it shall not unreasonably withhold its consent to any request from the Construction Manager pursuant to clause (3) above. In order to enable the Owner to review the Construction Manager's compliance with the provisions of clause (3) above, the Construction Manager shall, commencing as of the execution and delivery of this Agreement and continuing until final completion of construction of the Work: (i) submit to the Owner, at the same time that the Construction Manager submits each Application for Payment to the Owner, a detailed monthly Contingency log and projection for review by the Owner of all Contingency expenditures, and (ii) prior to incurring any cost which may be charged to the Contingency, the Construction Manager shall submit a written request to the Owner for reimbursement of such cost, together with an explanation of the reason such cost is to be incurred.

2.2.4 At the same time the Construction Manager proposes a Guaranteed Maximum Price to the Owner, the Construction Manager shall prepare and provide to the Owner, a schedule for completion of the Work (the "Construction Schedule"). The Construction Schedule shall be in a detailed, precedent-style critical path method (CPM) or Primavera type format and shall: (1) provide a graphic representation of material activities and events that will occur during performance of the Work; (2) indicate a proposed cash flow schedule based on anticipated monthly requisitions by the Construction Manager through final completion; (3) identify key dates for Owner-provided or Architect-provided information and materials, and (4) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents, including but not limited to the date by which Substantial Completion of the Work shall be achieved. Also at the same time the Construction Manager proposes a Guaranteed Maximum Price to the Owner, the Construction Manager shall prepare a requisition schedule for the Project for the Owner's review and approval. Such requisition schedule shall provide time periods for the preparation, submission, processing and payment of the Construction Manager's Applications for Payment and the requisitions of its Subcontractors and suppliers in accordance with the requirements of the Contract Documents. The Construction Manager shall prepare and submit its Applications for Payment, and coordinate and supervise the preparation, submission, processing and payment of the requisitions of its Subcontractors and suppliers, in accordance with such schedule.

2.2.5 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- .1** A list of the Drawings and Specifications including all addenda thereto and any Supplementary Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price Proposal.
- .2** A list of unit prices, alternates and allowances and a statement of their basis.
- .3** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .4** The proposed Guaranteed Maximum Price, including a schedule of values setting for the Cost of the Work organized by trade categories, contingency, and other items and the Construction Manager's Fee that comprise the Guaranteed Maximum Price including a statement of the General Condition items.

- .5 The Substantial Completion Date for the entire Work, and for each phase of the Work having a separate Substantial Completion Date, upon which the proposed Guaranteed Maximum Price is based, and the per diem liquidated damages amount for unexcused failure to achieve each such Substantial Completion Date.

The Construction Manager shall meet with the Owner and Architect/Engineer to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect/Engineer discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both.

2.2.6 Unless the Owner confirms acceptance of the Guaranteed Maximum Price in written or electronic form on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Owner.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price Proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in the Guaranteed Maximum Price Amendment. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.9 The Owner shall authorize and cause the Architect/Engineer to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect/Engineer and Construction Manager. The Construction Manager shall promptly notify the Architect/Engineer and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.2.10 The Construction Manager shall not charge taxes to the Owner and no bid shall contain any such charges. The Owner is a non-profit organization with a tax exempt status under Internal Revenue Code 501 (c)(3) (Tax exemption No. E041679980).

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

2.3.1.1 The Construction Phase shall commence on the earlier of:

- (1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price Proposal and issuance of a Notice to Proceed; and
- (2) the Owner's first authorization to the Construction Manager to:
 - (a) award a Subcontract, or
 - (b) undertake construction Work with the Construction Manager's own forces, or
 - (c) issue a purchase order for materials of equipment required or the Work.

2.3.1.2 The Construction Manager shall fully execute the Work described in or reasonably inferable from the Contract Documents, including but not limited to the furnishing of (a) all materials, supplies, equipment, fixtures, tools, implement and all other items and facilities required for or in connection with or for inclusion or incorporation into the Project and (b) all labor, supervision, transportation, utilities, storage and all other services required for or in connection with the Project, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. If any changes in the Work are required to satisfy any applicable requirements of governmental authorities having jurisdiction over the performance of the Work, the Construction Manager shall promptly notify the Owner and the Architect thereof, and no adjustment shall be made to the Contract Sum if, as a

knowledgeable and experienced contractor, the Construction Manager should have been aware of such requirement or if such requirement is, under normal industry standards and practices, the responsibility of the Construction Manager. The Owner shall have the option, exercisable on written notice to Construction Manager, to increase the scope of the Work.

[INCLUDE FOLLOWING IF APPLICABLE]

2.3.1.3 The sustainability goal established for this Project by the Owner is to obtain Leadership in Environmental and Energy Design (“LEED”) [Gold/Silver] Certification or certification by the National Green Building Rating System pursuant to International Construction Code 700 Green Building Standards (in either case, the “Sustainability Certification”). The Contractor shall administer construction of the Project in accordance with the current version of the applicable rating system for the purpose of achieving the Sustainability Certification goal established for the Project by the Owner. The Contractor shall assist the Architect and LEED Consultant to register the Project with the Green Building Certification Institute or under the National Green Building Rating System, as directed by Owner, collect, and review the required submittals, certifications, reports, and other documentation, and submit the collected submittals, certifications, reports, and other documentation as applicable to its work for the purpose of achieving the Sustainability Certification goal established by the Owner. Registration and certification fees for the Project shall be directly paid by the Owner to the applicable certifying agency. The costs for the Contractor’s participation in the Sustainability Certification process is included in the Guaranteed Maximum Price and additional compensation shall not be permitted.

2.3.2 ADMINISTRATION

2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect/Engineer. Such bids shall include established labor rates from the Subcontractor which shall be made up of Subcontractors direct personnel expense including actual wages, salaries, taxes, insurance contributions and benefits required by law or collective bargaining agreements or other customary benefits and excluding cost of Profit Sharing Plans. All bids shall also contain established overhead and profit multipliers to be used in the event the Subcontractor or Sub-subcontractor is required to perform services under a Change Order. The Construction Manager shall disclose to the Owner, in advance, all proposed cash discounts which accrue to the Construction Manager. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect/Engineer, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect/Engineer: (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, the Owner may approve a change in the work be issued to adjust the Contract time and will approve a change in the work to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.4, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.4.2.

2.3.2.5 The Construction Manager shall schedule and conduct weekly meetings at which the Owner, Architect/Engineer, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.2.6 Promptly after the Owner’s acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of the NU General Conditions, including the Owner’s occupancy requirements.

2.3.2.7 The Construction Manager shall provide monthly written reports to the Owner and Architect/Engineer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect/Engineer.

2.3.2.8 The Construction Manager shall develop a system of cost control acceptable to the Owner for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect/Engineer at regular intervals.

2.3.2.9 The Construction Manager will supply all estimates, budgets, payment breakdowns and cost control information as required by and in a form reasonably acceptable to the Owner.

2.3.2.10 The Construction Manager’s Project team (“Project Team”) will consist of those persons specified, serving in the positions specified, in **Exhibit B** attached hereto. No change will be made in the membership of the Project Team without the Owner’s prior written approval, which approval shall not be unreasonably withheld; the Owner may require the replacement of any member of the Project Team upon notice to the Construction Manager.

2.3.2.11 The Construction Manager will maintain a competent full-time staff (including, without limitation, the Superintendent, a Field Engineer, and/or an Assistant Superintendent, if necessary) at the Project Site to coordinate and provide general direction of the Work and the progress of the Subcontractors on the Project. The Project Manager may, at the election of the Owner, be based at the Site or the Construction Manager’s home office, provided that the Project Manager spends all time reasonably necessary for the proper administration of the Project.

2.3.2.12 The Construction Manager shall submit to the Owner, for the Owner’s approval, prior to the start of Work on the Project, a job organization chart that shall include the identity of the Construction Manager’s personnel and their title/position. The Construction Manager agrees that it shall not change the title/position of any personnel during the duration of the Project which would result in a higher Hourly Labor Rate without the prior written approval of the Owner. The Construction Manager shall also submit to the Owner, for the Owner’s approval, Hourly Labor Rates (billing) of all personnel to be employed on the Work and for which the Construction Manager may be reimbursed under Article 6 hereof. All Hourly Labor Rates of the Construction Manager’s personnel must be reviewed and approved by the Owner in writing.

2.3.2.13 The Construction Manager shall be represented by the Project Executive or the Project Manager at all Project meetings as called by the Architect or the Owner. The Project Executive and the Project Manager shall have express authority to bind the Construction Manager with respect to all matters requiring the Owner’s approval or authorization.

2.3.2.14 The Construction Manager shall use reasonable efforts to assure that all labor employed by the Construction Manager to perform Work on the site shall cooperate harmoniously with all other separate contractors,

Subcontractors, and suppliers performing work on the site, no matter by whom employed, in furtherance of the Owner's interests.

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals, whose signature and seal shall appear on all applicable Shop Drawing submittals, including drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. All such design professionals shall be required to carry professional liability insurance for the Project, from insurance companies approved by the Owner and with such limits as the Owner may require. 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. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner or Architect have specified to the Contractor appropriate performance and design criteria that such services must satisfy..

2.5 UNSAFE MATERIALS

Section 10.3 of the NU General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The Owner, upon written request from the Construction Manager, shall furnish evidence of Project financing prior to the start of the Construction Phase and from time to time thereafter as the Construction Manager may request. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work.

3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect/Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4, except to the extent that the Construction Manager knows of any inaccuracy:

3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations,

dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

3.1.4.3 The services of geotechnical engineers when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity test, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.1.4.5 The Owner shall not be required to engage the services of any third party (including any provider of legal services) in connection with the Project, unless: (i) the Owner agrees that there is a need for the services of such third party, and (ii) the Owner determines that the fees payable to such consultant can be paid for within the Owner's budget for the Project.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing, and/or through e-Builder, a representative ("Project Manager") who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, except for certain legal authorizations including, but not limited to, executing contract amendments. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedule construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the service or Work of the Construction Manager.

3.3 ARCHITECT/ENGINEER

The Owner shall retain an Architect/Engineer to provide the Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the Northeastern University Agreement Between Owner and Architect/Engineer. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect/Engineer, from which compensation provisions may be deleted.

3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Architect/Engineer and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 COMPENSATION

4.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2 the Construction Manager's compensation shall be calculated as follows:

_____ Dollars (\$_____).

4.1.2 Compensation for Preconstruction Phase services shall be equitably adjusted if the originally contemplated scope of such services is significantly modified.

4.1.3 If compensation is based on Hourly Labor Rates of all the Construction Manager's personnel engaged on the Project, such Hourly Labor Rates shall be limited to the costs as further defined in Article 6.1.4 below. In addition, the Construction Manager's employees who are billable to more than one project shall only be billable to the Owner for the actual hours worked on the Project in a given week to arrive at a total allowable hours for the purposes of calculating the Construction Manager's compensation for that employee. The Construction Manager has provided the Owner with a full list of all personnel titles and the hourly wage of each person which is attached hereto as **Exhibit C**.

4.2 PAYMENTS

4.2.1 Payments shall be made monthly following submission of the Construction Manager's Application for Payment and, where applicable, shall be in proportion to services performed. Construction Manager shall use the Owner's form of Application for Payment attached hereto as Exhibit J. Owner will approve or reject each invoice for a progress payment not later than fifteen (15) days after submission. A rejection of an application for payment, in whole or in part, shall be made in writing and shall include an explanation of the factual and contractual basis for the rejection and shall be certified as made in good faith.

4.2.2 Payments are due and payable thirty five (35) days from the date the Construction Manager's application for payment is approved by the Architect/Engineer and the Owner.

4.2.3 Notwithstanding any of the provisions of Contract Documents to the contrary, it is the intent of the parties that the Contract Documents and all subcontracts comply with the terms of Massachusetts General Laws Ch. 149, Sec. 29E and that the terms of the Contract Documents and all subcontracts shall be interpreted to conform to this intent.

4.2.4 NOT USED

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION

5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determines as follows:

The Construction Manager's Fee shall be _____ percent (____%) of the actual Cost of the Work; and the Construction Manager's Fee for Work executed pursuant to a Change Order shall be the same percentage of the actual Cost of the Work pursuant to such Change Order.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in the Guaranteed Maximum Price Amendment, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is defined in the Contract Documents as the "Guaranteed Maximum Price." Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.3 CHANGES IN THE WORK

5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment shall be determined by any of the methods listed in Section 7.3.3 of the NU General Conditions. The Construction Manager shall not proceed on Change Orders without authorization from the Owner.

5.3.2 In calculating adjustments to the Contract, the terms “cost” and “costs” as used in the above-referenced provisions of the NU General Conditions shall mean the Cost of the Work.

5.3.3 Subsequent to execution of the Guaranteed Maximum Price Amendment, the Architect shall from time to time issue Supplemental Materials. The Construction Manager shall review such Supplemental Materials in detail and notify the Owner and the Architect of any error, inconsistency or discrepancy that the Construction Manager discovers between the Supplemental Materials and the Drawings and Specifications listed in the Guaranteed Maximum Price Amendment. Upon completion of such review, the Construction Manager shall also notify the Owner in writing of any item in the Supplemental Materials which in the Construction Manager’s opinion represents a change in the Work (as defined in Section 5.3.4), setting forth, with specificity, the reasons the Construction Manager contends that information or requirements of the Supplemental Materials represent a change in the Work (such notice shall constitute a “Change Request”). The Change Request shall set forth the change in costs and the impacts of the Construction Schedule, if any, that the Construction Manager attributes to the work covered by such Change Request, and shall include evidence reasonably satisfactory to Owner substantiating any claimed increase in any cost of the Work that would be a reimbursable cost as defined in Article 6.

The Construction Manager and Owner agree that the greater the magnitude of the change which is detailed in said Supplemental Materials, the more urgent the need will be to notify the Owner and the more difficult it will be to accurately evaluate the cost and schedule effects of such materials. Therefore, when the Construction Manager receives Supplemental Materials which it believes may have significant cost or schedule impact(s), the Construction Manager shall notify the Owner both orally and in writing within seven (7) days of receipt thereof. Such notice shall include the Construction Manager’s order of magnitude evaluation of any cost and/or schedule impact(s). Such notice shall also include an estimate of the length of time it will take to accurately schedule or price the Change Request with appropriate supplier and Subcontractor input. Significant impact means any change which the Construction Manager believes will extend the schedule or any milestone date by three or more days or which will require an increase to the Guaranteed Maximum Price of more than \$50,000. If the Supplemental Materials are not anticipated to have significant impact on schedule or price, the Construction Manager shall notify the Owner within seven days of receipt of the order of magnitude of the potential impacts and provide the Owner with a completed Change Request within thirty days of receipt of such materials.

5.3.4 A change in the Work is any work described in any Supplemental Materials which is not reasonably inferable from the Drawings and Specifications listed in the Guaranteed Maximum Price Amendment and is (1) inconsistent with the Clarifications and Assumptions, or (2) a change in the quantity, quality, programmatic requirements or other substantial deviation from the Drawings and Specifications listed in the Guaranteed Maximum Price Amendment. The Construction Manager represents that it is a contractor experienced in constructing projects similar to the Project and the Construction Manager acknowledges that, as part of its pre-construction services, it will advise the Owner, in a timely manner, of all tests and inspections of the Site which the Construction Manager believes are necessary to minimize the risk that any site conditions may be discovered which could give rise to an increase in the Guaranteed Maximum Price or an extension of the Contract Time. Therefore, notwithstanding anything to the contrary contained in this Contract, in no event shall any site condition which could have been discovered by such inspections or testing give rise to a change in the Work unless the Construction Manager advises the Owner, in a timely manner, to perform such inspection or testing and the Owner declines to have such tests performed.

5.3.5 If the Construction Manager timely submits to the Owner a completed Change Request, including all supporting documentation required by the Owner to allow for a thorough evaluation of the Change Request:

- .1 within thirty (30) days of receipt of the Change Request, the Owner shall direct the Architect in writing, with a copy to the Construction Manager, to modify that aspect of the Supplemental Materials to which the Construction Manager objects. The Construction Manager shall cooperate with the Owner and the Architect during the modification effort and shall assist in making recommendations appropriate to correct such portions of the Supplemental Materials. Within thirty (30) days of receipt of the Owner's written directive to revise the Supplemental Materials, the Architect shall submit to the Construction Manager the revised Supplemental Materials as approved by the Owner. The Construction Manager shall promptly re-examine such revised Supplemental Materials as described in Section 5.3.3.
- .2 if, upon review of the Change Request, the Owner believes that the portion of the work described therein does not constitute a change in the Work, the Owner shall so advise the Construction Manager within thirty (30) days of receipt of the Change Request. Any rejection by the Owner of a Change Request, whether in whole or in part, shall be made in writing and shall include an explanation of the factual and contractual basis for the rejection and shall be certified as made in good faith. If such disagreement is not resolved, the Work subject to disagreement shall be identified in a schedule (the "Disputed Work Schedule"). Whenever possible, the Owner and the Construction Manager shall resolve items set forth in the Disputed Work Schedule, confirming such resolution in Change Orders. Items in the Disputed Work Schedule that are not resolved by the Owner and Construction Manager shall be subject to the dispute resolution procedures set forth in Section 4.4 of the NU General Conditions. During the pendency of such dispute resolution procedures, all items remaining in the Disputed Work Schedule shall be performed by the Construction Manager on a time and materials basis, without mark-up for the Construction Manager's Fee. For each item in the Disputed Work Schedule, the Construction Manager shall keep a specific detailed accounting of the item and materials required to complete such item. Adjustments to the Construction Schedule shall not be permitted on a tentative basis.
- .3 if, upon review of the Change Request, the Owner agrees that all or a portion of the work therein constitutes a change in the Work, and the Owner elects not to direct the Architect to modify the Supplemental Materials, the Owner and the Construction Manager shall execute a Change Order providing for changes to the Guaranteed Maximum Price and the Construction Schedule, if any.
- .4 if, with respect to any item in the Change Request, the Owner does not, within the appropriate time limitations, (a) direct the Architect to modify the Supplemental Materials, (b) advise the Construction Manager in writing of disapproval of such item in the Change Request, or (c) agree that such item represents a change in the Work, then the Change Request with respect to such item shall be deemed approved by the Owner, and a Change Order shall be executed pursuant to which the Guaranteed Maximum Price and the Construction Schedule shall be modified as requested by the Construction Manager in the Change Request.

5.3.6 [Not Used]

5.3.7 [Not Used]

ARTICLE 6 COST OF THE WORK FOR THE CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

6.1.1 The term "Cost of the Work" shall mean the actual costs as defined in this Article 6.1, less all applicable discounts, rebates, and salvage amounts which are necessarily incurred by the Construction Manager in the proper performance of the Work and such other amounts as stated in Article 6.2 and Article 6.3. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

6.1.2 All payments made by the Owner pursuant to this Article 6, whether those payments are actually made before or after the execution of the Guaranteed Maximum Price Amendment for the Work for which such costs were

incurred, shall be included within the Guaranteed Maximum Price Amendment for such Work; provided, however, that in no event shall the Owner be required to reimburse the Construction Manager for any portion of the Cost of the Work incurred prior to the Commencement Date of the Work unless the Construction Manager has received the Owner's written consent prior to incurring such cost.

6.1.3 Without limitation of any other supporting documentation that the Construction Manager is required under the Contract Documents to submit with any Application for Payment, the Construction Manager shall submit documentation satisfactory to the Owner to substantiate any and all costs with respect to which the Construction Manager is seeking payment under Sections 6.1.1 through 6.1.10 with each applicable Application for Payment.

6.1.4 LABOR COSTS

6.1.4.1 Subject to Sections 6.1.4.2 and 6.1.4.3, a schedule of the Hourly Labor Rates of all Construction Manager's personnel whose compensation is included in the Cost of the Work pursuant to this Article 6 is attached hereto as **Exhibit C**. Such approved Hourly Labor Rates may be adjusted during the term of this Agreement. Such Hourly Labor Rates may include the following:

6.1.4.1.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

6.1.4.1.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when directly and exclusively performing the Construction Manager's services for this Project when stationed at the site, or when stationed at the Construction Manager's office for that portion of their time directly required for the Work, with the Owner's prior agreement.

6.1.4.1.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly required for the Work with the Owner's prior written approval.

6.1.4.2 [Not Used]

6.1.4.3 [Not Used]

6.1.4.4 The Hourly Labor Rates shall include only the actual cost incurred and paid for wages and salaries plus labor burden. For purposes of the foregoing sentence, "labor burden" means payroll taxes, insurance (long and short term disability, worker's comp, and general liability), assessments, contributions, and benefits required by law or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, vacations, holidays, medical and health benefits, pensions, and matching retirement plan contributions. For purposes of reviewing proposals for Changes in the Work, Claims, and Subcontracts to be performed on a time and materials or cost-plus basis, the Construction Manager will require all of its Subcontractors to submit, in a form acceptable to the Owner, a detailed breakdown of all costs components which comprise the Hourly Labor Rates ("Subcontractor Labor Rates") for all applicable Subcontractor personnel. As part of the Owner's review and approval of such Changes in the Work, Claims, and Subcontracts, the Subcontractor shall provide information reasonably and timely requested by the Owner to substantiate the Subcontractor Labor Rates. All Subcontractor Labor Rates shall be subject to the approval by the Owner in writing. Such Subcontractor Labor Rates shall include only the actual wages and salaries and labor burden as defined in this Article 6.1.4.4.

6.1.5 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors shall be in accordance with the requirements of the subcontracts. The cost of any claims by Subcontractors for additional compensation shall not be considered a Cost

of the Work unless approved in advance by the Owner. The Construction Manager shall include in each subcontract a limitation on the amount of profit and overhead any Subcontractor of any tier or supplier can charge for Work performed and administered pursuant to Change Orders and Construction Change Directives that is consistent with the requirements of Section 7.3.3 of the NU General Conditions. The combined profit and overhead amount of any such Subcontractor or supplier shall include all other mark-ups and non-direct costs including, but not limited to, any and all non-productive labor, supervision, field supervision, incidental costs, fixed costs, variable costs, warranty, small tools, miscellaneous materials, coordination, estimating, other estimating expenses, remobilization, etc.

The Construction Manager's subcontract and purchase order forms shall require the Subcontractors and vendors to perform their portion of the Work in accordance with all applicable provisions of this Agreement and the Contract Documents.

6.1.6 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

6.1.6.1 Costs, including, but not limited to, transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

6.1.6.2 Costs of materials described in the preceding Section 6.1.6.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work. Small tools, computers, and computer equipment billed to the Project shall be turned over to the Owner upon completion of the Work or upon termination of the Agreement.

6.1.7 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

6.1.7.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

6.1.7.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. The reimbursable "rental charge" of equipment rented will be equal to market rental rates or eighty-five percent (85%) of the Association of Equipment Distributors Green Book rates established for the then current year for such equipment, whichever is lower. In no event shall the aggregate rental payments on any piece of machinery, equipment, tools, and vehicles owned by the Construction Manager or any entity related to, controlling or controlled by, the Construction Manager equal or exceed seventy five percent (75%) of its market value as of the commencement of the proposed rental period, the Construction Manager or such related, controlled or controlling entity shall be deemed to have sold such piece of machinery, equipment, tool or vehicle to the Owner, and upon final completion or earlier termination of this Agreement (or, if requested by the Owner upon completion of use of such piece of machinery, equipment, tool, or vehicle on the Project), the Construction Manager shall, at the Owner's election, either: (i) deliver such piece of machinery, equipment, tools and vehicles, together with a bill of sale transferring title free from all encumbrances and liens to the Owner, or (ii) purchase such piece of machinery, equipment, tool or vehicle from the Owner for an amount equal to the then market value of the same (which amount may, at the Owner's election, be deducted by the Owner from any amounts due from the Owner to the Construction Manager). The Construction Manager agrees at all times to maintain all such machinery, equipment, tools and vehicles in good working order and condition and, in the event that the Owner elects to take ownership and possession thereof, to deliver it to the Owner in such good working order and condition.

6.1.7.3 Costs of removal of debris from the site and its proper and legal disposal.

6.1.7.4 Reasonable reproduction costs, long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

6.1.7.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

6.1.7.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

6.1.8 MISCELLANEOUS COSTS

6.1.8.1 That portion directly attributable to this Contract of premiums for insurance and bonds. *(If charges for self-insurance are to be included, specify the basis of reimbursement.)*

6.1.8.2 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

6.1.8.3 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2 above.

6.1.8.4 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of the NU General Conditions or other provisions of the Contract Documents.

6.1.8.5 Data processing costs related to the Work are excluded from the Cost of the Work and from the Guaranteed Maximum Price, except for project management software expense and for rental or purchase of computer equipment located at the Project site. The Construction Manager shall pay all costs without reimbursement from the Owner of data processing related to the work, except for such computer rental or purchase.

6.1.8.6 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

6.1.8.7 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

6.1.9 OTHER COSTS

Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

6.1.10 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager:

- .1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of the NU General Conditions.
- .2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement on the part of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

6.1.11 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of the NU General Conditions or other Conditions of the Contract which may require the Construction Manager to pay such costs unless such costs are excluded by the provisions of Section 6.2.

6.1.12 All invoices must contain the project number and have proper back documentation acceptable to the Owner to be considered for payment.

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.4.2 and 6.1.4.3.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office except as specifically provided in Section 6.1.
- .3 Overhead (meaning any and all costs that are customarily deemed overhead costs) and general expenses, except as may be expressly included in Section 6.1.
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of any kind, except as specifically provided in Section 6.1.7.2.
- .6 Except as provided in Section 6.1.10.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase Services.
- .8 Sales taxes as per Section 2.2.10.
- .9 Except as provided in Section 6.1.9, any cost not specifically and expressly described in Section 6.1.
- .10 Costs which would cause the Guaranteed Maximum Price to be exceeded.
- .11 Except as permitted pursuant to Section 6.1.8.7, legal, mediation and arbitration fees and costs.
- .12 Losses or costs chargeable to any Subcontractor pursuant to its Subcontract, except if and to the extent Owner agrees to include such losses and costs in the Cost of the Work.
- .13 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal unless such fines, penalties, sanctions or impositions are assessed or imposed due to the action or inaction of Owner.
- .14 Costs associated with Construction Manager's failure to obtain any and all permits in a timely manner, including, without limitation, the costs of any delays resulting therefrom.
- .15 Costs of accelerating the Work, including but not limited to overtime, to the extent caused by the negligence or fault of Construction Manager, any Subcontractor or anyone else for whom the Construction Manager is legally responsible.
- .16 Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as required by the Contract Documents.
- .17 Travel costs, legal fees and other expenses incurred in connection with the preparation, negotiation and interpretation of this Agreement.

- .18 Cost of bonding or securing liens or defending claims filed by Subcontractors of any tier arising from a default by Construction Manager in properly making any payment due to a Subcontractors of any tier, material supplier or laborer, unless such default by Construction Manager is due to the wrongful failure by Owner to make a progress payment to Construction Manager.
- .19 Losses or expenses for which Construction Manager is compensated by insurance.
- .20 Materials which are not shipped to and received at the Project site by the Construction Manager, unless agreed to by the Owner.
- .21 Reimbursable items which are not evidenced by back up documentation indicating they are directly connected with the Project.
- .22 Cost of or parking tickets or of parking in excess of the rates available at the University parking garage located on Columbus Avenue.
- .23 Costs associated with automobile fringe benefits such as gas and insurance reimbursement. Mileage between the job site and Construction Manager's home office is allowable at the current federally approved rate.
- .24 Bonuses paid to Construction Manager's employees.
- .25 Vacation time not earned during the course of the Project. Vacation time shall be prorated for the period worked and over the jobs worked on by the Construction Manager's personnel.
- .26 Estimating and scheduling done by the Construction Manager shall be included as part of the Preconstruction Services and shall not be included as a Cost of the Work unless specifically approved by the Owner.
- .27 The cost of signage, advertisements, photographs, films, and other promotional material to be used for the Construction Manager's benefit.
- .28 Hourly charges in excess of forty hours for salaried employees.
- .29 Cost of meals unless approved by the Owner.
- .30 Spring water or bottled water charges when running water is supplied to the site.
- .31 Cost of vehicles supplied to employees, or costs reimbursing employees for personal vehicle use, other than mileage reimbursement, unless such vehicle or such reimbursement is mandated by union regulations or is specifically agreed to by the Owner.
- .32 Cost of employees who are not part of the defined management team and who do not appear on the daily logs.
- .33 Costs incurred by the Construction Manager more than 90 days after the date of Substantial Completion unless approved by the Owner in writing prior to the expense being incurred.
- .34 All costs associated with Construction Manager's personnel will be reimbursed on an actual cost incurred basis using the terms of this Section to determine what is an allowable cost.

6.3 DISCOUNTS, REBATES AND REFUNDS

6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so they can be secured.

6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 RELATED PARTY TRANSACTIONS

6.4.1 For purposes of this Section 6.4, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in

the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

6.4.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

6.5 ACCOUNTING RECORDS

6.5.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s accountants shall be afforded access to the Construction Manager’s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

6.5.2 Without limiting the provisions of Section 6.5.1, the Construction Manager shall facilitate any such audit by making necessary facilities available to the Owner and its representatives. If the Owner performs such an audit after Substantial Completion which discloses that the Construction Manager has been overpaid by more than two percent (2%), then, unless such overpayment is the fault of the Owner, the Construction Manager shall reimburse the Owner for the reasonable cost of such audit.

ARTICLE 7 CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

7.1.1 Based upon Applications for Payment, including all supporting documentation required under the Contract Documents, submitted to the Owner and the Architect by the Construction Manager and Certificates for Payment issued by the Owner and/or the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. No action taken by the Owner and/or the Architect with respect to any Application for Payment, including, without limitation, any approval or disapproval by the Owner and/or the Architect of any Application for Payment, or of any component part thereof, such as, but not limited to, any approval or disapproval by the Owner pursuant to Section 2.2.3 of any Contingency expenditure, shall constitute or be deemed to constitute an approval, acquiescence or waiver by the Owner with respect to any violation of applicable law by the Construction Manager, any Subcontractor or anyone else for whom the Construction Manager is legally responsible.

7.1.2 The period covered by each Application for Payment shall be thirty (30) days, except as otherwise provided with respect to the first Application for Payment as provided in the following sentence of this Section 7.1.2. The first Application for Payment shall cover the period from the date on which the Construction Manager commences the Work through and until the tenth (10th) day before the end of the calendar month during which such commencement date occurs; provided, however, that if the Construction Manager commences the Work after the seventh (7th) day of any given calendar month, then the first billing period shall end on the tenth (10th) day before the end of the next calendar month.

7.1.3 Payments are due and payable thirty five (35) days from the date the Construction Manager's final approved invoice, including all supporting documentation required under the Contract Documents, is approved by the Owner in accordance with the following submittal and review schedule:

- .1 The first fiscal billing period for the Construction Manager and its Subcontractors shall be as provided in Section 7.1.2, and each subsequent fiscal billing period for the Construction Manager and its Subcontractors shall terminate on the last day of each successive thirty (30) day period thereafter;
- .2 The Construction Manager shall present a draft of its proposed invoice for review by the Owner by no later than five (5) days after the last day of each fiscal billing period;
- .3 The Owner shall have five (5) business days after receipt of the proposed invoice to complete its review of the proposed invoice;
- .4 The Construction Manager shall have three (3) business days from receipt of the Owner's request to respond to the Owner's request for revisions to the proposed invoice, requests for additional documentation, etc., and to present its final invoice for the Owner's approval;
- .5 The Owner shall have two (2) business days to complete its review of the proposed final invoice and to approve the invoice as presented; and
- .6 If the Owner does not approve the proposed final invoice because it is incomplete or otherwise non-responsive to the Owner's requests for revisions, additional documentation, etc., the Owner shall have two (2) business days in which to perform its review of each subsequently submitted proposed final invoice and to approve such subsequent invoice when it is determined to be complete and responsive.

Any rejection by the Owner of an Application for Payment, whether in whole or in part, shall be made in writing and shall include an explanation of the factual and contractual basis for the rejection and shall be certified as made in good faith.

Each Application for Payment shall include: (1) partial releases of lien and acknowledgments of payment executed by Construction Manager in the form of **Exhibit D** attached hereto covering all monies received through the last payment made by the Owner; (2) partial releases of lien and acknowledgments of payment executed by each of its Subcontractors and suppliers in the form of **Exhibit E** attached hereto covering all monies received through the last payment made by the Owner and a copy of each Notice of Identification received by the Construction Manager from a Subcontractor or supplier of any tier to the extent such Notices of Identification are provided for under applicable law; and (3) such other information reasonably requested by the Owner's lender, if any. If the Construction Manager fails to furnish such releases or waivers as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, the Owner may require the Construction Manager as a condition of final payment and at the Construction Manager's expense, to furnish a lien bond satisfactory to the Owner to indemnify the Owner against such liens.

In addition, prior to payment on any such Application for Payment, the Construction Manager shall submit a monthly status report of the progress of the Work, including all pending changes. Such monthly status report shall be current through the date of the preceding Application for Payment. The parties hereby agree that such report is of significant importance to the Owner in determining whether the Construction Manager is entitled to payment pursuant to such Application for Payment, and failure to deliver such report in its entirety shall be deemed to be just cause for withholding payment. The Owner's waiver of the requirement of such report (or any portion thereof) in respect of any Application for Payment shall not be deemed to be a waiver of the Owner's right to require the full status report in respect of any future Application for Payment. In addition to the other documentation required pursuant to this Agreement, this report will include an updated cost control report in form satisfactory to the Owner, a report of all substantive matters (*i.e.*, pending changes) and any other reports requested by the Owner, including any of the following: (1) a narrative description of the work performed; (2) a progress bar chart indicating the precedence of the remaining portions of the Work; and (3) progress photographs. All reports shall be in forms satisfactory to the Owner. The Construction Manager, if requested by the Owner, shall furnish a statement accounting for the disbursement of funds received under any prior Application for Payment.

7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect/Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work amounts not in dispute may be included as provided in Section 7.3.7 of the NU General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
- .2** Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- .3** Add the Construction Manager's Fee, less retainage of **ten percent (10%) [if Contract is a Mass. Contract and the Contract Sum is \$3,000,000 or more, five percent (5%)]**. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Subparagraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4** Subtract the aggregate of previous payments made by the Owner.
- .5** Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.3 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6** Subtract amounts, if any, for which the Architect/Engineer has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the NU General Conditions.

7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than **ten percent (10%) [if Contract is a Mass. Contract and Contract Sum is \$3,000,000 or more, five percent (5%)]**. The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. The Construction Manager shall comply with requirements set forth in the Owner's Storage/Payment Procedures for Material Stored Offsite, attached hereto as **Exhibit F**.

IF CONTRACT SUM IS >\$3 MILLION

7.1.10 Upon Substantial Completion of the entire Work of the Construction Manager, the Owner shall pay the Construction Manager a sum sufficient to increase the total payments to the Construction Manager equal to the Contract Sum, less the sum of (1) the value of incomplete, nonconforming or defective Work, which value shall be based on the most recent schedule of values, plus (2) one hundred fifty percent (150%) of the reasonable cost to complete or correct incomplete, nonconforming or defective work, plus (3) the reasonable value of any Claims which the Owner has against the Construction Manager.

IF CONTRACT SUM IS <\$3 MILLION

7.1.10 Upon Substantial Completion of the entire Work of the Construction Manager, the Owner shall pay the Construction Manager a sum sufficient to increase the total payments to the Construction Manager equal to the Contract Sum, less the sum of (1) an amount equal to two hundred percent (200%) of the value of incomplete, nonconforming or defective Work, plus (2) an amount equal to two hundred percent (200%) of the value of any Claims which the Owner has against the Construction Manager.

7.1.11 In taking action on the Construction Manager's Applications for Payment, the Architect/Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect/Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.3 or other supporting data; that the Architect/Engineer has made exhaustive or continuous on-site inspections or that the Architect/Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

7.2 FINAL PAYMENT

7.2.1 Final payment shall be made by the Owner to the Construction Manager made by the Owner not more than thirty five (35) days after the latest to occur of the following:

- .1** the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of the NU General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment, which includes the final lien waivers for the Construction Manager and all applicable Subcontractors using the forms attached hereto as **Exhibit G** and **Exhibit H**;
- .3** a final Certificate for Payment has been issued by the Architect/Engineer; and
- .4** the Construction Manager has fully satisfied all other requirements of the Contract Documents that are conditions to final payment, including but not limited to those set forth in Section 9.10.2 of the NU General Conditions.

7.2.2 The amount of the final payment shall be calculated as follows:

- .1** Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee; but not more than the Guaranteed Maximum Price.
- .2** Subtract amounts, if any, for which the Architect/Engineer withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of the NU General Conditions or other provisions of the Contract Documents.
- .3** Subtract the aggregate of previous payments made by the Owner.

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

7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within thirty five (35) days after delivery of the final accounting to the Architect/Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect/Engineer will, within seven (7) days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect/Engineer's reasons for withholding a certificate as provided in Section 9.5.1 of the NU General Conditions. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of the NU General Conditions.

7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect/Engineer. Unless agreed to otherwise, a demand for mediation of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect/Engineer's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect/Engineer's final Certificate for Payment.

7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1, and not excluded by Section 6.2: (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

7.3 Payment of Retainage Where Contract Sum is \$3,000,000 or More.

In the event that the Contract Sum hereunder exceeds \$3,000,000 and any retainage is held by Owner following the expiration of sixty (60) days after Substantial Completion (or, in the event the Owner has rejected the Construction Manager's determination of Substantial Completion in accordance with Section 9.8.6 of the General Conditions, the date of final, binding resolution of the dispute), the Construction Manager may submit a written application for payment of such retainage in the form required by **Exhibit J**, or in such alternative format as the Owner may approve. Such application for payment of retainage shall be accompanied by a written list identifying the incomplete or defective work items and deliverables from the punch list that the Construction Manager has completed, repaired, and delivered. Within thirty (30) days of Owner's receipt of such written application for payment, Owner shall pay Construction Manager any such retainage less the sum of (1) the value of incomplete, nonconforming or defective Work, which value shall be based on the most recent schedule of values, plus (2) one hundred fifty percent (150%) of the reasonable cost to complete or correct incomplete, nonconforming or defective work, plus (3) the reasonable value of any Claims which the Owner has against the Construction Manager.

**ARTICLE 8
INSURANCE AND BONDS**

8.1 INSURANCE AND BONDS

During both phases of the Project, the Owner and the Construction Manager shall purchase and maintain insurance (and, if applicable, the Construction Manager shall purchase and maintain bonds) as set forth in Section 11 of the NU General Conditions and in accordance with the Owner's insurance requirements outlined on Exhibit I attached hereto.

**ARTICLE 9
MISCELLANEOUS PROVISIONS**

9.1 DISPUTE RESOLUTION

Dispute resolution shall be governed by the provisions of Section 4.4 of the NU General Conditions.

9.2 OTHER PROVISIONS

9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the NU General Conditions.

9.2.2 The Drawings, Specifications and other documents prepared by the Architect/Engineer, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect/Engineer. The Construction Manager, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect/Engineer appropriate to and for use in the execution of their Work under the Contract Documents.

9.2.3 The Contract shall be governed by the law of the place where the Project site is located, exclusive of its choice of laws principles.

9.2.4 Assignment of the Contract shall be governed by the provisions of Section 13.2 of the NU General Conditions.

**ARTICLE 10
TERMINATION AND SUSPENSION**

10.1 TERMINATION AND SUSPENSION

The Owner shall have the rights of termination and suspension and the Construction Manager shall have the rights of termination specified in Article 14 of the NU General Conditions.

**ARTICLE 11
OTHER CONDITIONS AND SERVICES**

11.1 CONSTRUCTION MANAGER'S PERSONNEL

The Construction Manager shall provide adequate personnel during the course of the Project, with qualifications to provide supervision, coordination, reporting and quality control of the construction of the Work. If at any time during the course of the Project, in the Owner's opinion, the Construction Manager's staffing is inadequate or unqualified to provide the required services, the Owner can require the Project Manager to increase the number of Project Management staff or replace individual members of the Project Management staff with more qualified personnel at no additional Cost to the Owner. In the event the Owner is still unsatisfied with the level or quality of the services provided by the Construction Manager's Project Management personnel, the Owner may elect to supplement the site staffing with independent Project Management staff and deduct the cost of providing such services from the Construction Manager's fee.

11.2 ADDITIONAL PROVISIONS

11.2.1 With respect to the entire Work, or any phase of the Work that has its own separate date for Substantial Completion pursuant to the Construction Schedule as finally approved by the Owner (each, a "Substantial Completion Date"), if the Construction Manager fails to achieve Substantial Completion thereof by the applicable

Substantial Completion Date, then the Construction Manager shall pay to the Owner, commencing on the first day after the applicable Substantial Completion Date and continuing for each day thereafter through and until the date that the Construction Manager achieves Substantial Completion of such phase of the Work or the entire Work, as applicable, a per diem liquidated damages amount which will be specified in the Guaranteed Maximum Price Amendment. Each Substantial Completion Date shall be extended by the length of any delays which are excused pursuant to the provisions of this Agreement to the extent that such excused delays actually delay the Substantial Completion of such phase of the Work and/or the entire Work, as the case may be. Payment of liquidated damages by the Construction Manager shall be the Owner's exclusive remedy for damages based upon delays which are not excused pursuant to the provisions of this Agreement, provided that the Owner shall have the right to recover from the Construction Manager increases in the cost to the Owner of completing the Project arising from such delays, and further provided that such damages shall in no way limit the Owner's other rights under this Agreement or the Owner's entitlement to damages for any other injury, damage or loss, other than for delay, for which Construction Manager may be responsible.

11.2.2 The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- .1 the Construction Manager is financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 the Construction Manager is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 the Construction Manager is authorized to do business in the jurisdiction where the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager and over the Work and the Project;
- .4 the Construction Manager's execution of this Agreement and performance thereof is within the Construction Manager's duly authorized powers;
- .5 the Construction Manager's duly authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated observations with the requirements of the Contract Documents; and
- .6 the Construction Manager possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project and will perform the Work with the care, skill and diligence of such a Construction Manager.

11.2.3 The Construction Manager shall coordinate safety requirements on the project as required by the Owner and shall cooperate with the Owner in all aspects of safety compliance including training and monitoring such as but not limited to, lock-out, tag-out procedures and entering of confined space procedures. The Construction Manager shall comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

11.2.4 No principal, officer, director, shareholder, manager, member, partner, trustee, beneficiary, agent, employee, official, joint venturer, member of governing board, consultant, representative, property manager, affiliate or volunteer participant (whether disclosed or undisclosed) of Construction Manager or Owner shall be personally liable under any term or provision of this Agreement for payment obligations or otherwise, or because of any breach of this Agreement, the Owner agreeing to look solely to the assets of the Construction Manager, and the Construction Manager agreeing to look solely to the Owner's interest in the Project site as the same may be developed by the Owner, or by a separate legal entity created by the Owner which owns or controls the Project site, for the satisfaction of any liability under this Agreement.

11.2.5 There shall be no manifestations on the Project of any dispute between any labor organization and Construction Manager involving any personnel under the direct control of Construction Manager or any Subcontractor. Construction Manager agrees that there will be no delay, interruption or stoppage of work on the part

of its employees, agents, suppliers, Subcontractors or Sub-subcontractors (on any and all tiers) as a result of any labor dispute (including, but not limited to, any strikes, picketing or boycott, but excepting any strike, picketing or boycott that is national or industry-wide in scope and not directed specifically at the Construction Manager or any Subcontractor). Should there be any delay, interruption or stoppage of work on the part of the Construction Manager's employees, agents, suppliers, Subcontractors or Sub-subcontractors due to any labor dispute involving the Construction Manager or any personnel under the direct control of Construction Manager or any Subcontractor, or any inability on the part of the Construction Manager to obtain supplies, material or equipment due to a labor dispute involving the Construction Manager or any personnel under the direct control of Construction Manager or any Subcontractor which in the sole judgment of Owner will cause or is likely to cause, unreasonable delay in the progress of construction, then upon twenty four (24) hours' written notice, either delivered in hand, by facsimile transmission, or by certified mail, the Owner shall have the right to declare Construction Manager in default of this Contract and upon giving such notice the Owner shall have the right to take such steps as are necessary to finish the uncompleted portion of the Work to be performed by Construction Manager. In such event, the Owner shall have the right to take possession of and use all of contractor's material and equipment intended for use on the work. The cost of completion shall be charged against the Construction Manager's remaining interest in the Contract price. If the cost of completion exceeds Construction Manager's remaining interest in the Contract Price, the Construction Manager agrees to pay such excess within thirty (30) days after presentation of documented written demand for such excess has been made upon him by the Owner. In the event of any inconsistency between the provision of this Section of the Contract and any other provisions contained in the Contract or the Contract Documents, the provisions of this Section of the Contract shall prevail. Additionally, any provisions of the Contract or the Contract Documents with respect to mediation or any other non-judicial dispute resolution shall not apply to this Section. The rights contained in this Section are in addition to, and shall in no way limit, the rights and remedies available to the Owner under this Contract or under the law.

11.2.6 The Construction Manager acknowledges that the Owner may finance the Work with funds provided and/or administered by one or more construction lenders (collectively, the "Owner's lender"). Construction Manager agrees to comply with the requirements of the Owner's lender which bear upon the performance of the Work. The Construction Manager shall also:

- .1 make the site of the Work available at reasonable times for inspection by the Owner's lender or its representatives;
- .2 consent to and execute all documents reasonably requested by the Owner in connection with the assignment of this Agreement and the Drawings and Specifications to the Owner's lender. Such assignment shall provide that the Construction Manager agrees that, notwithstanding a default by the Owner under the provisions of this Agreement which would give the Construction Manager the right to terminate this Agreement, the Construction Manager will continue to perform its obligations hereunder (on the same terms and conditions as are set forth herein) for and on account of the Owner's lender if the Owner's lender shall notify the Construction Manager that the Owner's lender agrees to pay the Construction Manager all amounts due and owing the Construction from and after the date of such notification;
- .3 promptly furnish the Owner with information, documents and materials that the Owner may reasonably request from time to time in order to comply with the requirements of the Owner's lender; and
- .4 execute such certificates and other similar documents as shall be reasonably required by the Owner's lender with respect to the Work performed or to be performed by or for the Construction Manager, provided, however, that the Construction Manager shall not be required to prospectively waive liens for portions of the Work for which it has not received payment.

11.2.7 Without limitation of other applicable requirements or deliverables, upon final completion of the Project, Construction Manager shall provide the Owner with one copy of the project daily log book, three copies of the Operating and Maintenance Manuals in a 3 "D" ring binder, including; all warranty documentation, paint color schedule and samples, a light bulb schedule, CADD (AutoCAD version 2000 or higher) as-built drawings, Project contact directory, inspection and acceptance records, owners and operators manuals, special tools which may be required for equipment on the Project and computers and computer equipment as described in Section 6.1.8.2.

11.2.8 This Agreement shall not be construed against the party preparing it, and this Agreement shall be construed without regard to the identity of the party who prepared it and as if the parties hereto had jointly prepared this agreement and it shall be deemed their joint work product. Any uncertainty or ambiguity shall not be interpreted against any one party, and any rule of construction that a document is to be construed against the drafting party shall not be applicable.

11.2.9 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

11.2.10 It is expressly understood that in the performances of the services herein, the Construction Manager, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the Owner. Construction Manager shall be solely responsible to pay all required taxes, including but not limited to, all withholdings required in connection with social security and workers' compensation taxes.

11.2.11 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 12 SCOPE OF THE AGREEMENT

12.1 ENTIRE AGREEMENT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, the order of precedence shall be determined by Section 1.1.1 of the NU General Conditions.

12.2 THIS AGREEMENT

The following documents comprise the Agreement:

- .1** This Northeastern University Agreement Between Owner and Construction Manager where the Construction Manager is the Constructor and where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2** NU General Conditions of the Contract for Construction

LIST OF EXHIBITS

- Exhibit A — Form of Guaranteed Maximum Price Amendment
- Exhibit B — Construction Manager's Project Team
- Exhibit C — Construction Manager's Wage and Salary Schedule
- Exhibit D — Construction Manager's Partial Waiver and Subordination of Lien
- Exhibit E — Subcontractor's Partial Lien Waiver
- Exhibit F — Owner's Storage/Payment Procedures for Material Stored Offsite
- Exhibit G — Construction Manager's Affidavit of Final Payment and Release of Lien
- Exhibit H — Subcontractor's/Supplier's Affidavit of Final Payment and Release of Lien
- Exhibit I — Insurance Requirements
- Exhibit J — Application for Payment Form
- Exhibit K — [Moved to Exhibit A – Schedule I]
- Exhibit L — Form of Notice of Substantial Completion (only for projects over \$3,000,000)
- Exhibit M — Northeastern University Project Close-Out Requirements
- Exhibit N — Waste Stream Reporting Form

SAMPLE

This Agreement entered into as of the day and year first written above.

OWNER:

CONSTRUCTION MANAGER:

NORTHEASTERN UNIVERSITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SAMPLE

EXHIBIT A

**GUARANTEED MAXIMUM PRICE AMENDMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS GUARANTEED MAXIMUM PRICE AMENDMENT is made and entered into as of the ____ day of 20__.

Pursuant to Section 2.2 of the Agreement dated _____, 2014 between Northeastern University (“Owner”) and _____ (“Construction Manager”) relating to the Project, and all exhibits thereto (collectively, the “Construction Contract”), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

**ARTICLE I
GUARANTEED MAXIMUM PRICE**

The Construction Manager’s Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and the Construction Manager’s Fee as defined in Article 5, is _____ and 00/100 Dollars (\$_____.00).

This Guaranteed Maximum Price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked **Schedules A through I**, as follows:

Schedule A — List of Drawings and Specifications, including all Addenda thereto and any Supplemental Conditions of the Contract, on which the Guaranteed Maximum Price is based.

Schedule B — Allowance items, if any.

Schedule C — Alternates, if any.

Schedule D — Unit Prices, if any.

Schedule E — Construction Manager’s Assumptions and Clarifications, if any, made in preparing the Guaranteed Maximum Price.

Schedule F — Construction Schedule.

Schedule G — Schedule of Values.

Schedule H — Schedule of Substantial Completion Dates and *Per Diem* Liquidated Damages Amounts.

Schedule I — M/P/W/SLBE Participation and Reporting Forms

**ARTICLE II
CONTRACT TIME**

The Substantial Completion Date for the entire Work, and for each phase of the Work having a separate Substantial Completion Date, and the per diem liquidated damages amount for unexcused failure to achieve each such Substantial Completion Date, are set forth in **Schedule H** attached hereto.

This Guaranteed Maximum Price Amendment is entered into as of the date first written above pursuant to the terms of the Construction Contract and is executed in at least three original counterparts, of which , and one shall be delivered to the Owner, one to the Contractor and one to the Architect for use in the administration hereof and the Construction Contract.

OWNER:

NORTHEASTERN UNIVERSITY

By: _____
Name: _____
Title: _____

CONSTRUCTION MANAGER:

By: _____
Name: _____
Title: _____

SAMPLE

SCHEDULE A TO GUARANTEED MAXIMUM PRICE AMENDMENT

LIST OF DRAWINGS AND SPECIFICATIONS, INCLUDING ALL ADDENDA THERETO AND ANY
SUPPLEMENTAL CONDITIONS OF THE CONTRACT

SEE ATTACHED

SAMPLE

SCHEDULE B TO GUARANTEED MAXIMUM PRICE AMENDMENT

ALLOWANCES

SEE ATTACHED

SAMPLE

SCHEDULE C TO GUARANTEED MAXIMUM PRICE AMENDMENT

ALTERNATES

SEE ATTACHED

SAMPLE

SCHEDULE D TO GUARANTEED MAXIMUM PRICE AMENDMENT

UNIT PRICES

SEE ATTACHED

SAMPLE

SCHEDULE E TO GUARANTEED MAXIMUM PRICE AMENDMENT

CONTRACTOR'S CLARIFICATIONS AND ASSUMPTIONS

SEE ATTACHED

SAMPLE

SCHEDULE F TO GUARANTEED MAXIMUM PRICE AMENDMENT

CONSTRUCTION SCHEDULE

SEE ATTACHED

SAMPLE

SCHEDULE G TO GUARANTEED MAXIMUM PRICE AMENDMENT

SCHEDULE OF VALUES

SEE ATTACHED

SAMPLE

SCHEDULE H TO GUARANTEED MAXIMUM PRICE AMENDMENT

**SCHEDULE OF SUBSTANTIAL COMPLETION DATES
AND *PER DIEM* LIQUIDATED DAMAGES AMOUNTS**

Substantial Completion: _____

If the Contractor fails to complete the Work within the time set forth herein or any formally approved extension thereof, the actual damage to the Owner due to the delay will be difficult, even impossible, to determine and in lieu thereof, the Contractor shall pay to the Owner, for each calendar day's delay, as fixed, agreed and liquidated damages, and not as a penalty, the sum of Five Hundred Dollars (\$500.00) per day which amount shall be increased by Five Hundred Dollars (\$500.00) per day after each fifteen (15) day period that expires until the Work is complete and the Contractor shall be liable for the amount thereof provided, that the Owner reserves the right to proceed and to complete the Work by contract or otherwise charging against the Contractor and his sureties any excess cost incurred by the Owner thereby together with liquidated damages accruing until such times as the Owner may reasonably procure the completion of the Work.

Schedule I TO GUARANTEED MAXIMUM PRICE AMENDMENT

MINORITY AND WOMEN OWNED BUSINESS AND SMALL LOCAL BUSINESS PARTICIPATION AND
REPORTING FORMS

**Schedule I-1: SCHEDULE FOR PARTICIPATION
BY MINORITY/WOMEN/SMALL-LOCAL BUSINESS ENTERPRISES**

NU Project Number: _____
NU Project Name: _____
Bidder: _____

CONTRACTOR CERTIFICATION:

The Contractor agrees that it will expend at least the amount of the contract set forth below for M/P/W/SLBE participation (attach additional sheets if necessary):

Company Name & Address	MBE WBE or SLBE	Scope(s) of Work	Supply or Labor	Total Dollar Value of Contract

M/W/SLBE Goal: \$ _____

Total Dollar Value of MBE Commitment: \$ _____ %

Total Dollar Value of WBE Commitment: \$ _____ %

Total Dollar Value of SLBE Commitment: \$ _____ %

If the Contractor was unable to achieve the project M/W/SLBE participation goals, provide the reasons, specifically including the names of all M/W/SLBEs the Contractor contacted prior to its final proposed Guaranteed Maximum Price amendment submission and the dates of such contact.

The undersigned hereby certifies that he/she has read the terms and conditions of the contract with regard to M/W/SLBE participation and is authorized to bind the Contractor to the commitment set forth above.

Name of Firm _____
Business Address _____
Print Name _____
Authorized Signature _____
Title _____
Date _____

Schedule I TO GUARANTEED MAXIMUM PRICE AMENDMENT

MINORITY AND WOMEN OWNED BUSINESS AND SMALL LOCAL BUSINESS PARTICIPATION AND REPORTING FORMS

**Schedule I-2: Minority/Women/Small Local Business Enterprise (M/W/SLBE)
Progress Payment Certification**

PROGRESS REPORT & CERTIFICATION

Schedule I-2 must be submitted with each of the Contractor's Applications for Payment. The Contractor must use a separate Exhibit I-2 for each M/W/SLBE with which it is subcontracting.

Payment Application No.: _____ Payment Application Date: _____ Period To: _____

NU Project No:		Subcontract Start Date:	
NU Project Name:		Subcontract Est. Date of Completion:	
Construction Manager:		M/W/SLBE Contractor:	
General Contract Amount (adjusted):		M/WBE Cert. Date: SLBE ZIP Code:	

Contracting Details:

- 1. M/W/SLBE Subcontract Amt.: \$ _____
- 2. Amount Paid This Period: \$ _____
- 3. Total Amount Paid to Date: \$ _____
- 4. Balance Due to M/W/SLBE: \$ _____

Comments

CONTRACTOR CERTIFICATION: Under the pains and penalties of perjury I hereby certify that the information supplied herein is correct and complete. For contracts including labor, I hereby certify that the M/W/SLBE Contractor performed its work with its own employees and did not subcontract or assign its work to any other firm.

CONSTRUCTION MANAGER:

(Signature)

(Printed Name)

(Title & Date)

Schedule I TO GUARANTEED MAXIMUM PRICE AMENDMENT

MINORITY AND WOMEN OWNED BUSINESS AND SMALL LOCAL BUSINESS PARTICIPATION AND REPORTING FORMS

**Schedule I-3: Minority/Women/Small Local Business Enterprise (M/W/SLBE)
Final Payment Certification**

FINAL REPORT & CERTIFICATION

The Contractor must use a separate Schedule I-3 for each M/W/SLBE with which it is subcontracting.

Payment Application No.: _____ Payment Application Date: _____ Period To: _____

NU Project No:		Subcontract Start Date:	
NU Project Name:		Subcontract Est. Date of Completion:	
Construction Manager:		M/W/SLBE Contractor:	
General Contract Amount (adjusted):		M/WBE Cert. Date: SLBE ZIP Code:	

Contracting Details:

- 1. M/W/SLBE Subcontract Amt.: \$ _____
- 2. Amount Paid This Period: \$ _____
- 3. Total Amount Paid to Date: \$ _____
- 4. Balance Due to M/W/SLBE: \$ _____

Comments

CONTRACTOR CERTIFICATION: Under the pains and penalties of perjury I hereby certify that the information supplied herein is correct and complete. For contracts including labor, I hereby certify that the M/W/SLBE Contractor performed its work with its own employees and did not subcontract or assign its work to any other firm.

GENERAL CONTRACTOR/CONSTRUCTION MANAGER:

(Signature)

(Printed Name)

(Title & Date)

WAIVER AND SUBORDINATION OF LIEN

**COMMONWEALTH OF MASSACHUSETTS:
SUFFOLK COUNTY**

DATE: -
Application for Payment:

OWNER:

CONTRACTOR:

1.	Original Contract Amount:	\$	
2.	Approved Change Orders: #1 -#9	\$	
3.	Adjusted Contract Amount:	\$	\$0.00
4.	Completed to Date:	\$	
5.	Less Retainage:	\$	
6.	Total Payable to Date: (line 4 less line 5)	\$	
7.	Less Previous Pay:	\$	
8.	Current Amount Due: (line 6 less line 7)	\$	#VALUE!
9.	Pending Change Orders:	\$	\$0.00
10.	Disputed Claims:	\$	\$0.00

The undersigned Contractor who has a contract with _____ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair, or removal of a building or structure or other improvement of real

property known and identified as _____ and related site improvements, located in Boston, Suffolk County, Commonwealth of Massachusetts and owned by _____, upon receipt of _____

in payment of an invoice/requisition/application for payment dated _____, does hereby:

- (a) waive any and all liens and right of lien on such real property for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished through the following date: _____ (payment period), except for retainage, unpaid, **\$0.00** agreed or pending change orders, and disputed claims as stated above; and
- (b) subordinate any and all liens and right of lien to secure payment for such unpaid, agreed or pending change orders and disputed claims, and such further labor or materials, or both labor and materials, or rental equipment, appliances or tools, except for retainage, performed or furnished at any time through the twenty-fifth day after the end of the above payment period, to the extent of the amount actually advanced by the above lender/mortgagee through such twenty-fifth day.

Signed under the penalties of perjury this _____ day of _____ .

Contractor: _____

Name: _____

Title: _____

COMMONWEALTH OF MASSACHUSETTS

_____, Suffolk, SS. _____ - _____ (date)

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be his/her free act and deed, before me,

Notary Public

My Commission Expires:



Northeastern

TRADE CONTRACTOR CERTIFICATION INDEMNIFICATION AND WAIVER OF LIENS

[Note: To be used for subcontractors only. This document is not to be used for GC/CM]

Project: _____

The undersigned has a contract with _____ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as _____ located in _____ (city or town), _____ County, Commonwealth of Massachusetts and owned by Northeastern University. In connection with the submissions of all Applications for Payment previously submitted, the undersigned hereby:

1. _____ CERTIFIES to Northeastern University that all laborers and all trade contractors, material, men, services, machinery, equipment, insurance and supplies ("Work") to or through the undersigned on the above-captioned project have been duly paid for all said work on the _____ project and all related projects and further certifies that all taxes and bills of any other descriptive title in connection with the work finished for or through _____.

2. _____ WAIVES, relinquishes and dissolves all any and all liens and right of lien upon the property, real estate, buildings or improvements consisting of the above-captioned project or upon which any labor or materials, or both labor and materials, or rental equipment, appliances or tools, were performed or supplied as of the date the Previous Application for Payment, except as noted in paragraph 4 below.

3. _____ AGREES to indemnify and save/hold harmless Northeastern University, their successors and assigns, from all liens (including, without limitation, General Laws Chapter 254, Mechanics Liens and all Internal Revenue Service Liens), claims and demands, and all expenses incurred, including attorney's fees and costs of defense for or on account of or in any way arising out of claims for any work and any labor performed and material and equipment furnished to or through the undersigned up to the date of the previous Application for Payment for the above-captioned project, except as noted in paragraph 4 below.

4. _____ AGREES that this Indemnification and Waiver shall not include the following items for the amount listed:

Company	Amount
This certification, indemnification and waiver of liens is made by the undersigned for the purpose of inducing Northeastern University to make payment on _____ Project and all related projects or purchase orders.	

SIGNED AND SEALED THIS _____ DAY OF _____, 20__.

By: _____ ITS: _____

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK COUNTY,
_____, _____

The above _____ personally appeared before me _____ and took oath that he/she is the duly elected _____ of _____ that the certifications made in the above paragraphs of the foregoing instrument are true, that the foregoing is his/her free act and deed and that of said _____, and that he/she is duly authorized to execute, seal and deliver this instrument on behalf of _____.

Notary Public: _____ My Commission Expires: _____

Facilities Division
140 Cullinane Hall
360 Huntington Ave.
Boston, MA 02115
617.373.2700
f 617.373.8505

Storage/Payment Procedures for Material Stored Offsite
and not yet installed in the work

The documentation requests are as follows:

1. Bill of Sale must include date, description, quantity, location and value of material stored-separate listing of all materials should be included.
2. Letter from vendor to Northeastern University detailing list of materials and obligations to Northeastern University upon receipt of payment.
3. Compile offsite storage certificate inspection certificate which would validate location of material stored and that materials have been properly tagged as the property of Northeastern University.
4. Inspection Certificate must name Northeastern University as additional insured. Certificate must include location, description, quantity and value of material.

In addition, someone from Northeastern University field staff may also be required to inspect the material listed by the vendors invoice to insure that the materials are designated for a specific project.

BILL OF SALE TO Northeastern University

From

KNOW ALL MEN BY THESE PRESENTS

That,

(hereinafter called the Seller), for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations to it in hand paid by

Northeastern University

(hereinafter call the Purchaser), receipt whereof is hereby acknowledged, does hereby sell, transfer and assign to the said Purchaser the goods and chattels described and located on the premises described in Schedule A listed on page 4 hereto, manufactured or in process for delivery on the

And in the event that nay of said goods and chattels are in process of manufacture, it is expressly intended to sell, transfer and convey the same in their completed state, as well as in the form and state they possess at the time of the execution of this instrument.

TO HAVE AND TO HOLD all and singular the said goods and chattels to the said Purchaser, its successors and assigns to their own use and behoof forever.

And the said Seller does hereby covenant with the said Purchaser that it is the lawful owner of said goods and chattels: that they are free from all liens and claims whatsoever, that it has good right to sell the same; that it will warrant and defend same against the claims and demands of all persons.

The undersigned will provide safe and proper storage for the said goods and chattels on its own premises or other premises as may be described in the said Schedule until such a time as said goods and chattels are delivered to the said job.

The undersigned will cause to be placed conspicuously and securely on the said described goods and chattels in its plant or warehouse or other place mentioned in said Schedule, as the case may be, a sign or signs which will show that the said described property is the property of the _____
Northeastern University

The undersigned will cause the said described property to be insured against fire, theft and all other hazards in at least the value of the goods and chattels described in Schedule A and the undersigned does hereby agree to indemnify and hold the Purchaser harmless by reason of the payment made to the undersigned for any loss, theft or destruction of the said described property or any part thereof, notwithstanding the payment made to the undersigned or the transfer of title to the property in this bill of sale. The policies of insurance provided for in this paragraph shall be for the benefit of

Northeastern University
and shall be in form satisfactory to it, and the amount of such insurance shall be increased from time to time in proportion to the increase of value of said goods by any further process of manufacture.

The obligation for the performance of the Purchase Order between the undersigned and ___Northeastern University_____

shall continue in full force and effect including but not limited to the obligation to deliver the said property pursuant to the terms of said contract.

IN WITNESS WHEREOF the said Seller has caused this instrument to be duly executed and signed this _____ day of _____, 20__.

Seller

By: _____
Official Title

FOR CORPORATION

STATE OF _____)

SS:

COUNTY OF _____)

On the _____ day of _____ in the year Two Thousand and _____ before me personally came _____ to me known, who being by me duly sworn, did depose and say:
That he resides in _____ that he is _____

(President or other office)

of the _____ Corporation

(Name of Corporation)

described in which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, and that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

FOR INDIVIDUAL

STATE OF _____)

SS:

COUNTY OF _____)

On the _____ day of _____ in the year Two Thousand and _____ before me personally came _____ known to me, and to me known to be the person described in and who executed the foregoing instrument, and be acknowledged that he executed that same.

Notary Public

SCHEDULE A

The full description of the material covered hereunder, including sizes, number, etc., together with place of location and part of premises where this material , is as follows;

SAMPLE

Vendor

Date:

(Name and Address of Vendor:)

Gentleman:

This will acknowledge receipt of _____ DOLLARS
Representing the cost of the described property.

(List Materials stored:)

We are handing you herewith Bill of Sale covering such described
Property.

In consideration of the payment of aforesaid sum in advance of the time
Provided for such payment by our Purchase Order dated _____
Supplied in connection with the work at _____ for
_____ Northeastern University _____ we agree as follows:

1. We will deliver or cause to be delivered the said described property at the time required by you for the Work under the above-mentioned contract.
2. We will cause to be placed conspicuously and securely upon the said described property in our/your storage a sign or signs which will show that the said described property is the property of _____.
Northeastern University
3. Our obligation for the performance of our Purchase Order with you continues in full force and effect and the obligation to deliver the above-described property as part of said contract shall likewise continue.

COMPANY _____

BY _____

TITLE _____

Northeastern University

OFFSITE STORAGE INSPECTION CERTIFICATION

The following items have been physically inspected and found to be marked and stored in a proper manner.

VENDOR _____

PURCHASE ORDER NUMBER: _____

BUSINESS ADDRESS: _____

PERSON CONTACTED: _____

LOCATION OF MATERIAL STORED: _____

FOR PAYMENT OF INVOICE NUMBER: _____ Dated: _____

INSPECTED BY: _____ Dated: _____

TITLE: _____

FINAL
WAIVER AND SUBORDINATION OF LIEN

**COMMONWEALTH OF MASSACHUSETTS:
 SUFFOLK COUNTY**

DATE: _ _
Application for Payment:

OWNER:

CONTRACTOR:

1.	Original Contract Amount:	\$	
2.	Approved Change Orders: #1 -#9	\$	
3.	Adjusted Contract Amount:	\$	\$0.00
4.	Completed to Date:	\$	
5.	Less Retainage:	\$	
6.	Total Payable to Date: (line 4 less line 5)	\$	
7.	Less Previous Pay:	\$	
8.	Current Amount Due: (line 6 less line 7)	\$	#VALUE!
9.	Pending Change Orders:	\$	\$0.00
10.	Disputed Claims:	\$	\$0.00

The undersigned Contractor who has a contract with _____ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair, or removal of a building or structure or other improvement of real

property known and identified as _____ and related site improvements, located in Boston, Suffolk County, Commonwealth of Massachusetts and owned by _____, upon receipt of _____

in payment of an invoice/requisition/application for payment dated _____, does hereby:

- (a) waive any and all liens and right of lien on such real property for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished through the following date: _____ (payment period), except for retainage, unpaid, **\$0.00** agreed or pending change orders, and disputed claims as stated above; and
- (b) subordinate any and all liens and right of lien to secure payment for such unpaid, agreed or pending change orders and disputed claims, and such further labor or materials, or both labor and materials, or rental equipment, appliances or tools, except for retainage, performed or furnished at any time through the twenty-fifth day after the end of the above payment period, to the extent of the amount actually advanced by the above lender/mortgagee through such twenty-fifth day.

Signed under the penalties of perjury this _____ day of _____.

Contractor: _____

Name: _____

Title: _____

COMMONWEALTH OF MASSACHUSETTS

_____, Suffolk, SS. _____ (date)

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be his/her free act and deed, before me,

Notary Public

My Commission Expires:



Northeastern

SUBCONTRACTOR/SUPPLIER FINAL CERTIFICATION INDEMNIFICATION AND WAIVER OF LIENS

[Note: To be used for subcontractors only. This document is not to be used for GC/CM]

Project: _____

The undersigned has a contract with _____ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as _____ located in _____ (city or town), _____ County, Commonwealth of Massachusetts and owned by Northeastern University. In connection with the submissions of all Applications for Payment previously submitted, the undersigned hereby:

1. _____ CERTIFIES to Northeastern University that all laborers and all trade contractors, material, men, services, machinery, equipment, insurance and supplies ("Work") to or through the undersigned on the above-captioned project have been duly paid for all said work on the _____ project and all related projects and further certifies that all taxes and bills of any other descriptive title in connection with the work finished for or through _____.

2. _____ WAIVES, relinquishes and dissolves all any and all liens and right of lien upon the property, real estate, buildings or improvements consisting of the above-captioned project or upon which any labor or materials, or both labor and materials, or rental equipment, appliances or tools, were performed or supplied as of the date the Previous Application for Payment, except as noted in paragraph 4 below.

3. _____ AGREES to indemnify and save/hold harmless Northeastern University, their successors and assigns, from all liens (including, without limitation, General Laws Chapter 254, Mechanics Liens and all Internal Revenue Service Liens), claims and demands, and all expenses incurred, including attorney's fees and costs of defense for or on account of or in any way arising out of claims for any work and any labor performed and material and equipment furnished to or through the undersigned up to the date of the previous Application for Payment for the above-captioned project, except as noted in paragraph 4 below.

4. _____ AGREES that this Indemnification and Waiver shall not include the following items for the amount listed:

Company	Amount

This certification, indemnification and waiver of liens is made by the undersigned for the purpose of inducing Northeastern University to make payment on _____ Project and all related projects or purchase orders.

SIGNED AND SEALED THIS _____ DAY OF _____, 20__.

By: _____ ITS: _____

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK COUNTY,
_____, _____

The above _____ personally appeared before me _____ and took oath that he/she is the duly elected _____ of _____ that the certifications made in the above paragraphs of the foregoing instrument are true, that the foregoing is his/her free act and deed and that of said _____, and that he/she is duly authorized to execute, seal and deliver this instrument on behalf of _____.

Notary Public: _____ My Commission Expires: _____

Facilities Division
140 Cullinane Hall
360 Huntington Ave.
Boston, MA 02115
617.373.2700
f 617.373.8505

EXHIBIT I - NORTHEASTERN UNIVERSITY INSURANCE REQUIREMENTS

CERTIFICATE OF INSURANCE REQUIREMENTS

Minimum Insurance Coverages and Requirements

The Contractor, Architect, Engineer, or other Consultant (hereinafter the “Contractor”)/ shall obtain and maintain the minimum insurance coverages set forth below. By requiring such minimum insurance, Northeastern University shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under the contract of which this Exhibit I is a part (hereinafter the “Contract”). Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance coverages stated below do not replace any surety (performance, payment or maintenance) bonds as required by contract.

Coverages (The provisions shown in *italics* should be included when exposures warrant.)

1. Commercial General Liability – Coverage to include:
 - Premises and Operations
 - Explosion, Collapse and Underground Hazards
 - Personal/Advertising Injury
 - Products/Completed Operations
 - Liability assumed under an Insured Contract (including defense costs assumed under contract)
 - Broad Form Property Damage
 - Independent Contractors
 - Limited Pollution Liability Extension Endorsement ISO CG 2415 (10-01) or equivalent
 - Pollution Exclusion Limitation Endorsement – Overspray
 - Designated Construction Project(s) General Aggregate Limit, ISO CG 2503 (1997 Edition) or equivalent

2. Automobile Liability including all
 - Owned, Non-Owned & Hired Vehicles
 - Personal Injury Protection
 - If the contractor/vendor is transporting any hazardous materials, a Pollution Liability Broadened Coverage for Autos endorsement must be added to the Business Automobile Policy by ISO endorsement CA 9948 3/06 or its equivalent and MCS-90.

Required for contractors / vendors where they transport NU property, transport NU employees, students or invitees; or use of a vehicle is integral to the performance of the contract or if the vehicle will be used on NU premises.

3. Workers Compensation
 - Statutory Benefits (Coverage A) including applicable coverage such as USL&H or FELA as applicable to the project or work
 - Employers Liability (Coverage B)

4. Umbrella/Excess Liability: Contractor is required to have an Umbrella/Excess Liability policy that extends over the Contractor’s General Liability, Automobile Liability, and Employer’s/ Workers

Compensation Liability policies. Any Contractor that is required to maintain General Liability, Auto Liability, and Employers/Workers Compensation Liability insurance who does not meet the minimum University requirements for these coverages may elect to obtain an Umbrella or Excess policy in an amount that brings the overall limit to the indicated University minimum requirement for each coverage in lieu of increasing each underlying policy limit

5. Professional Liability (*including Design Build Errors & Omissions*) – Whenever the work under this contract includes Professional Liability, Contractor shall maintain professional liability covering wrongful acts, errors and/or omissions of (Contractor) for damage sustained by reason of or in the course of operations under this contract.
6. Valuable Papers and Records Insurance – This coverage is required if the Contract is a “Northeastern University Agreement Between Owner and Architect/Engineer” to cover restoration of plans, drawings, computations, field notes, and other data pertinent to this contract shall be carried in the amount of \$2,000,000
7. Contractors Pollution Liability – Northeastern University may require this coverage whenever work under this contract involves an environmental exposure. This coverage is to include sudden and gradual coverage for third-party liability including defense costs and completed operations.

SAMPLE

Limits Required

Contractor shall carry the following limits of liability:

COMMERCIAL GENERAL LIABILITY

- | | |
|---|-------------|
| • General Aggregate | \$2,000,000 |
| • Products/Completed Operations Aggregate | \$2,000,000 |
| • Each Occurrence Limit | \$1,000,000 |
| • Personal/Advertising Injury | \$1,000,000 |
| • Fire Damage (Any One Fire) | \$250,000 |
| • Medical Payments (Any One Person) | \$5,000 |

AUTOMOBILE LIABILITY:

- | | |
|--|--------------|
| • Bodily Injury/Property Damage (Combined Single Limit): | \$1,000,000 |
| • If the vehicle being used has a Gross Vehicle Weight Rating of Class 6-8 / US DOT rating of "Heavy Duty" (19,501+ lbs.): | \$2,000,000 |
| • For any vehicle being used can carry multiple persons (including driver): | |
| ○ 5 – 10 persons: | \$5,000,000 |
| ○ 10 - 20 persons: | \$10,000,000 |
| ○ 20 or more persons: | \$20,000,000 |

WORKERS COMPENSATION

- | | |
|-------------------------------------|-------------------------------|
| • Coverage A (Workers Compensation) | Statutory |
| • Coverage B (Employers Liability) | \$100,000/\$100,000/\$500,000 |

UMBRELLA LIABILITY

- | | |
|---|-------------|
| • Each Occurrence Limit | \$1,000,000 |
| • General Aggregate Limit | \$1,000,000 |
| • Products/Completed Operations Aggregate | \$1,000,000 |

Contracts for boiler/chiller installations, cleaning/janitorial, debris removal, hazardous materials removal, electrical work, elevator work, environmental remediation, exterior work (facades, roofs, concrete work), plumbers, roof tanks, and/or scaffolding, require the following Umbrella Liability limits:

- | | |
|---|-------------|
| • Each Occurrence Limit | \$5,000,000 |
| • General Aggregate Limit | \$5,000,000 |
| • Products/Completed Operations Aggregate | \$5,000,000 |

PROFESSIONAL LIABILITY (if required) - Aggregate

- | | |
|---|--------------|
| • Architect: Interior or Landscaping Design Services: | \$1,000,000 |
| • Architect: Structural Integrity Audits: | \$10,000,000 |
| • Architect: Building Structural Design: | \$10,000,000 |
| • Engineer: | \$1,000,000 |

CONTRACTORS POLLUTION LIABILITY (if required)

- Painting, cleaning, janitorial:
 - Per Loss: \$1,000,000
 - Aggregate: \$2,000,000

- Large-scale painting contracts (as identified/directed in writing by Owner); asbestos abatement
 - Per Loss: \$5,000,000
 - Aggregate: \$10,000,000

SAMPLE

GENERAL REQUIREMENTS FOR ALL INSURERS

Northeastern University requires that all insurers:

1. Be licensed or approved to do business within the Commonwealth of Massachusetts or within the state in which the project is to be performed.
2. Write required insurance on an occurrence basis, provided however that Professional Liability and Pollution Liability are acceptable written on a claims-made basis.
3. Write policies on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by Northeastern University; include a Waiver of Subrogation Clause; and not be renewed, cancelled or materially changed or altered unless thirty (30) days advance written notice via certified mail is provided to Northeastern University.
4. Name Northeastern University and its Board of Trustees, officers and employees, agents and volunteers, as well as any third parties, if requested in writing by Northeastern University, as "Additional Insureds" on general liability, umbrella/excess liability, environmental liability and other policies as specified by the contract Using ISO Form CG 2010 10/1 and CG2037 10/01 or equivalent.

Further, all policies shall:

1. Required insurance coverages shall be maintained throughout the term of this contract, and any claims-made coverages shall be maintained for a period of six (6) years after the date of completion of the project.
2. Possess a minimum A.M. Best's Insurance Guide rating of A VII. A.M. Best rating is composed of two parts: the letter denotes the company's level (see chart below) and the Roman numeral denotes financial size.

Level	Category
A++	Superior
A+	Superior
A	Excellent
A-	Excellent
B++	Very Good
B+	Good
B-	Good
C++	Fair
C+	Fair
C	Marginal
C-	Marginal
D	Below minimum standards

3. Not have an aggregate impairment that would bring the coverage below the minimum required limits as stated above.

The level assigned to a company is an indicator of the company's ability to meet obligations over a long period of time. Financial Size is measured by Roman numerals ranging from Class I (the smallest) to Class XV (the largest). Financial size provides an indication of the amount of reserves or policyholders' surplus the company reported as liabilities. The amount of the policyholders' surplus determines the amount of insurance the company may prudently underwrite.

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF 2 PAGES

TO OWNER: Northeastern University

PROJECT:

APPLICATION NO:

Distribution to:

FINAL APP (circle one)? YES / NO

OWNER

ARCHITECT

CONTRACTOR

PERIOD TO:

FROM CONTRACTOR:

VIA ARCHITECT:

NU PROJECT MANAGER:

NU PROJECT NO:

CONTRACT DATE:

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

- 1. ORIGINAL CONTRACT SUM \$ _____
- 2. Net change by Change Orders \$ _____
- 3. CONTRACT SUM TO DATE (Line 1 + 2) \$ _____
- 4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ _____
- 5. RETAINAGE:
 - a. _____ % of Completed Work \$ _____ 0
 - (Column D + E on G703)
 - b. _____ % of Stored Material \$ _____ 0
 - (Column F on G703)
 - Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ _____
- 6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ _____ 0.00
- 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ _____
- 8. CURRENT PAYMENT DUE \$ _____ 0.00
- 9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ _____ 0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due

CONTRACTOR:

By: _____ Date: _____

State of: _____ County of: _____
 Subscribed and sworn to before me this _____ day of _____
 Notary Public:
 My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
NU PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C-1 SCHEDULED VALUE	CHANGE ORDERS (NET)	C-2 ADJUSTED CONTRACT SUM	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C-2)	H BALANCE TO FINISH (C-2 - G)	I RETAINAGE (IF VARIABLE RATE)
					FROM PREVIOUS APPLICATIONS (D + E)	THIS PERIOD					
								\$0.00			
								\$0.00			
								\$0.00			
								\$0.00			
								\$0.00			
								\$0.00			
								\$0.00			
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								\$0.00			
								\$0.00			
								\$0.00			
								\$0.00			
								\$0.00			
GRAND TOTALS		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

Exhibit L

NOT USED

SAMPLE



Northeastern University

NORTHEASTERN UNIVERSITY REQUIREMENTS FOR CLOSEOUT DELIVERABLES STANDARDS FOR PRODUCTION AND FORMAT

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INTRODUCTION

This document is a resource for project managers, architects, engineers, and contractors working on Northeastern University construction and renovation projects. The purpose of this document is to convey the requirements for project closeout documentation, and provide standards for creating and delivering documentation at the close of Northeastern University projects. Section 1 outlines the required document types due at closeout, and sections 2 through 6 describe standards for the creation and delivery of project deliverables.

Acknowledged that Northeastern University construction and renovation project deliverables may vary depending on size and type of work. For instance, some projects may not produce drawings in any format, or require regulatory approvals. However, all architects, engineers, and contractors must submit applicable deliverables as described within this document.

These requirements ensure that Northeastern University receives an accurate record of final project work, and also promotes a standard for consistency that ensures the long-term value and accessibility of construction project deliverables. Architects, Engineers, and Contractors must deliver required documentation (where applicable), and adhere to the standards described herein. If received documentation does not comply with the following standards, final payment may be delayed until documents conform to requirements.

There are 4 checklist templates to assist with deliverable submissions. Templates A-C provide summary lists of deliverable types, and standards for format. Appendix D must be completed and submitted with project drawing sets.

These guidelines are in accordance with the latest version of *U.S. National CAD Standards* and the *AIA CAD Layer Guidelines*, and Northeastern University guidelines, *Guidelines for Capital Project Design & Implementation*, and *NU MEP Design Standards*.

DELIVERABLES

- ➔ Upload closeout to the appropriate folders in e-Builder, and/or deliver to the Northeastern University project manager.
- ➔ Complete and submit the Drawing Index (Appendix D) with all drawing sets.

1. Required Document Types

1.1. As-built and Record Drawings

1.1.1. Definitions:

- As-Built: Definition for as-built drawings may differ depending on organization, but Northeastern University defines as-built drawings as drawings that are prepared at the end

of a construction project by the contractor. These are drawings / plans that show the work, as actually installed.

- Record Drawings: Record drawings are prepared by the architect and reflect on-site changes the contractor noted in the as-built drawings. They are often compiled as a set of on-site changes made for the owner per owner/architect contract. (see contract *Northeastern University Agreement Between Owner and Architect / Engineer*)

1.1.2. Requirements

- All drawings should be stamped and signed showing actual construction; drawings shall not show alternatives or different options. Mark drawings as “as-built.”
- Submit each drawing separately as single sheet.
- Submit 3 sets of drawings in total, 1 set of CAD files, and 1 set of PDF files, and one set of TIFF files.

1.1.3. General Production

- Drawings will be reviewed upon submission, and if all required documentation is not received, and/or submitted per requirements, project will not closeout and final payment will be delayed until documentation is received and approved.
- The Project Architect / Engineer should work with the contractor regarding the project CAD drawings; either to utilize these CAD files to produce as-built drawings, or pay the contractor to produce the project as-built CAD files. (see contract *Northeastern University Agreement Between Owner and Architect / Engineer*, Section 1.5.16)
- For Northeastern University in-house designed projects, coordinate with the Northeastern University project manager to determine if Northeastern University will produce the CAD as-built and if so then what allowance will be given for this from the contractor.

➔ For more details, see Exhibit One titled *Record Document Field Data* from the *Northeastern University Agreement Between Owner and Architect / Engineer*

1.2. Operations and Maintenance Manuals (O&Ms)

1.2.1. Definition

An Operations and Maintenance Manual contains the information required for the operation, maintenance, decommissioning and demolition of a building.

1.2.2. Requirements

- O&M manuals should be organized in separate sections for each related equipment.
- Each manual must contain: title page, table of contents, product data supplemented by text and/or drawings; warranties, bond and service contract issued.
- All O&Ms should include phone lists of subcontractors, suppliers, manufacturers' and representatives.
- Include a description of each unit and related component parts, including name of manufacturer, model number, serial number, and equipment tag number.
- Provide manufacturer information, maintenance procedures, and servicing schedule(s).
- Submit O&Ms in both hardcopy and PDF formats.
- PDF version must be organized in the same manner as the hardcopy.

1.3. Warranties

- Include warranties in O&Ms, and/or submit as separate document(s).

1.4. Specifications

1.4.1. Definition

Specifications are defined as detailed written descriptions of materials, equipment, systems, and required workmanship and other qualitative information pertaining to the work.

1.4.2. Requirements

- If specifications are submitted as a book, organize specifications following the latest [Construction Specifications Institute \(CSI\)](#) format and indexing.
- If specifications are submitted as a drawing, follow sheet identification standards described in section 3.

1.5. Final Commissioning Report

- Submit Final Commissioning Report, if applicable, in PDF.

1.6. Regulatory Approvals

- ➔ For full list of possible regulatory approvals, see Appendix A
- Submit regulatory approvals, as applicable, in PDF.
 - o Asbestos / DEP Permits
 - o Building Permits
 - o Certificate of Inspection

- Assembly Permits
- Occupancy Permits

1.7. Land Survey

- If a land survey was done, submit in TIFF and PDF formats.

1.8. Environmental Reports

- If soil or other environmental reports were done, submit all geotechnical reports in TIFF and PDF format.

CAD DRAWINGS

2. File Format Preparation

2.1. Version

- AutoCAD™ versions 2004 or higher are acceptable file formats for as-built project drawings. All drawings prepared for Northeastern University must be submitted in .dwg format.

2.2. General Production

- CAD files containing multiple drawing sheets must be broken down into separate drawings containing single sheets.
- All CAD drawings shall be purged of empty, unused, or non-essential drawing data prior to submittal. This includes all unused layers, linetypes, blocks, fonts and entities.
- All CAD drawing models should be drafted at full scale in architectural units, such that one drawing unit equals one inch.

2.3. Title Block Requirements

- Electronic drawing files must contain only one drawing and one title block per file.
- Title block information must include the following information:
 - A/E/C – consultant responsible for producing the drawings should be clearly identified.
 - Project Name - assigned by Northeastern University
 - Project Number – assigned by Northeastern University
 - Building – name of the building as per Northeastern University naming convention

2.4. Sheet Identification Requirements

- Drawing Title – describes the drawing content
- Sheet identification – follow the Sheet Identification Requirements in section 3
- Date – date of the drawing at final revision, as-built
- North Arrow showing orientation of drawing

2.5. Fonts and Text Styles

- Use only native CAD fonts, linetypes, and hatch patterns.
- Do not use custom fonts, linetypes, and hatch patterns, including any provided by 3rd party.
- Only use TrueType fonts such as Arial, Courier New, Times New Roman.
- Postscript fonts shall not be used.

2.6. External Reference Files (XREFs)

- Northeastern University will not accept CAD drawing submissions that reference external reference files (XREFS).
- All XREFS must be “bound” to the final drawing

2.7. Model and Paper Space Guidelines

- Place title blocks, schedules and general notes at full-scale in paper space whenever possible.
- Label scaled viewports with the appropriate scale in model space.
- Do not place or draw model-related blocks, tags and objects in paper space.
- Draw all model space objects at full scale.
- Scale objects using paper space viewports – zoom viewports to the appropriate scale.

2.8. Use Disclaimer Requirement

- All final as-built drawings / plans must include the following disclaimer:
“Warning: This document may contain sensitive and/or proprietary information and therefore must be treated as a confidential document. Acceptance of this document constitutes an agreement that this document and the information contained herein shall be maintained and transmitted in a confidential manner. No part of this document shall be reproduced, released or distributed without the express written permission of Northeastern University and any distribution to non-Northeastern University entities or persons must be subject to a written confidentiality agreement.”

2.9. Layering

2.9.1. General Layering Guidelines

- Use only the latest version of *US National CAD Standard* layer names.
- Use the minimum number of layers necessary to adequately separate entities in each drawing, and should not contain extraneous, redundant, or overly detailed layer names.
- Purge each drawing of unused layers prior to submittal. The drawing file should contain only those layers necessary for displaying and plotting the information and drawing entities contained in each drawing. To ensure that subsequent prints made from each CAD drawing match the original, unused or unnecessary layers must be purged from the drawing prior to delivery.
- The layer name format is organized as a hierarchy. This hierarchical structure allows for detailed levels of description as desired. Layer names consist of distinct data fields separated from one another by dashes.

2.9.2. Entity Properties

- Entity colors must be defined by layer, not by entity.
- Blocks must be created on layer 0 (zero).
- All attributes must be created on layer 0 (zero).

2.10. Layer Name Format

- Northeastern University follows a naming schema that is organized as a hierarchy. Layer names are defined using characters identifying disciplines, major and minor groups, and modifiers.

AI	-	WALL	-	FULL	-	DIMS	-	N
Discipline Designator(s)		Major Group		Minor Group		Minor Group		Status

- **Discipline Designator** indicates the category of subject matter contained on the specified layer or file name. The Discipline Designator is a one or two-character field. The first character is the discipline character, and the second character is an optional modifier.

1 LEVEL DISCIPLINE DESIGNATORS			
G	General	P	Plumbing
H	Hazardous Materials	D	Process
V	Survey / Mapping	M	Mechanical
B	Geotechnical	E	Electrical
C	Civil	W	Distributed Energy

L	Landscape	T	Telecommunications
S	Structural	R	Resource
A	Architectural	X	Other Disciplines
I	Interiors	Z	Contract / Shop Drawings
Q	Equipment	O	Operations
F	Fire Protection		

The optional second character is used to further define the discipline character. For example, *AI-WALL Architectural Interior, Wall*

For a complete list of 2 level Discipline Designators, refer to the latest version *US National CAD Standards*.

- **Major Group** is a four-character field that identifies a major building system. Major Group field codes are logically grouped with discipline designators. However, any Major Group may be used with prescribed Discipline Designator. For example, *A-Wall or I-Wall*.

For complete list of Major Groups, refer to the latest version of *US National CAD Standards*.

- **Minor Group** is a four-character field used to further define the Major Group. For example, *A-WALL-FULL Architectural, Wall, Full*

For complete list of Minor Groups, refer to the latest version of *US National CAD Standards*.

- **Status** field is an optional single-character field that identifies the data contained on the layer according to the status or construction phase of the work. Since drawings submitted at closeout are as-built, this field should be used to distinguish new construction from existing or phases of work that must be differentiated. For example, *A-WALL-FULL-N Architectural, Wall, Full, New Work*

STATUS FIELD CODES	
A	Abandoned
D	Existing to demolish
E	Existing to remain
F	Future work
M	Items to be moved
N	New work
T	Temporary work
X	Not in contract
1-9	Phase numbers

2.11. Drawing View Layer Names

- **DETL**, **ELEV**, and **SECT** are specialized codes used for layers that are organized primarily by drawing type, rather than by major building system. These field codes may also be used as Minor Group field codes to modify a major building system.

indicate discipline and optional modifier

LAYER NAME	DESCRIPTION
<input type="checkbox"/> -SECT-MCUT	material cut by section
<input type="checkbox"/> -DETL-MBND	material beyond cut
<input type="checkbox"/> -DETL-PATT	textures and hatch patterns
<input type="checkbox"/> -ELEV-IDEN	component identification numbers
<input type="checkbox"/> -ELEV-OTLN	outline of object drawn

2.12. Annotation Layer

- Annotation consists of text, dimensions, notes, sheet borders, detail references and other elements on CAD drawings that do not represent physical aspects of a building. Use of the Major Group ANNO allows all annotation to be placed in a defined group of layers.

The Layer Names shown below provide examples for the use of Minor Group field codes for annotation.

indicate discipline and optional modifier

LAYER NAME	DESCRIPTION
<input type="checkbox"/> -ANNO	Annotation
<input type="checkbox"/> -ANNO-DIMS	Dimensions
<input type="checkbox"/> -ANNO-IDEN	Identification tags
<input type="checkbox"/> -ANNO-KEYN	Keynotes
<input type="checkbox"/> -ANNO-LABL	Labels
<input type="checkbox"/> -ANNO-LEGN	Legends, symbol keys
<input type="checkbox"/> -ANNO-MARK	Markers, break marks, leaders
<input type="checkbox"/> -ANNO-NOTE	Notes
<input type="checkbox"/> -ANNO-REVC	Revision clouds
<input type="checkbox"/> -ANNO-REVS	Revisions
<input type="checkbox"/> -ANNO-SCHD	Schedules
<input type="checkbox"/> -ANNO-SYMB	Reference symbols
<input type="checkbox"/> -ANNO-TEXT	Text
<input type="checkbox"/> -ANNO-TABL	Data tables
<input type="checkbox"/> -ANNO-TITL	Drawing or detail titles
<input type="checkbox"/> -ANNO-TTLB	Border and title block

SHEET IDENTIFICATION

3. General Requirements

- Each sheet must have a corresponding image and .dwg file. **The sheet and the digital files must all follow the same naming convention.**

3.2 Sheet Identification

- The sheet identification format contains four alphanumeric characters in a specific sequence. The sheet identifier consists of three components: the discipline designator, the sheet type designator, and the sheet sequence number.

Example SF-302

A	A		N	N	N
S	F	-	3	0	2
Discipline Designator(s)			Sheet Type Designator	Sheet Sequence Number(s)	

- The **Discipline Designator** indicates the category of subject matter contained on the specified layer or file name. The Discipline Designator is an alpha one or two-character field. The first character is the discipline character, and the second character is an optional modifier. See section 2.2 for list.
- The **Sheet Type Designator** is a single numerical character that identifies the sheet type. All sheet types may apply to all discipline designators. It is not necessary to use all the sheet types for a project or within a discipline.

SHEET TYPE DESIGNATORS	
0	General (symbols legend, notes, etc.)
1	Plans (horizontal views and combination Plan & Profile)
2	Elevations and Profiles (vertical views)
3	Sections (sectional views, wall sections)
4	Large-Scale Views (Scaled up reproductions of plans, elevations, Δ or sections that are not details)
5	Details
6	Schedules and Diagrams
7	User Defined (for types that do not fall in other categories, including typical detail sheets)
8	User Defined (for types that do not fall in other categories)
9	3D Representations (isometrics, perspectives, photographs)

- The **Sheet Sequence Number** is a two-digit number that identifies each sheet in a series of the same discipline and sheet type. Sequence numbering starts with 01; sheet number 00 is not permitted. The first sheet of each series is numbered 01, followed by 02 through 99.

IMAGE FILE CREATION

4. Overview

- All image files must match in scale and content so that CAD = PDF = TIFF
- Ensure the drawings adhere to the guidelines presented in this document, including:
 - o Title Block Requirements in section 2.3
 - o Sheet Identification Requirements in section 2.4
 - o Use Disclaimer Requirement in section 2.8
- Include a drawing index (see appendix D) containing filenames and sheet numbers for each submittal. This ensures the completeness of the drawing set and assists in archival procedures.
- Name each file with the following convention: the sheet number first, followed by the title of the drawing. (Example: A-1 First Floor Plan)

4.1. TIFF Image Creation Requirements

- Produce TIFFs using LZW lossless data compression. This ensures that the original data of each image will be perfectly reconstructed.
- **Resolution:** Create TIFF images using a resolution of 300ppi at original size. Ideally a 24x36 drawing should have a pixel ratio of 7200 x 10800.
- **Bit depth:** Use 8-bit depth for color and grayscale TIFF images.

4.2. TIFF Image Creation

- **Create a TIFF from CAD**, AUTODESK® AUTOCAD® recommends:
 - o At the Command prompt, enter TIFFOUT.
 - o In the Create Raster File dialog box, select a folder and enter a file name. Click Save.
 - o The *.Tiff* extension is appended to the file name.
 - o Select the objects you want to save.
- **Create a TIFF from PDF**
 - o Click on File > Export to... > Image > TIFF
 - o Save as TIFF

BUILDING INFORMATION MODEL (BIM) STANDARDS

5. Overview

Northeastern University does not prescribe a project execution plan for BIM, however, if models are produced for a Northeastern University project, it should be submitted at project closeout with other deliverables. BIM standards continue to evolve, and while no one standard can be applied to all types of projects, there are basic standards to ensure consistency of project deliverables.

5.1. Guidelines

- Submit all BIM models as Revit file format.
- The *U.S. National CAD Standards-V6* recommends the following:
 - o All model files within a project should share the same coordinate system.
 - o All model files within a project should share coordinated units and unit tolerance.
 - o All model files within a project should share the same basic level names and vertical reference datum.
 - o Model(s) should be free of any unused or unnecessary views, links, references, or temporary content. All links or references should maintain portability and reusability (i.e. use relative paths and avoid embedding or binding content).
 - o Model(s) should be free of any erroneous and/or duplicate geometry that cause errors in quantities (i.e. two identical chairs placed in the exact same location in the model may appear fine but will be an error in quantities). This also applies to content in aggregate where quantities should not be duplicated when derived from a collection of models that represent the building.
 - o Model(s) should be free of excessive warnings or errors identified by the BIM software. Exceptions should be documented and distributed with model(s).
 - o One composite model per building should be provided. Separate model files (i.e. discipline specific or separated by level, etc.) are insufficient when BIM is a deliverable. A holistic composite model is necessary even if the composite model is only used as a container for links and/or references (i.e. a means of packaging all related files for delivery).
 - o Contract (Construction) Documents should be derived from the model(s). Avoid drafting 2D lines for modeled data but rather use 2D linework to embellish the model when necessary to convey intent. Sections and Details and other enlarged and more detailed views should utilize model content to the greatest extent possible.

SUBMITTING ELECTRONIC PROJECT DELIVERABLES

6. Uploading Files to e-Builder Folders (preferred method)

- **All electronic drawing files must be accompanied with a drawing index (Appendix D).**
- Northeastern University utilizes the project management system, “e-Builder,” to deliver capital projects for Northeastern University clients and its use is required of all vendors that provide services for capital projects.

Electronic project deliverables are to be uploaded into e-Builder as follows:

- Upload files into Documents > 07 Construction Closeout folder
 - o Upload drawings into Documents > 07 Construction Closeout > 01 As-Builts folder
 - o Upload Certificate(s) of Occupancy into Documents > 07 Construction Closeout > 02 Certificate of Occupancy folder
 - o Upload specifications, final commissioning report, certificate of inspection(s), land surveys, and geotechnical reports into the Documents > 07 Construction Closeout > 03 Close-Out Documents.
 - o Upload O&Ms into Documents > 07 Construction Closeout > 04 Operating Manuals folder.
 - o If warranties are not included in the O&M manual, upload warranties into the Documents > 07 Construction Closeout > 05 Warranties folder.
- Permits may be uploaded into Documents > 06 Construction > 06 Permits.

6.1. Other Methods for Submitting Files

- **All electronic drawing files must be accompanied with a drawing index (Appendix D).**
- Project closeout electronic files may be emailed to [FacilitiesArchive@Northeastern University.edu](mailto:FacilitiesArchive@NortheasternUniversity.edu)
- Project closeout electronic files may be loaded onto portable storage device and delivered to Northeastern University project manager.

APPENDICES

- A. Regulatory Approvals Checklist
- B. Deliverables Checklist
- C. Quality Assurance Checklist
- D. Drawing Index

A. REGULATORY APPROVAL CHECKLIST

Boston Redevelopment Authority – BRA

- Letter of Intent
- Project Notification
- Boston Zoning Commission Approval
- Boston Civic Design Commission Approval
- BRA Board Approval
- Cooperation Agreement
- Certificate of Compliance for ISD
- Certificate of Consistency for ISD
- Project Impact Report
- Article 32 Groundwater Conservation

Boston Transportation Department – BTM

- Transportation Access Plan Agreement (TAPA)

Mass Environment Protection Agency - Mass DEP- Chapter 91 Waterfront

- Application
- Permit

Mass Historical Commission – MHC

- Design Review/ Letter of Approval

Mass Architectural Access Board – MAAB

- Variance documents

B. DELIVERABLES CHECKLIST

REQUIRED DOCUMENTS

- As-built drawings
 - PDF
 - CAD
 - TIFF
- Operations and Maintenance Manuals (O&Ms)
 - PDF
 - Hardcopy
- Warranties
 - PDF
- Specifications
 - PDF – as book
 - TIFF, PDF, CAD – as drawing
- Final Commissioning Report, as applicable
 - PDF
- Regulatory Approvals, all as applicable
 - PDF
- Land Survey, as applicable
 - TIFF, PDF
- Environmental Reports, as applicable
 - PDF – as document
 - TIFF, PDF – as drawing

B. QUALITY ASSURANCE CHECKLIST

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- Title Block Requirements [section 2.3.]
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- e-Builder [section 6]



Northeastern University

Facilities Division

CONSTRUCTION WASTE MANAGEMENT MONTHLY PROJECT PROGRESS REPORT

NU Project Number:
NU Project Title:
Project Address:

Contractor:
Subcontractor:
Month/Year:

Container or ticket number	Haul Date	Total Tonnage (sum of concrete, metal, wood, other and residual)	Concrete Tonnage (diverted)	Metal Tonnage (diverted)	Wood Tonnage (diverted)	Gypsum Tonnage (diverted)	Paper and Card-board Products Tonnage (diverted)	Total Diverted Tonnage	Residual or Trash Tonnage or ADC	% Recycled/ Diverted Material	Name and location material was sent to. (If Other Recycled Material please also include description of material (IE Clean Green, Drywall, Glass, Etc.)	Comments. If landfilled, please explain why material was not diverted. If large amount appears as "Other" please explain contents.
TOTALS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!		

CONCRETE	
METAL	
WOOD	
GYPSUM	
PAPER/CARDBOARD	
SUBTOTAL DIVERTED	
RESIDUAL/TRASH	
SUBTOTAL	0.00
% of Recycled Material	#DIV/0!

**NORTHEASTERN UNIVERSITY
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

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ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between the Owner and Contractor (hereinafter the "Agreement"), Conditions of the Contract ("General, Supplementary and other Conditions", if any), 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/Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements). In the event of conflict or discrepancies among the Contract Documents, the documents shall be construed according to the following, the order of precedence shall be as follows:

- A. Written amendments to the Owner-Contractor Agreement signed by both parties - those of a later date shall take precedence over those of an earlier date;
- B. Change Orders - those of a later date shall take precedence over those of an earlier date;
- C. The Owner-Contractor Agreement;
- D. Construction Change Directives;
- E. Clarifications;
- F. Special Conditions;
- G. General Conditions;
- H. Specifications;
- I. Schedules
- J. Details - large scale control over small scale drawings;
- K. Drawings;
- L. Figured Dimensions; and
- M. Drawings not dimensioned.

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 Architect/Engineer and Contractor, (2) between the Owner and a Subcontractor of any tier or (3) between any persons or entities other than the Owner and Contractor. The Architect/Engineer shall; however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect/Engineer's duties.

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 or by separate Contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, 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, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT SITE

The Project Site, sometimes referred to as the Site, consists of that area within the property limits or limit of Work designated on the plans.

1.2 EXECUTION, CORRELATION, AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect/Engineer shall identify such unsigned Documents upon request. One of the signed sets shall be deposited with the Architect/Engineer. The Owner and the Contractor shall each retain one signed set.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and inspected the Drawings, Specifications, all Contract Documents and other information and Documents provided by the Owner to the Contractor.

1.2.3 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 intended results. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others. The Contractor has informed the Owner and hereby represents to the Owner, that it has had extensive experience in constructing projects similar to the Project called for in the Construction Documents, and that it is well acquainted with the components that are properly and customarily included within such a project. To the extent, if at all, that the Contract Documents contain ambiguities, discrepancies, errors or omissions, and to the extent, if at all, that there are discrepancies between the Contract Documents and the Project Site and surveys (collectively referred to in this Section 1.2.3 as "errors and omissions"), the Contractor hereby waives any claim for additional compensation or damages for additional time resulting from any errors or omissions to the extent that the Contractor has actually observed, or with the exercise of reasonable care should have observed, those errors and omissions and failed to report them to the Owner and the Architect/Engineer prior to executing the Agreement.

“Indicated”, where used in the Specifications, means indicated on the Drawings.

“Provide”, where used in the Specifications, means to both furnish and install the items referenced.

“Furnish”, where used in the Specifications, means to deliver to job site in state specified and under terms and conditions specified.

“Similar” and “Typical”, where used on the Drawings, refer to the general sense, rather than the strictly identical. “Similar”, where used in the Specifications, means a close proximity, as close as possible within the performance requirements.

Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by written addendum to the Contract.

- 1.2.4** 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 the Work to be performed by any trade. The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the Work of the mechanical, electrical, plumbing, fire protection, fire alarm and other specialized trades, and to all of the sections of the Specifications, and shall perform all work reasonably inferable there from as being necessary to produce the indicated results.
- 1.2.5** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.2.6** All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.
- 1.2.7** Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of Construction Documents, except where otherwise indicated.
- 1.2.8** Where no explicit quality or standards for materials or workmanship are established for work, such work is to be of the highest quality for the intended use and consistent with the quality of the surrounding work and of the construction of the Project generally.
- 1.2.9** All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturer’s written or printed directions and instructions unless otherwise indicated in the Contract Documents.
- 1.2.10** The mechanical and electrical, plumbing, fire protection, fire alarm drawings are diagrammatic only, and are not intended to show exact physical locations or configurations of Work. Such Work shall be installed to clear all obstructions, permit proper clearances for the Work of other trades and present an orderly appearance where exposed. Exact locations of fixtures and outlets shall be as indicated on the Architectural Drawings before the Work is roughed in; Work installed without such information from the Architect/Engineer shall be relocated at the Contractor’s expense.
- 1.2.11** Test boring and soil test information included with the Contract Documents or otherwise made accessible to the Contractor was obtained by the Owner for use by the

Architect/Engineer in the design of the Work. The Owner does not hold out such information to the Contractor as an accurate or approximate indication of sub-surface conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed except as provided in Section 4.3.4.

1.2.12 Where Drawings indicate partial details, and remainder is in outline form, the parts or materials so indicated shall apply also to other similar portions of Work. Where ornament or other detail is indicated by starting only, such detail shall be continued, and shall apply to other similar parts unless otherwise stated.

1.2.13 The Contractor and the Owner agree that the Contractor shall carry on the Work and maintain its progress during the period when any action in a court of competent jurisdiction is pending and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

1.3 OWNERSHIP AND USE OF ARCHITECT/ ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 All Drawings, Specifications and other documents which are or become a part of the Contract Documents and any related or additional drawings or instructions prepared during construction shall be used only with respect to this Project and they are not to be used on any other project. The ownership of all Drawings and Specifications is as set forth in the agreement between the Owner and the Architect/Engineer. The Architect/Engineer and the Owner shall be held harmless and indemnified for any unauthorized re-use of the Drawings, plans or Specifications.

1.3.2 The Architect/Engineer will furnish the following number of copies of Drawings and Specifications:

- .1** 2 complete sets for the General Contractor. (The Architect/Engineer will furnish more if they are available.)
- .2** 2 sets of blackline prints for record drawings purposes.
- .3** Sufficient as necessary to obtain building and other permits.
- .4** Additional copies of Drawings will be provided, at Contractor's expense.

1.3.3 Alteration to plans or copies of parts thereof, by the Contractor or his agents, is not permitted, except as required for the record drawing sets.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document or (3) the titles of other documents published by the American Institute of Architects.

1.5 INTERPRETATION

1.5.1 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.

1.6 EXECUTION OF CONTRACT DOCUMENTS

1.6.1 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. The Contractor has evaluated and satisfied himself or will cause his Subcontractors to satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and physical conditions of the Project Site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) anticipated availability and costs of materials, tools and equipment, and (5) except as provided in Section 4.3.4, anticipated soil and subsurface conditions of the Project Site. The Owner shall not be required to pay any amount or make any adjustment in the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

ARTICLE 2

OWNER

2.1 DEFINITION

- 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 term “Owner” means the Owner or the Owner’s authorized representative.
- 2.1.2** The Owner upon reasonable written request shall furnish to the Contractor in writing information which is 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 at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 2.2.1** The Owner shall furnish to the Contractor (a) a survey showing the perimeter of the Project Site, and such other detail as is agreed upon in writing; (b) a copy of all easements or restrictions of record which affect the Project Site; and (c) all information available concerning the location of utilities on the Project Site which has been obtained by the Owner after inquiry of the appropriate utility companies and governmental authorities. The Contractor is solely responsible for verifying the precise location of utilities on the Project Site. Owner to provide control points that will be jointly agreed upon.
- 2.2.2** Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures for permanent changes in existing facilities.
- 2.2.3** Information or service under the Owner’s control shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of written request for such information or services.
- 2.2.4** Unless otherwise provided in the Contract Documents, the Contractor will be furnished free of charge at the Architect/Engineer’s office, all copies of Contract Documents as indicated in Section 1.3.2. If the Contractor requests delivery of such materials at a place or places other than the Architect/Engineer’s office, the Contractor shall reimburse the Architect/Engineer for packing and shipping costs incurred.

2.2.5 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails, in the sole judgment of the Owner, to correct defective work as required by Section 2.4 or fails to carry out the Work in accordance with the Contract Documents, the Owner by written notice to Contractor may, without prejudice to any other remedy the Owner may have, order the Contractor to stop the Work, or any portion thereof (and the Contractor shall not thereafter incur any further cost or expense therefor without the Owner's prior written approval) until the cause for such order has been eliminated or finally determined not to constitute a failure on the part of the Contractor to perform in accordance with the Contract Documents.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a five 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. In such case an appropriate Change Directive shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect/Engineer's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3

CONTRACTOR

3.1 DEFINITION

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 term "Contractor" means the Contractor or the Contractor's authorized representative. On projects in which the Owner enters into an Agreement with a Construction Manager, the term "Contractor" as used in these General Conditions and all other Contract Documents shall mean the Construction Manager.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Before starting the Work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Agreement, Conditions of the Contract, Drawings, Specifications, addenda and other Contract Documents and shall at once report to the Architect/Engineer any error, inconsistency or omission he may discover. Any necessary change shall be ordered as provided in Article 7, subject to the requirements of Section 1.2 and other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to the Architect/Engineer, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents using his experience as a Contractor, he should have reasonably discovered such, the Contractor shall bear all appropriate costs arising therefrom.

- 3.2.2** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect/Engineer at once.
- 3.2.3** The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.12.
- 3.2.4** The Contractor shall give the Architect/Engineer timely notice of any additional design drawings, Specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work.
- 3.2.5** The Contractor shall not proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Architect/Engineer as provided in Section 3.2.4. If the Contractor proceeds with such Work without obtaining further drawings or instructions, he shall correct Work incorrectly done at his own expense.

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. Subject to, and in accordance with the Contract Documents, the Contractor shall give timely written notice to the Architect/Engineer that any construction means, method, technique, sequence or procedure specified in the Contract Documents is not safe or suitable.

The Contractor or Owner shall not commit, nor permit, any act which would interfere with performance of work by other contractors or suppliers (including those hired by the Owner outside this contract).

- 3.3.2** The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and all other persons performing or supplying the Work.
- 3.3.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by any act or omission of the Architect/Engineer or Others in inspection, testing or approval of the work or Shop Drawings.
- 3.3.4** The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.
- 3.3.5** Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used on the Work, such mention is intended only to indicate that the operations of the Contractor shall be such as to produce at least the quality of Work implied by the operations described, but that the actual determination of whether or not the described operations may be safely and suitably employed on the Work shall be the responsibility of the Contractor, who shall notify the Architect/Engineer in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those mentioned in the Contract Documents. All loss, damage, liability

or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents, unless the Contractor has given timely notice to the Architect/Engineer in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and the Contractor has then been instructed in writing by the Owner to proceed at the Owner's risk.

- 3.3.6** Dependent Work: Wherever the Work of a Subcontractor ("dependent Work") is dependent upon the Work of other Subcontractors or Contractors ("supporting Work"), then the Contractor shall require the Subcontractor to:
- .1** Coordinate his Work with the dependent or supporting Work,
 - .2** Provide necessary dependent and supporting data and requirements,
 - .3** Supply and/or install items to be built into dependent Work of others,
 - .4** Make provisions for dependent Work of others,
 - .5** Examine dependent Drawings and Specifications for supporting and dependent Work,
 - .6** Examine previously placed dependent Work,
 - .7** Check and verify dimensions of previously placed supporting Work,
 - .8** Notify the Contractor of previously placed supporting Work or dimensions which are unsatisfactory or will prevent a satisfactory installation of his Work,
 - .9** Not to proceed with his Work until the unsatisfactory dependent conditions have been corrected.

Installation of Work by a Subcontractor in any given area shall constitute acceptance by the Subcontractor and Contractor of the previously placed dependent 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. The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified.
- 3.4.2** If the Contractor desires to substitute a product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may propose to do so in a written request delivered to the Architect and the Owner setting forth the following:
- .1** Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution and relevant materials prepared as part of pre-construction services.
 - .2** Reasons why the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable.
 - .3** The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable.
 - .4** The adjustment, if any, in the Contract Time and any milestone dates in the event the substitution is acceptable.
 - .5** The Contractor shall submit a written request for any substitution, together with complete substantiating data and information, to the Architect and the Owner not later than thirty (30) days prior to the time that such substitute product or method would be incorporated into the Work. No substitution shall be made by the Contractor, or considered or approved by the Architect or the Owner, without the Contractor's submittal of a written request with respect to such

substitution as provided above. The Contractor may make a substitution only: (1) upon the written approval of the Architect and the Owner of such written request therefor after evaluation by them of such request and all accompanying data and information; and (2) in accordance with a Change Order.

.6 Any written request for a substitution by the Contractor shall be a representation by the Contractor to the Owner that: (1) the Contractor has investigated the product or method proposed to be substituted and found it to be equivalent or better than the product or method specified in the Contract Documents, and (2) except to the extent otherwise expressly stated in such request, the Contractor is waiving any Claim for additional costs related to such substitution.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect/Engineer that materials and equipment furnished under the Contract will be of good quality and new and/or recent manufacture unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 The Contractor further agrees that each Subcontract shall contain a guarantee of the work performed thereunder in the same form as the above stated guarantee of Contractor. Included in said guarantee shall be the statement that it shall be enforceable directly by the Owner, if the Owner so elects. The guarantee of any Subcontractor shall not relieve the Contractor of its guarantee as set forth above and the Owner may look to the Contractor, directly, and in the first instance to correct any defects in the Work.

3.5.3 The warranty provided in this Section 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

3.5.4 The Contractor shall procure and deliver to the Architect/Engineer, no later than the date claimed by the Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the Warranty will be performed in accordance with its terms and conditions.

3.5.5 All warranties under this Section 3.5 shall commence as of the date of Substantial Completion of the entire Work, and shall continue for a period of no less than one (1) year; provided, however, that longer term warranties shall be provided if specified in the Contract Documents. In no event shall the commencement of the use of building systems in connection with system testing and trial operations prior to the actual commencement by Owner of beneficial use of the entire Project be deemed to commence the term of any warranty, it being understood and agreed that any such warranty shall not commence until the Owner has actually commenced beneficial use of the entire Project and that Contractor shall obtain, at no additional cost to Owner, any extended warranties required in connection therewith.

3.5.6 The Contractor agrees to assign to the Owner, at the time of Substantial Completion of the Work, all manufacturer's warranties required by the Contract Documents relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve all such manufacturer's warranties.

3.5.7 Contractor agrees to correct any Work that does not conform to the Contract Documents in accordance with Section 12.2 of these General Conditions.

3.6 TAXES

3.6.1 Neither the Contractor nor any Subcontractor, without the written approval of the Owner, shall charge taxes to the Owner and no bid shall contain any such charges. The Owner is a non-profit organization with a tax exempt status under Internal Revenue Code 501(c)(3) (Tax exemption No. E041679980).

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit, certificate of occupancy, curb cut permits, street excavation permits, sewer connection permits and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work and lawful use and occupancy of the Work. The Contractor shall keep all such original permits, licenses and inspection reports on Site and provide the Owner with copies of the originals. The Owner shall be notified immediately of any delay in obtaining any permit, license or inspection.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect/Engineer and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs and shall pay all Owner's damages.

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 against which the Contractor makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1** Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work.
- .2** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts.
- .3** 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 and not in the allowances.

- .4 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.2 and (2) changes in Contractor's costs under Section 3.8.2.3.

3.9 SUPERINTENDENCE

- 3.9.1** The Contractor shall employ a competent superintendent licensed in the Commonwealth of Massachusetts and the City of Boston and necessary assistants who shall be in attendance at the Project Site full time during the progress of the Work until the date of Substantial Completion, and for such additional time thereafter as the Architect/Engineer may determine to be necessary for the expeditious completion of the Work. The superintendent shall be satisfactory to the Owner and the Architect/Engineer and shall not be changed except with the consent of the Owner and the Architect/Engineer unless the superintendent ceases to be in the employ of the Contractor. The superintendent shall represent the Contractor and all notices and other communications given to the superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing upon request. The Owner shall have the right, which shall be exercised in a reasonable manner, to approve and, if necessary, require the replacement of, the superintendent employed by the Contractor.
- 3.9.2** The Contractor shall retain or use a competent Engineer, acceptable to the Architect/Engineer, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the Site and shall establish sufficient lines and grades for the construction of associated work such as, but not limited to roads, utilities, and Site grading. The Engineer or Land Surveyor shall certify as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries.
- 3.9.3** The Contractor shall establish the baseline building grades, lines, levels, column, wall and partition lines required by the various Subcontractors in laying out their Work.
- 3.9.4** The Contractor shall coordinate and supervise the Work of all Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.
- 3.9.5** The Contractor shall arrange for and attend job meetings with the Owner and Architect/Engineer and such other persons as the Owner or Architect/Engineer may from time to time wish to have present. The Contractor shall be represented by a principal (if requested), project manager, or other authorized main office representative, as well as by his own superintendent. An authorized representative of any Subcontractor or the Subcontractor shall attend such meetings if his presence is requested by the Architect/Engineer or the Owner. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

- 3.10.1** The Contractor shall prepare and submit to the Architect/Engineer for approval a progress schedule as described in Sections 8.2.3 through 8.2.9.

- 3.10.2** The Contractor shall prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.
- 3.10.3** The Contractor shall conform to the most recent schedules.
- 3.10.4** The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. The Construction Schedule shall be updated each month to reflect actual conditions (such updates are sometimes referred to in these General Conditions as "progress reports"). In the event any progress report indicates delays in achievement of any elements of the Work on the critical path of construction and such delays are not attributable to the acts or failures to act of the Owner or the Architect, or to other causes beyond the Contractor's control for which extensions of time are available under Section 8.3, the Contractor shall propose in written form an affirmative plan (the "Corrective Plan") to correct the delay, including overtime and/or additional labor, if necessary. The Corrective Plan shall indicate the date by which the progress of the Work will comply with the Construction Schedule, and shall be subject to the approval of the Owner and the Architect. In no event shall any progress report or Corrective Plan constitute an adjustment in the Contract Time unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.
- 3.10.5** In the event (1) that the performance of any element of the Work on the critical path of construction has not progressed or reached the level of completion required by the Construction Schedule owing to the fault or neglect of Contractor, any Subcontractor or any other party for whom Contractor is responsible, and (2) the progress of the Work is not brought back into compliance with the Construction Schedule on the date proposed by the Corrective Plan, or the Contractor otherwise fails to comply with the Corrective Plan, the Owner shall have the right to order the Contractor to take corrective measures to expedite the progress of the Work, including, without limitation, (a) working additional shifts or overtime, (b) supplying additional manpower, equipment and facilities, and (c) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule.
- .1** The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5, except to the extent (if any) that the delay which precipitated the Owner's instructions to employ such Extraordinary Measures did not result from the fault or neglect of Contractor, any Subcontractor or any other party for whom Contractor is responsible.
- .2** The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as reasonably necessary to ensure that the Contractor's performance of the Work complies with the elements of the Work on the critical path of construction set forth in the Construction Schedule.

3.11 RECORD DRAWINGS AND MAINTENANCE MANUALS

- 3.11.1** The Contractor shall at all times keep at the Project Site one copy of all Drawings and Specifications, addenda, change orders, approved shop drawings and approved samples together with copies of all building, electric, plumbing and public safety codes applicable to the Work. All such material shall be made available to the Architect/Engineer and the Owner.

- 3.11.2** The Contractor shall keep at the Site at all times a separate set of blackline prints on which shall be noted neatly, accurately and promptly, as the Work progresses, all significant changes in structure, wall sections and floor plans, as well as any other changes the Architect/Engineer may specifically direct the Contractor to record.
- 3.11.3** The Plumbing Subcontractor, the Heating and Ventilating Subcontractor, the Fire Protection, the Fire Alarm and the Electrical Subcontractor shall each keep at the Site at all times a separate set of blackline prints of the drawings showing his Work, on which shall be noted neatly, accurately and promptly, as the Work progresses, the exact physical location and configuration of the Work as actually installed, including any revisions or deviations from the Contract Drawings.
- 3.11.4** The Contractor shall maintain record drawings of all work outside the building or buildings, noting neatly, accurately and promptly, as the Work progresses, the actual physical locations and configurations of the Work as installed. The record drawings shall show surface improvements and underground Work, and shall indicate and be referenced to permanent, tangible reference marks. Horizontal dimensions locating such improvements or Work shall be accurate to $\pm 1/2$ foot, with significant changes in vertical dimensions indicated to accuracy of ± 1 inch and significant changes in elevation indicated to accuracy of ± 0.1 foot. The invert elevations of all gravity-operated utility lines and drainage structures shall be shown, accurate to ± 0.01 foot. Top elevations of other underground utilities which are level or uniformly pitched shall be shown, accurate to $\pm .1$ foot at their extremities. Underground utilities that generally follow the contours of existing or finished grades, or that for some other reason are not continuously level or uniformly pitched, shall be located by (1) relating utilities in question to finish grades by dimensions, accurate to within 10%, taken from points at tops of the utilities, (2) spot elevations accurate to within 0.1 foot, and, (3) descriptive notes, or by other satisfactory means, as required to provide a reasonably descriptive and accurate record of the Work as constructed.
- 3.11.5** At the completion of the Work, the Contractor shall arrange through the Architect/Engineer to obtain at the Contractor's expense, Electronic CADD drawings in AutoCAD version 2000 or higher and reproducible copies of the drawings required by Sections 3.11.2 through 3.11.4. The Contractor, the Subcontractors and the Engineer or Land Surveyor shall revise these reproducible copies neatly, legibly and in accordance with the standards of drafting of the original drawings, so as to show clearly the way in which the Work was actually constructed. The Engineer/Land Surveyor shall provide, in the same format as the original drawings, any additional sheets required to record his Work.
- 3.11.6** The Contractor shall prepare and deliver to the Architect/Engineer one copy of an operating and maintenance manual and three copies to the Owner for the project. The manual shall contain full information for each item of mechanical, electrical or other operating equipment, copies of warranties therefore, schematic diagrams of control systems, circuit directories for each electric and communications panelboard and charts showing the tagging of all valves. The Contractor shall obtain and include in the manual reduced scale photocopies of the revised electrical, mechanical and plumbing drawings referred to in Section 3.11.3. The manual shall also contain complete paint color schedules, paint color samples and light bulb schedule. Each volume of the manual shall be clearly indexed, and shall include a directory of all Subcontractors and maintenance contractors, indicating the area of responsibility of each, and the name and telephone number of the responsible member of each organization. The volumes shall be bound in multi-"D" ring binders with black plastic covers. Typewritten, drawn or photographic material shall be protected by clear plastic sleeves.

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 of any tier, 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 illustrate materials or equipment for some portion of the Work.
- 3.12.3** Samples are physical examples of 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Section 4.2.6.
- 3.12.5** The Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents 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. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.
- 3.12.6** The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer. Such Work shall be in accordance with approved submittals.
- 3.12.7** By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that he has determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data or Samples and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data and Samples, the Architect/Engineer shall be entitled to rely upon the Contractor's representation that such information is correct and accurate.
- 3.12.8** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and the Architect/Engineer has given written approval to the specific 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/Engineer'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/Engineer on previous submittals. Unless such written notice has been given, the Architect/Engineer's approval of a re-submitted Shop Drawing shall not constitute approval of any changes not requested on the prior submission.

- 3.12.10** Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.
- 3.12.11** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 3.12.12** The Contractor shall submit one reproducible sepia or diazo copy of each Shop Drawing. Drawings shall be rolled on mailing tubes, not folded. He shall submit six (6) copies of manufacturer's Product Data unless otherwise instructed by the Architect/Engineer. Each submission shall be accompanied by a transmittal form in a format acceptable to the Architect/Engineer.
- 3.12.13** Samples shall be identified by a permanent label giving the manufacturer's name, trade name, material type, intended application, project name, Contractor's name and Subcontractor's or supplier's name and date of submission. Manufacturer's installation directions shall be provided with each sample. Each submission shall be accompanied by a transmittal form in a format determined by the Architect/Engineer. The Contractor shall prepay all transportation costs and deliver samples to the Architect/Engineer's office, job site or testing laboratory as directed by the Architect/Engineer. Samples will not be returned unless return is requested at the time of submission; all packing and transportation costs for the return of samples shall be paid by the Contractor.
- 3.12.14** Samples shall be of adequate size to permit proper evaluation of the material by the Architect/Engineer. Where variations in color, texture, dimensions or other characteristics are to be expected, the Contractor shall submit samples showing the maximum range of variation. Materials exceeding the range of variation of the approved samples shall not be used on the Work.
- 3.12.15** In order to permit coordinated selection of colors and finishes, the Contractor shall deliver samples of all items of interior finish to the Architect/Engineer at one time. Samples of such materials will not be accepted if submitted individually.
- 3.12.16** If both Shop Drawings and Product Data or Samples are required for the same item, the Architect/Engineer may require both to be submitted before approving either.
- 3.12.17** No mechanical or electrical engineer or other consultant to the Architect/Engineer shall have authority to approve Shop Drawings, Product Data or Samples unless the Architect/Engineer has notified the Contractor in writing that such authority has been delegated by him to such engineer or consultant.
- 3.12.18** No acceptance or approval of any Shop Drawing, Product Data or Sample, nor any indication or request marked by the Architect/Engineer on any Shop Drawing shall constitute an authorization for any increase in the Contract Sum. Any claim by the Contractor for such increase must be made in accordance with Section 7.2 before proceeding with the Work.

3.13 USE OF SITE

- 3.13.1** The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, the Contract Documents and permits or directions of the Architect/Engineer and shall not

unreasonably encumber the premises with his materials. Contractor will have continuous access to the Site so that it can perform the Work in an orderly, efficient, contiguous manner.

- 3.13.2** Notwithstanding the designation of contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. Trenching, utility work, site development, landscaping and all other Work, if required beyond such designated limits, shall be scheduled in such a manner as to cause or occasion a minimum of inconvenience or disturbance to or interference with the normal operations of the Owner, abutters and the public. The Contractor shall obtain the Owner's prior approval, such approval not to be unreasonably withheld, for such operations, prosecute such operations expeditiously and restore the affected area to its original condition immediately upon completion of such operations, unless otherwise specified herein.
- 3.13.3** All existing walks, roadways, paved or landscaped areas over which temporary driveways or walks are re-routed shall be restored to their original condition, immediately upon completion of the related phases or portions of the Work, unless otherwise specified herein.
- 3.13.4** Pumping, draining and control of surface and ground water shall be carried out so as to avoid endangering the Work or any adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof.
- 3.13.5** The Contractor shall not restrict or encumber access to the Owner's parking areas, loading ramps, docks, etc. in the vicinity of the Site nor shall he allow any Subcontractors, suppliers or others under his control to restrict or encumber such access, unless approved in advance by the Owner or the Owner's Director of Public Safety.
- 3.13.6** The employees of the Contractor, Subcontractors and all others under the control of the Contractor may not have parking available in the immediate vicinity of the Site. Areas where parking will be possible will be designated by the Owner or the Owner's Director of Public Safety.

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 properly together.
- 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 such construction by the Owner or a separate Contractor except with written consent of the Owner and of such separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate Contractor the Contractor's consent to cutting or otherwise altering the Work.
- 3.14.3** Unless authorized in writing by the Owner and the Architect, structural elements of the Work shall not be cut, patched, or otherwise altered or repaired. Existing work that is cut, damaged, disturbed or otherwise interfered with by the Contractor, a Subcontractor, or anyone for whom they are responsible shall be fully, properly and carefully repaired by the responsible Contractor or Subcontractor. All such repairs shall be completed in a first-class manner to the satisfaction of the Architect, and shall match similar existing adjoining work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. Immediately prior to the Architect/Engineer's inspection for Substantial Completion, the Contractor shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures, and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken and scratched glass and plastic shall be replaced by the Contractor at his expense, provided, however, that the Contractor shall be entitled to receive any amounts payable under the Owner's insurance as provided in Section 11.3, in respect to glass and plastic.

Small tools, computers, and computer equipment billed to the Project shall be turned over to the Owner upon completion of the Work or upon termination of the Agreement.

The Construction Manager shall submit a completed monthly waste stream report with each of its Applications for Payment using the form attached to the Owner-Contractor Agreement as **Exhibit N**.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect/Engineer access to the Work in preparation and progress wherever located.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect/Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect/Engineer.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, the Owner's representative, the property manager(s) and any lender or tenant of the Owner, and their respective directors, members of governing boards, officers, partners, employees, shareholders, members, managers, beneficiaries and agents (each an "Indemnitee," and collectively, the "Indemnitees") 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 (other than the Work itself), but only to the extent caused by the negligent acts or omissions or violations of applicable law or breach of this Contract on the part 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. The obligations of the Contractor under the foregoing indemnity shall include, to the fullest extent permitted by law, any and all claims (including attorneys' fees resulting therefrom) directly or indirectly arising or alleged to arise (1) out of the performance of or the failure to perform the Work, or the condition of the Work, the job site, adjoining land or driveways, or streets or alleys used in connection with the performance of the Work, and from any and all claims by workmen, suppliers or Subcontractors who are involved in the performance of the Work and (2) under any scaffolding, structural work or safe place law or any law with respect to the protection of adjacent landowners. The foregoing shall not be construed to negate, abridge, deprive or reduce any other action, right, remedy or obligation of indemnity otherwise available to any Indemnitee under the Contract Documents, at law, in equity or otherwise. The term "Work" for purposes of this Section 3.18 means the obligations undertaken by the Contractor pursuant to the Contract Documents. Work includes, unless specifically excepted, the furnishing, installation and construction, as applicable, of all material, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, insurance, taxes and all other services, facilities, and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also includes that which is produced, constructed or built pursuant to the Contract Documents.

- 3.18.2** With respect to any claim against any Indemnitee 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 any Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 3.18.3** To the fullest extent permitted by law, the Contractor shall further indemnify, defend and hold harmless the Indemnitees from and against any and all claims and liens from the Contractor's Subcontractors and suppliers and from lower level Subcontractors and employees or agents of any of them arising out of alleged or actual non-payment, insufficient payment or late payment as required under the applicable Subcontract or purchase order of amounts owed for labor, materials, supplies, equipment or services provided in connection with the Project, unless such claims or liens result from the failure of the Owner to make payments to the Contractor as provided for in the Contract Documents.
- 3.18.4** To the fullest extent permitted by law, the Contractor shall further indemnify, defend and hold harmless the Indemnitees from and against any and all claims and shall bear any and all costs, damages and expenses of any Indemnitee suffered, incurred or arising from the failure of the Contractor, the Contractor's Subcontractors, lower level Subcontractors and employees or agents of any of them to conduct the Work in accordance with applicable laws, statutes, ordinances, rules and regulations and lawful orders and other requirements of any governmental authority.
- 3.18.5** The Contractor shall bear any and all reasonable expense incurred by any Indemnitee because of any claim or other matter indemnified against hereunder, including without limitation, attorneys' and consultants' fees and expenses, court costs, and costs related to the defense of, or preparing for the defense against, any such claim. If any such claim has not been settled or discharged or bonded at the time of final completion of the Work, and if such claim is not covered in full by a policy of insurance then in effect from a reputable and financially sound insurance company which has not declined or reserved the right to decline coverage of such claim, the Owner may withhold an amount equal to two hundred percent (200%) of the outstanding claim until any such claim is paid or settled or the Contractor provides a bond, acceptable to the Owner, to satisfy such claim.

- 3.18.6** Any Indemnitee, at its election and at its expense, may defend against or settle any claim that is not defended by any of the Contractor's insurance providers, or at the request of any such Indemnitee, the Contractor shall assume the defense of any such claim on behalf of such party, provided, however, that any attorney employed in such defense must be reasonably satisfactory to such indemnified party and such attorney shall obtain the consent of such party prior to effecting any settlement of a claim, such consent not to be unreasonably withheld, conditioned or delayed.
- 3.18.7** The Contractor shall pay any judgment finally awarded in any claim that is brought against any Indemnitee and that is covered by the Contractor's indemnity herein, provided that the Contractor has participated in the defense thereof, and shall pay any amounts payable in settlement or compromise of any such claim approved by the Contractor, such approval not to be unreasonably withheld, conditioned or delayed.
- 3.18.8** In the event that the Contractor is requested but refuses to honor its indemnity obligations hereunder, then the Contractor shall, in addition to its other obligations, pay the cost of bringing any action to enforce the Contractor's indemnity obligations, including, without limitation, reasonable attorneys' and consultants' fees, expenses and court costs, to the party requesting such indemnity.
- 3.18.9** The obligations of the Contractor under Section 3.18.1 shall not extend to the liability of the Owner's Architect/Engineer and consultants, or their agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change orders, Construction Change Directives, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect/Engineer, the Architect/Engineer's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.
- 3.18.10** The Contractor agrees to include the indemnity provisions substantially the same as those set forth in this Section 3.18 in all its subcontracts so as to protect the Owner from any claims or damages arising out of or caused by any Subcontractor's work on the Project.

3.19 CERTIFICATES

- 3.19.1** The Contractor, if required by Specifications or at the Architect/Engineer's request, shall furnish an affidavit from manufacturer certifying that materials or products delivered to the Project meet the requirements specified. Such certifications shall not relieve the Contractor from responsibility of complying with requirements in the Contract Documents.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT/ENGINEER

- 4.1.1** The Architect/Engineer is the person lawfully licensed to practice architecture/engineering or an entity lawfully practicing architecture/engineering or an entity lawfully practicing architecture/engineering identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative.

- 4.1.2** Duties, responsibilities and limitations of authority of the Architect/Engineer as set forth in the Contract Documents shall not be modified or extended without written consent of the Owner and the Architect/Engineer.
- 4.1.3** In case of termination of employment of the Architect/Engineer, the Owner shall appoint an architect/engineer against whom the Contractor makes no reasonable objection and whose status under the Contract documents shall be that of the former architect/engineer.

4.2 ARCHITECT/ENGINEER'S ADMINISTRATION OF THE CONTRACT

- 4.2.1** The Architect/Engineer will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Section 12.2. The Architect/Engineer will advise and consult with the Owner. The Architect/Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.
- 4.2.2** The Architect/Engineer will visit the Site at intervals appropriate to the stage of construction, or as otherwise agreed by the Architect/Engineer in writing, but at least weekly, and at least at such intervals as may be required by any governmental regulatory agency having jurisdiction over the Project, to familiarize himself with the progress and quality of the Work. The Architect/Engineer agrees to attend weekly job site meetings to determine if the Work is proceeding in accordance with the Contract Documents. However, the Architect/Engineer will not be required to make exhaustive or continuous on-Site inspections. On the basis of his on-Site observations as an architect/engineer, he will promptly keep the Owner informed of the progress of the Work and will use its best efforts to guard the Owner against defects and deficiencies in the Work; provided however, that no delay by the Architect/Engineer in so advising the Contractor shall in any way limit or prejudice the rights of the Owner with respect to such defect. If the Architect/Engineer becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, he shall give prompt written notice thereof to the Owner and Contractor.
- 4.2.3** The Architect/Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents. The limitation of the Architect/Engineer's liability shall not apply to the extent that the failure of the other parties to properly perform their aspects of the Work would not have occurred if the Architect/Engineer had properly performed his obligations hereunder.
- 4.2.4** The Owner and Contractor shall endeavor (but shall in no event be required) to communicate with each other through the Architect/Engineer about matters arising out of or relating to the Contract, and copies of any written communications to the Architect shall be sent to the Owner. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer, with copies of any written communications being sent to the Owner. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.
- 4.2.5** The Architect/Engineer shall review Contractor's Applications for Payment and advise the Owner as to matters which are consistent with Architect/Engineer's observations and actual knowledge of Contractor's Work.

- 4.2.6** The Architect/Engineer will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.1 through 13.5.3, whether or not such Work is fabricated, installed or completed. Special inspection or testing shall be performed only with written approval of the Owner.
- 4.2.7** The Architect/Engineer 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. Such review, approval, or other appropriate action must be taken within a reasonable time frame as required for timely progress of the work. Such time frame shall be communicated by the General Contractor in advance and as agreed to by the Architect/Engineer. The Architect/Engineer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect/Engineer'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/Engineer'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/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect/Engineer'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/Engineer shall review and comment on proposed Change Orders and prepare Change Orders as directed by the Owner and Construction Change Directives and may authorize minor changes in the Work as provided in Section 7.4. The Architect/Engineer may in consultation with the Owner, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be effected by Field Order or other notice to the Contractor, and provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or instructions without additional cost or extension of Contract Time. If the Contractor claims additional cost or time on account of such drawings or instructions, he shall give notice as provided in Section 7.3 or 8.3.
- 4.2.9** The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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, and will issue a final Certificate for Payment subject to approval of the Owner.
- 4.2.10** If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more project representatives to assist in carrying out the Architect/Engineer's responsibilities at the Site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

- 4.2.11 The Architect/Engineer shall furnish, upon Substantial Completion, a Certificate of Substantial Completion stating that the Work has been substantially completed in accordance with the Contract Documents.

4.3 CLAIMS AND DISPUTES

- 4.3.1 **Definition.** A “Claim” is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims, other than any Claim made on account of any failure by the Owner to make payment of any approved Application for Payment as required under the Contract Documents, must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 4.3.2 **Role of Architect/Engineer.** Claims, including those alleging an error or omission by the Architect/Engineer, may be referred by the Owner or the Contractor initially to the Architect/Engineer for action as provided in Section 4.4.
- 4.3.3 **Continuing Contract Performance.** 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 of undisputed amounts in accordance with the Contract Documents.
- 4.3.4 **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect/Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect/Engineer 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/Engineer shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect/Engineer has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect/Engineer for initial determination, subject to further proceedings pursuant to Section 4.4.
- 4.3.5 **Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect/Engineer, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect/Engineer, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner’s suspension or (7) other reasonable grounds, a Claim shall be filed in accordance with the procedure established herein.

- 4.3.6 Claims for Additional Time.** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. 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 and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- 4.3.7 Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Section 4.3.5 or 4.3.6.

4.4 DISPUTE RESOLUTION

- 4.4.1** The Owner and the Contractor agree that, for any dispute arising out of or related to the interpretation of or compliance with this Agreement or the completion of the Project, including but not limited to any Claim, responsible persons selected by each party will meet together (with the Architect/Engineer, to the extent necessary or desirable) and attempt to resolve the dispute between them within 21 days after the date on which such meeting is first requested in writing by either party. Such an in-person meeting shall be a condition precedent to the initiation of mediation or litigation, unless legal action must be filed in order to satisfy the requirements of any applicable statute of limitations, in which case such action shall be stayed until such in-person meeting has occurred. Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Section 9.10.4, may be subject to resolution by the Architect/Engineer and/or non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party as provided below.
- 4.4.2** If any Claim is referred to the Architect/Engineer by the Owner or the Contractor as provided in Section 4.3.2, the Architect/Engineer will review such Claim and take one or more of the following preliminary actions within ten (10) days of receipt of such Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect/Engineer expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect/Engineer may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.
- 4.4.3** If a Claim has been resolved, the Architect/Engineer will prepare or obtain appropriate documentation.
- 4.4.4** If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect/Engineer's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect/Engineer, (2) modify the initial Claim or (3) notify the Architect/Engineer that the initial Claim stands.
- 4.4.5** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect/Engineer, the Architect/Engineer will notify the parties in writing that the Architect/Engineer's decision will be made within seven (7) days, which decision shall be binding on the parties if they so agree in writing, but shall otherwise be subject to further negotiation, mediation and/or

litigation. Upon expiration of such time period, the Architect/Engineer will render to the parties the Architect/Engineer's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect/Engineer may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

- 4.4.6** If either party wishes to submit any Claim to non-binding mediation, the party requesting such mediation shall submit such request in writing to the other party and the American Arbitration Association. In such event, if the other party agrees in writing so to do, the parties shall endeavor for a period of time not to exceed thirty (30) days without the further written agreement of the parties to resolve such Claim by non-binding mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect.
- 4.4.7** 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. In the event that the parties execute a written agreement as a result of such mediation in settlement of any such Claim, such agreement shall be enforceable as a settlement agreement in any court having jurisdiction thereof.
- 4.4.8** Any Claim that cannot be resolved as provided above in this Section 4.4 shall be settled by litigation in a court of competent jurisdiction in the Commonwealth of Massachusetts.

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 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.
- 5.1.3** Each Subcontractor or Sub-Subcontractor shall be a person or organization pre-approved by the Owner, of established reputation, regularly engaged in specialized manufacture or installation of items required, who selects and combines materials involved, who maintains and makes available for this purpose a regular force of workmen skilled in such work, and who is licensed as an installer by manufacturer of products involved or is working under direct supervision of manufacturer. The term "Subcontractor", as used in the Specifications, may mean either a Subcontractor or Sub-Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1** As soon as practicable and before awarding any subcontracts, the Contractor shall notify the Architect/Engineer and the Owner in writing of the names of the

Subcontractors proposed for the principal parts of the Work, and for such other parts as the Architect/Engineer may direct, and shall not employ any to whom the Architect/Engineer or Owner may have a reasonable objection.

5.2.2 If, before or after the execution of the Agreement, a change of any Subcontractor on such list is required by the Architect/Engineer or by the Owner prior to the award of the relevant subcontract, the Contract Sum shall be increased or decreased by the difference in cost to the Contractor occasioned by such change. However, no increase in the Contract Sum shall be allowed unless the Contractor has acted promptly and responsively in submitting names as required. The Contractor shall not be required to employ any Subcontractor against whom he has a reasonable objection.

5.2.3 The Contractor shall not change a Subcontractor, person or entity previously selected without the prior consent of the Owner or if the Owner or Architect/Engineer makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate written agreement, written where legally required for validity, the Contractor shall require each Subcontractor to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so the 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. 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 which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall require each Subcontractor to agree in writing that, (1) in the event of any default of the Contractor, the Owner shall have the right, prior to termination of the Subcontract, and after notice by the Subcontractor to the Owner of such default, or (2) in the event of termination of the Contract, or both, to assume the Contractor's rights under the Contract.

The Owner shall have the right to review and approve all Subcontracts to ensure compliance with the provisions of this Section before execution thereof. Nothing in this Section shall create any third-party beneficiary relationship between the Owner and any Subcontractor.

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 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

- .2 Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

5.5 TERMS AND CONDITIONS APPLY TO SUBCONTRACTORS OF ALL TIERS

- 5.5.1** Any specific requirement in the Contract Documents that the responsibilities or obligations of the Contractor also apply to a Subcontractor or supplier is added for emphasis and is also hereby deemed to include Subcontractors and suppliers of any tier. The omission of a reference to a Subcontractor or supplier in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor or supplier of any tier under the Contract Documents or the applicable Subcontractor or supplier.

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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.
- 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operation on the Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contract 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 other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the 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.

6.2 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 separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the

Architect/Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgement that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

6.2.4 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Section 4.3 provided the separate contractor has reciprocal obligations.

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 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 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 as described in Section 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect/Engineer determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

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. The Contractor agrees that there shall be no Change Orders except those specifically requested and approved in writing by the Owner.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect/Engineer; a Construction Change Directive requires agreement by the Owner and Architect/Engineer 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/Engineer alone.

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

7.1.4 Upon request of the Owner or the Architect (with the Owner's approval), the Contractor shall submit to the Architect, in such form as the Architect may require, an accurate written estimate of the cost of any proposed extra Work or change in the Work. Such estimates shall be provided without cost to the Owner provided that the number of estimates requested is reasonable in the context of the Project as a whole. The Contractor's estimate shall indicate the description, quantity and unit cost of each item of material, and the number of hours of work and hourly rate for each class of labor, as well as all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials shall be shown if required by the Architect. The

Contractor shall promptly revise and resubmit such estimate if the Architect determines that it is not in compliance with the requirements of this Section, or that it contains errors of fact or mathematical errors. If required by the Architect, in order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor shall obtain and furnish to the Architect bona fide proposals from recognized suppliers for furnishing any material included in such Work. Provided the requests for such estimates are made reasonably in advance of the time they are needed, such estimates shall be furnished promptly so as to occasion no delay in the Work. The Contractor shall also state in the estimate any change in the Contract Time that would result from the change or extra work.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect/Engineer and signed by the Owner, Contractor and Architect/Engineer, stating their agreement upon all of the following:

- .1** A change in the Work;
- .2** The amount of the adjustments in the Contract Sum, if any; and
- .3** The extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

7.2.3 Should conditions (not reasonably foreseeable prior to commencement of the Work) encountered below the surface of the ground require that footings, foundations or other building or other structure be raised, lowered or changed, or if additional depth of excavation below the levels shown on the drawings is required in order to provide proper bearing for the building or other structure or for any permanent utilities on the Site or for permanent grading or other permanent Site Work, any change in the amount of excavation, dewatering, sheeting, protection, rock excavation, backfill, concrete or other structural Work, or any other Work permanently incorporated in the building shall be considered a change in the Work, and the Contract Sum shall be adjusted as provided in this Article, provided that such Work has been ordered in writing as provided in 7.1.1 above. All other costs resulting from subsoil or water conditions including, without limitation, costs on account of delay, administration, operations, temporary construction, cave-in or collapse of excavations, or pumping, shall be considered Cost of Work within the Guaranteed Maximum Price. The Contractor will promptly after the first observance of the conditions, notify the Architect/Engineer and allow the Architect/Engineer to inspect the conditions before the conditions are disturbed.

7.2.4 Unless expressly reserved therein, an executed Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any adjustments to the Contract Sum, and any and all adjustments to the Construction Schedule and/or Contract Time.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect/Engineer and signed by the Owner and Architect/Engineer, directing a change in the Work and stating a proposed basis for 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 7.3.7.
 - .5** Notwithstanding anything to the contrary contained in the foregoing provisions of this Section 7.3.3, markups for overhead and profit shall not exceed the percentages shown below.
 - (a) The Contractor's maximum allowable percentage for overhead and profit mark-ups of the cost of additional Work administered by Contractor, but actually and directly performed by Subcontractors or Sub-subcontractors, or involving materials actually and directly provided by suppliers, shall be the same percentage as the percentage used to calculate the "Construction Manager's Fee" as set forth in Section 5.1.1 of the Owner-Contractor Agreement.
 - (b) If such additional Work is actually and directly performed by the Contractor's own forces, the maximum allowable percentage for overhead and profit mark-ups of the Contractor's actual costs for labor (including labor burden), and materials and equipment shall be not more than ten percent (10%) for overhead, and for profit shall be limited to a total of not more than a percentage equal to the same percentage as that applicable to the Contractor's fee (as set forth in the Schedule of Values).
 - (c) For any Subcontractor or Sub-subcontractor, the maximum allowable percentage for overhead and profit mark-ups of the cost of additional Work that is administered by but not actually and directly performed by such Subcontractor or Sub-subcontractor shall be not more than five (5%) for overhead and profit.
 - (d) If such additional Work is actually and directly performed by any Subcontractor or Sub-subcontractor or involves materials directly supplied by any such supplier, the maximum allowable percentage for overhead and profit mark-ups of such Subcontractor's or Sub-subcontractor's or supplier's actual costs for labor (including labor burden), and materials and equipment (as applicable) shall be not more than ten percent (10%) for overhead and profit.
 - (e) The aggregate amount of all markups for overhead and profit for all Subcontractors, Sub-subcontractors and suppliers, regardless of the number of tiers thereof, shall not exceed fifteen percent (15%) of the actual cost of any such additional Work.
 - (f) Exceptions to the foregoing limitations will be considered by the Owner on a case-by-case basis and will be made in any case(s) where the Owner and the Contractor agree that an exception would be in the best interest of the Project.
 - .6** All Change Orders and Construction Change Directives shall provide itemized accounting that provides a detailed break-out of all materials and labor rates applicable thereto:
 - (a) Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

- (b) Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- (c) Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- (d) Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- (e) Additional costs of supervision and field office personnel directly attributable to the change.

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

7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect/Engineer 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.

7.3.6 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including an 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.

7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect/Engineer on the basis of reasonable expenditures and savings of those performing the Work attributable to the change including in the case of an increase in Guaranteed Maximum Price an allowance for overhead and profit as provided in Section 7.3.3 and evaluated on a case by case basis to determine if there shall be a change to the General Conditions. In such case, and also under Section 7.3.3, the Contractor shall keep and present, in such form as the Architect/Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1** Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;
- .2** Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4** Costs of premiums for all bonds and insurance, permit fees, and sales, use of similar taxes related to the Work; and
- .5** Additional costs of supervision and field office personnel directly attributable to the change.

7.3.8 Pending final determination of cost to the owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect/Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

- 7.3.9** If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect/Engineer for determination.
- 7.3.10** When the Owner and Contractor agree with the determination made by the Architect/Engineer concerning the adjustment in the Contract sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.
- 7.3.11** If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Architect/Engineer written notice thereof within twenty days after the Construction Change Directive, Architect/Engineer's interpretation order or instruction, discovery of a concealed condition or other event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except (a) in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Section 10.4 or (b) when the Contractor proceeds with the Work under Section 7.3.5. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the in accordance with the Contract Documents. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.
- 7.3.12** Upon receipt from the Contractor of a written notice of claim as provided in Section 7.3.11, the Architect/Engineer shall review such claim and if he determines that any work in dispute should proceed, within fifteen (15) days he shall issue to the Owner and Contractor a written order certified as having been made in good faith to proceed in which he shall approve or deny the Contractor's claim, in whole or in part, specifying the factual and contractual basis for any denial, whether in whole or in part. The Owner then shall approve or reject the decision of the Architect/Engineer and advise the Contractor in writing of its determination not more than thirty (30) days after submission of the Contractor's written notice of claim. The Owner shall specify the factual and contractual basis for any rejection, in whole or in part, and shall certify that its rejection is made in good faith
- 7.3.13** To the extent that the Architect/Engineer when issuing the written order to proceed described in 7.3.12 approves the Contractor's claim, the Contract Sum shall be adjusted, subsequently, as provided in Section 7.3.3. If the Architect/Engineer, when issuing his written order to proceed, denies, in whole or in part, the Contractor's claim, the Contractor shall proceed with the work without delay, in any case.

7.4 MINOR CHANGES IN THE WORK

- 7.4.1** The Architect/Engineer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension for the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effective by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.
- 8.1.3** The date of Substantial Completion is the date certified by the Architect/Engineer 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, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic’s lien and other security interests.
- 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- 8.2.4** Within two weeks after award of the Contract, the Contractor shall submit to the Owner and Architect/Engineer a progress schedule showing for each class of Work included in the schedule of values, the percentage completion to be obtained and the total dollar value of Work to be completed as of the first of each month until Substantial Completion. All calculations shall be on the basis of Work in place, but not including the value of materials delivered but not in place.
- 8.2.5** The progress schedule shall be based on an orderly progression of the Work, allowing adequate time for each operation, and leading to a reasonable certainty of Substantial Completion by the date established in the Agreement. The progress schedule will be reviewed by the Architect/Engineer for compliance with the requirements of this article and will be accepted by him or returned to the Contractor for revision and resubmittal. Unless specifically required by law, no payment under this Contract shall be due until the progress schedule has been submitted to the Architect/Engineer for Approval.
- 8.2.6** If in any application for payment the total value of the completed Work in place, as certified by the Architect/Engineer, is less than 90% of the total value of the Work in place estimated in the progress schedule and the Owner has not been informed of and

agreed to such adjustment to the progress schedule, the Owner may, at his option, require the Contractor to accelerate the progress of the Work without cost to the Owner by increasing the work force or hours of work, or by other reasonable means approved by the Architect/Engineer.

- 8.2.7** If each of three successive applications, as certified by the Architect/Engineer, indicate that the actual Work completed is less than 90% of the values estimated in the progress schedule to be completed by the respective dates and the Owner has not been informed of and agreed to such adjustment to the progress schedule, the Owner may at his option, treat the Contractor's delinquency as a default justifying the action permitted under Section 14.2.
- 8.2.8** If the Architect/Engineer has determined that the Contractor should be permitted to extend the time for completion as provided in Section 8.3, the calendar dates in the progress schedule shall be adjusted accordingly to retain their same relationship to the adjusted date of Substantial Completion, and the dollar value of Work to be completed as of the first of each month shall be adjusted pro-rata.
- 8.2.9** If the Contractor fails to submit any application for payment in any month, the Architect/Engineer shall, for the purpose of this evaluation of progress, certify separately to the actual value of the Work in place completed as of the first of the month to the best of his knowledge.
- 8.2.10** Nothing herein shall limit the Owner's right to liquidated damages or to any other remedy which he may possess under other provisions of the Contract Documents or by law.

8.3 DELAYS AND EXTENSIONS OF TIME

- 8.3.1** If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes (except standard variations in weather) beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer may determine, subject to the following:
 - .1** The Contractor acknowledges that no adjustments to any milestone date or the Contract Time shall be made unless the events described above have the effect of delaying completion of components of Work on any critical path indicated in the Construction Schedule. The Contractor shall be entitled to reallocate any time saved in the completion of any of the particular activities in the Construction Schedule to the time permitted for the completion of any other activities; provided, however that in no event shall any such reallocation result in any adjustments to any milestone date or the Contract Time and/or result in any extension of the time originally allocated in the Construction Schedule for the completion of components of Work on any critical path indicated in the Construction Schedule.
 - .2** The Contractor further acknowledges and agrees that adjustments to any milestone dates and the Contract Time shall be permitted in connection with any of the events described above only to the extent that the delays resulting therefrom (1) are not caused by, or could not have been avoided by the exercise of reasonable efforts of the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay and (3) have an impact of at least one (1) day.

- 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.
- 8.3.3** In the event the operations of the Contractor are delayed by any act of the Owner or Architect/Engineer and notifies the Owner of such delay and such delay has not been remedied within 24 hours of notice, then Contractor will be entitled to apply for an extension of time as provided in Section 8.3.1, if the Contractor fails to provide the Owner such notice the Contractor hereby waives, and shall on no account be entitled to recover, damages for delay, disruption, “impact”, loss of efficiency, loss of productivity, or any other similar form of damages or compensation.
- 8.3.4** No extension of time shall be granted because of seasonal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted. Any additional cost of operations or conditions shall be the responsibility of the Contractor.
- 8.3.5** The Contractor hereby agrees that he shall have no claim for damages of any kind on account of any delay in the commencement of the Work and/or any delay or suspension of any portion of the Work, if the Contractor fails to notify the Owner of such Delay and provide the Owner a twenty-four (24) hour period to cure such delay whether such delay is caused by the Owner, the Architect/Engineer, or otherwise. The Contractor acknowledges that his sole remedy for any such delay and/or suspension will be an extension of time as provided in this article.
- 8.3.6** The Contractor’s only remedy for delay shall be (1) an adjustment of the Contract Time (as provided in Section 8.3.1) and (2) an adjustment of the Contract Sum for a delay that is not the fault of the Contractor or that results from any cause beyond the Contractor’s control. In no event shall Contractor be entitled to (1) any damages for delay or (2) any compensation for a delay that is the fault of the Contractor.

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.

9.2 SCHEDULE OF VALUES

- 9.2.1** Before the first Application for Payment, the Contractor shall submit to the Owner and Architect/Engineer for their approval a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect/Engineer may require. If the Owner or Architect/Engineer object to the form of the schedule of values or the data supporting it, a revised schedule or additional data shall be submitted by the Contractor to the Owner and Architect/Engineer meeting such objections. After approval by the Owner and the Architect/Engineer of the schedule, it shall be used as a basis for the Contractor’s Application for Payment, but for no other purpose.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 On or before the last date of each month, the Contractor shall submit to the Owner and Architect/Engineer an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect/Engineer may require, such as copies of requisitions from Subcontractors and material supplies, and reflecting retainage if provided for elsewhere in the Contract Documents the format and number of copies of such Applications for Payment shall be as directed by the Owner.

- .1** Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.
- .2** Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.
- .3** At the time of each Application for Payment, the Contractor shall, if requested by the Architect/Engineer or the Owner indicate (a) by percentage and dollar amount, the extent to which each such portion of the Work has been completed, and (b) the dollar amount of each payment which is allocated (i) labor and materials incorporated into the Work, and (ii) materials not incorporated into the Work. If the Architect/Engineer or the Owner objects to the form of the Schedule of Values or the data supporting it, a revised schedule or additional data shall be submitted by the Contractor to the Architect/Engineer meeting objections of the Architect/Engineer or the Owner. After the Architect/Engineer approves the schedule, it shall be used as a basis for the Contractor's Application for Payment but for no other purpose.

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 applicable insurance, storage and transportation to the Site for such materials and equipment stored off the Site. The Contractor shall reimburse the Owner for any loss or damage to such unincorporated materials or equipment which the Contractor had control and such unincorporated materials or equipment is not covered by Owner Controlled Insurance Program insurance.

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. 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, the Contractor further agrees that the submission of any Application for Payment shall conclusively be deemed to waive all liens with respect to said Work, materials and labor to which the Contractor then may be entitled; provided, however, that in no event shall such waiver of lien rights waive right to payment for said

Work, materials and labor.

9.3.4 Each Application for Payment or periodic estimate requesting payment shall be accompanied by (a) certification that the Contractor is maintaining As-Built-Drawings, (b) a certificate from each Subcontractor stating that he has been paid all amounts due

him on the basis of the previous periodic payment to the Contractor, or else stating the amount not so paid and the reason for the discrepancy and (c) a Trade Contractor Certification, Indemnification and Waiver of Liens (sample attached).

- 9.3.5** In the event a lien is filed or claimed against the Work for which payment was due and made by Owner by any Subcontractor, Sub-Subcontractor, Laborer or Supplier of Materials, the Contractor agrees immediately to bond such lien in accordance with the Provisions of Massachusetts General Laws, Chapter 254 or to cause such lien to be discharged. If the Contractor shall fail to do so, the Owner may at its option, and at the expense of the Contractor, bond such lien or cause it to be discharged.

9.4 CERTIFICATES FOR PAYMENT

- 9.4.1** The Architect/Engineer will, within seven (7) days after submission of the Contractor's Application for Payment either issue to the Owner a Certificate for Payment made in good faith, with a copy to the Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in Section 9.5.1, specifying the factual and contractual basis each reduction made in the application for payment.

- 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the Site and the data comprising the Application for Payment, that the Work has progressed to the point indicated that the remaining Work can be completed with the unpaid balance of the Contract Sum after payment in accordance with the Certificate of Payment, and that, to the best of the Architect/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. 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 minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect/Engineer 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 material 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/Engineer shall decline to certify payment and may withhold his Certificate in whole or in part, to the extent reasonably necessary to protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Section 9.4.2. If the Architect/Engineer is unable to make representations to the Owner as provided in Section 9.4.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Section 9.4.1 and will promptly issue a Certificate for Payment for the amount, if any, for which he is able to make such representations to the Owner. The Architect/Engineer shall also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he shall nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1** Defective work not remedied,

- .2 Third party claims filed or reasonable evidence indicating probable filing of such claims,
- .3 Failure of the Contractor to make payments properly to Subcontractors or 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 another contractor,
- .6 reasonable evidence that the Work will not be completed within the Contract Time, in accordance with the Progress Schedule submitted under Section 3.10,
- .7 Failure to carry out the Work in accordance with the Contract Documents,
- .8 A lien or attachment is filed contrary to Section 9.3.5, or
- .9 Failure of any Subcontractors to comply with mandatory requirements for maintaining Record Drawings. The Contractor shall check Record Drawings each month. Written confirmation that the Record Drawings are current will be required by the Architect/Engineer before approval of the Contractor's monthly payment requisition.
- .10 Any other failure of the Contractor to perform its obligations under the Contract Documents.

In any such event, the Owner or the Architect shall provide a written explanation of the factual and contractual basis for withholding the whole or any part of a Certificate for Payment and shall certify in writing that such withholding was made in good faith.

- 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

- 9.6.1 After the Architect/Engineer has issued a Certificate for Payment and the Owner has approved the Application for Payment in the amount certified by the Architect/Engineer, the Owner shall make payment in the manner within the time provided in the Contract Documents, and shall so notify the Architect/Engineer.
- 9.6.2 The Contractor shall promptly pay each Subcontractor within seven (7) days of receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such 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 within seven (7) days of receipt of payment by the Subcontractor from the Contractor.
- 9.6.3 The Architect/Engineer 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/Engineer and Owner on account of portions of the Work done by such Subcontractor.
- 9.6.4 Neither the Owner nor Architect/Engineer shall have an obligation to pay or to see the payment of money to a Subcontractor except as may otherwise be required by law. However, in the event the Owner becomes aware the Contractor is not paying Subcontractors promptly in accordance with the Subcontracts in respect to Subcontractors completed work on the Project and as a result the Owner believes the project may become subject to liens placed by the subcontractors, the Owner shall provide the Contractor written notice of the Owner's concern. The Contractor shall have seven (7) days from the date of the Owners Notice to cure the condition and provide the Owner reasonable assurances that the condition will not affect the Owner's rights in the Project.

If the Contractor fails to cure the condition the Owner shall begin to make payment to the Contractor through the use of two Party Checks making each Subcontractor a joint payee with the Contractor until the Owner becomes satisfied its rights in the Project have been secured. The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment 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 to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

9.6.5 Payment to material 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.

9.7 FAILURE OF PAYMENT

9.7.1 If the Owner does not pay the Contractor any amount that has been approved by the Owner within thirty five (35) days after the date that payment was due under the Contract Documents, then the Contractor may, upon written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received; provided, however, that the Contractor shall proceed with the Work as directed by the Owner in any case where, subsequent to the Owner's approval of any such unpaid amount: (1) the Owner gives written notice, certified in good faith by the Owner, to the Contractor of (a) a dispute regarding the quality or quantity of the Work furnished or (b) a default by the Contractor under this Contract; and (2) the Owner pays the Contractor all sums due to the Contractor less any amounts attributable to such dispute or default. In the event of any such shut-down by the Contractor in accordance with this Section 9.7, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.8 SUBSTANTIAL COMPLETION

9.8.1 The Work or designated portion thereof shall be considered to be substantially complete on the date as determined by the Architect when (1) the entire Work, or a portion thereof which the Owner agrees in its sole discretion to accept separately, is sufficiently complete in accordance with the Contract Documents so that the Owner can utilize the Work or designated portion thereof for the use for which it is intended (subject only to so-called punch list items, the completion of which can be accomplished within thirty (30) days without interfering with the actual use of the Work or designated portion thereof by the Owner or those claiming by, through or under the Owner), and (2) the Contractor has obtained a temporary certificate of occupancy for any such portion of the Work or an unconditional permanent certificate of occupancy permitting the lawful occupancy of the entire Project and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy thereof. Without limitation, if and to the extent applicable given the Work to be performed hereunder, Substantial Completion of the Work shall not be deemed to have occurred until construction and installation of all facilities and systems (including but not limited to instrumentation and controls) shall be complete in all respects as required for the issuance of all required use and occupancy permits and approvals by all applicable governmental authorities, excluding only the final landscaping work (if applicable). Further, if and to the extent applicable given the Work to be performed hereunder,

Substantial Completion requires full operation of all automatic systems, including but not limited to testing of individual system components and equipment and full operational startup and certification testing.

- 9.8.2** When the Owner or the Contractor considers that the Work, or a portion thereof which the Owner agrees in its sole discretion to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and the Architect a comprehensive punch list of items to be completed or corrected prior to final payment. Failure to include an item on such punch 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 punch list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's punch 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.
- 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list accompanying the Certificate, and shall otherwise be in recordable and statutory form. 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such 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 as required under Section 11.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage (if any), security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. In such event, prior to such occupancy, the Contractor shall prepare and submit a list to the Architect/Engineer 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/Engineer.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect/Engineer 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 written notice that the Work is ready for final inspection and acceptance and upon receipt of final Application for Payment, the Architect/Engineer will promptly make such inspection and, when the Architect/Engineer finds the Work acceptable under the Contract documents and the Contract fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate 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/Engineer (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 and will not be canceled or allowed to expire until a least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial 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 and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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 the Contractor fails to furnish such releases or waivers as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, the Owner may require the Contractor, as a condition of final payment, to furnish a bond satisfactory to the Owner to indemnify the Owner against any such liens. A Statutory lien bond under Massachusetts General Law 254 shall be satisfactory to the Owner. If such lien 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 such lien, including all costs and reasonable attorneys' fees. Without limiting any other conditions to final payment, as set forth in the Contract Documents, to the extent consistent with the Contractor's scope of work under the Contract Documents, the Contractor shall be required to submit the following to the Owner and the Architect, as conditions to the issuance of a final Certificate for Payment and final payment:

- .1** final documents of similar nature to those required by the Contract Documents for any monthly payments hereunder,
- .2** all final permits, approvals (including, without limitation, the approval of the Owner's insurance company, if required and requested in a timely fashion) certificates (including, without limitation, certificates in respect of electrical systems and life safety systems) and authorizations for use and occupancy of the Project required by any authority having jurisdiction, including any building permits, temporary and unconditioned permanent and full certificate of occupancy and any other necessary occupancy and use permits (except to the

- extent that the Owner or any third party other than the Contractor or any of its Subcontractors or suppliers, regardless of tier, are the cause of any delays in obtaining the same),
- .3 formally prepared “as built” drawings, records and related data including all field notes of all the Work (such drawings shall be in the form of “mylar” reproducible drawings, or as otherwise called for in the Contract Documents),
 - .4 all operating and maintenance manuals, parts lists, the final version of the Project Directory, and repair source lists,
 - .5 all guarantees and warranties to which the Owner is entitled hereunder,
 - .6 satisfactory proof that all claims, including taxes, arising out of the Work (including any claims of Subcontractors or suppliers) have been released or bonded,
 - .7 a certificate of insurance for product liability and completed operations, for the three year period following final completion,
 - .8 a final statement of accounting for all allowances in form satisfactory to the Owner and the Owner’s lender,
 - .9 if required by the Owner or the Owner’s lender, other data establishing payment or satisfaction of all such obligations, and releases and final unconditional waivers of liens arising out of the Contract, to the extent and in form reasonably satisfactory to the Owner, and
 - .10 delivery of all spare parts required to be submitted pursuant to the Contract Documents.
 - .11 complete releases from the Contractor in the form attached to the Owner-Contractor Agreement as **Exhibit G** and all Subcontractors and suppliers in the form attached thereto as **Exhibit H**. If the final documentation submitted by the Contractor is not deemed complete by the Owner or if the Owner deems the Work incomplete in any respect, the Contractor shall promptly complete any such Work and shall promptly resubmit the final documentation

All such Project close-out deliverables shall conform to the requirements of **Exhibit M** and any other reasonable requirements of Owner.

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/Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of 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/Engineer 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.

- 9.10.3** The Contractor shall use its best efforts to prevent any laborer’s, material supplier’s, mechanic’s or other similar liens or claims from being filed or otherwise imposed on any part of the Work or the Project, unless such lien or claim arises solely as the result of the breach by the Owner of its obligations under this Agreement. If any laborer’s, material supplier’s, mechanic’s or other similar lien or claim is filed or otherwise imposed by the Contractor, any Subcontractor, any material supplier, or any lower tier Subcontractor or material supplier in connection with the Work, the Contractor shall either cause such lien to be released and discharged, or shall file a bond in lieu thereof as quickly as possible and in no event later than five (5) days after receipt of written notice thereof, unless such lien or claim arises solely as the result of the breach by the Owner of its obligations under this Agreement. If the Contractor fails to release and discharge or bond over any such lien

or claim, the Owner may, at the Contractor's expense, do so. Any costs so incurred by the Owner in doing so may be deducted from any amounts due, or which may become due from the Owner to the Contractor. The Contractor shall indemnify, defend and hold harmless the Indemnitees, in the manner provided in Section 3.18, from and against any and all loss, cost or damage incurred by any of the Indemnitees as the result of the breach by the Contractor of any of its obligations under this Section. Nothing herein shall, or shall be deemed, to preclude any party from filing a notice of contract or other documentation required by applicable law to establish any lien rights that may arise solely as the result of the breach by the Owner of its obligations under this Agreement.

- 9.10.4** Acceptance of final payment by the Contractor, a Subcontractor or material supplier 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.

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 required by law, the Contract Documents or as reasonably requested by the Owner in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

- 10.2.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. 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 or the Contractor's Subcontractors or Sub-subcontractors; 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 give notices and comply with applicable laws, ordinances, rules, 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 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 owners and users of adjacent sites and utilities.
- 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 a 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, except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable.. 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 its on-Site staff as a Competent Safety Person among whose responsibilities shall be the administration of the Contractor's occupational safety and health program. The Competent Safety Person shall be present while any Work is being performed on the Site. Weekend and additional shift Work shall have the Competent Safety Person or a pre-approved designated alternate present while any Work is in progress..
- 10.2.7** The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.
- 10.2.8** The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the University's fire marshal, the local fire chief or fire marshal. The area within the Site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the Site.
- 10.2.9** The Contractor shall at all times protect excavations, trenches, buildings and materials from rain water, ground water, back-up or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. He shall provide and operate all pumps, piping and other equipment necessary to this end.
- 10.2.10** The Contractor shall remove snow and ice which might result in damage or delay.
- 10.2.11** During the progress of the Work and at all times prior to the date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Contractor shall provide temporary heat, ventilation and enclosure, adequate to prevent damage to completed work or work in progress, or to materials stored on the premises.
- 10.2.12** The Contractor shall take all precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of the Owner, whether or not forming part of the Work, located within those areas of the Project to which the Contractor has access. The Contractor shall have full responsibility for the security of such property of the Owner located in such areas or Contractor Controls and shall reimburse the Owner for any such loss, damage or injury, except such as may be directly caused by agents or employees of the Owner.

10.3 HAZARDOUS MATERIALS

- 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding any regulated substance, toxic substance, hazardous substance, hazardous waste, pollution, pollutant or contaminant, as defined or referred to in the Massachusetts General Laws, Chapter 21E; the federal underground storage tank law of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq.; the Water Pollution and Control Act, 33 U.S.C. §1251 et seq.; together with any amendments thereto and regulations promulgated thereunder or any other applicable federal, state, county or municipal environmental statute, ordinance,

code, rule or regulation, and including, without limitation, any oils or petroleum products (except for amounts of oils or petroleum products necessary in the performance of the Work and then in compliance with applicable law), any lead paint, asbestos or polychlorinated biphenyls (collectively, "Hazardous Materials"). 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 any Hazardous Materials, encountered on the Site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing; provided, however, that Contractor shall be responsible for taking all necessary precautions with respect to any material or substance present on the Site, including but not limited to any Hazardous Materials, of which Contractor has knowledge as a result of information given to Contractor by Owner as of the date of execution of this Contract with respect to the Site, including but not limited to any such material or substance which the Owner has retained Contractor to abate, remove or otherwise remediate pursuant to the Contract Documents (the "Known Materials"), and shall not be entitled to stop Work on account thereof.

10.3.2 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 take such measures with respect thereto as Owner, in consultation with its licensed environmental consultant(s), shall deem necessary or appropriate. Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3 Provided that the Contractor performs its obligations pursuant to this Section 10.3, to the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors and their respective agents and employees 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 (other than any of the Known Materials) presents the risk of bodily injury or death as described in Section 10.3.1 is present on the Site and has not been abated or remediated by the Owner in accordance with applicable law prior to the resumption of the Work upon written agreement of the Owner and Contractor as provided in Section 10.3.2, 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) caused by the presence of such material or substance (other than any of the Known Materials) on the Site, except to the extent that such damage, loss or expense arises out of or results from the negligence or willful misconduct of a party seeking indemnity.

10.3.4 The Contractor shall not use in connection with the performance of the Work, bring onto the Project Site or otherwise use or release at, onto or within the Project Site any Hazardous Materials. Owner shall not be responsible under this Section 10.3 for any Hazardous Materials brought to the Site by the Contractor unless the same were required by the Contract Documents.

10.3.5 If, without negligence or willful misconduct on the part of the Contractor, the Contractor is held liable for the cost of remediation of any Hazardous Materials solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. Contractor shall be solely responsible for compliance with all state and federal laws and all governmental regulations pertaining to environmental matters enacted or adopted and in existence during the time of this Contract, excluding any such laws and regulations as may be

applicable to or concern any pre-existing Hazardous Materials (other than any of the Known Materials) on the Site. Contractor shall perform all Work consistent with safe and reasonable construction practices. Contractor shall employ equipment, machinery and techniques of a kind which will minimize any detrimental impact on the environment. Without limiting the generality of the foregoing, Contractor agrees: (1) when the use of Hazardous Materials is necessary, such use shall be under the supervision of properly qualified personnel, licensed if required by applicable law, and the storage and use of such Hazardous Materials shall be at locations that will not create a hazard to the environment or personnel engaged at the job site; (2) unnecessary air pollution from dust, demolition, machinery exhaust, and the use of sprayed-on materials shall not be allowed; (3) that he will not carry out open burning on the construction site; and (4) that he will remove and dispose of Hazardous Materials, including but not limited to friable asbestos, off Site after giving notice to and observing all procedures mandated by the U.S. Environmental Protection Agency and other federal, state and local environmental authorities having jurisdiction over such matters, including, without limitation, the securing of all necessary approvals and permits prescribed by such agencies or authorities and complying with applicable law in connection with the removal, transport and disposal of such materials. The Contractor shall indemnify, defend and hold harmless the Owner and the other parties entitled to indemnity by the Contractor pursuant to Section 3.18 hereof, in the manner provided in such Section 3.18, from and against any and all loss, cost or damage incurred by any of them as the result of Contractor's failure to comply with the foregoing.

10.4 EMERGENCIES

In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss and shall take all action requested by the Owner or Architect/Engineer. Contractor shall promptly and, if circumstances warrant, immediately notify the University's project manager for the Project of any emergency affecting or potentially affecting the safety of persons or property at the Project Site. Any additional compensation or extension of time claims by the Contractor on account of emergency work shall be determined as provided in Article 7 for Changes in the Work, provided such emergency work was not attributable to the fault or negligence of the Contractor.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase and maintain insurance as set forth in the Insurance Requirements attached as **Exhibit I** to the Owner-Contractor Agreement (the "Insurance Requirements").

11.1.2 Insurance similar to that required of the Contractor, or as may be approved by the Owner, shall be provided by or on behalf of all Subcontractors to cover their operations performed under the Contract. The Contractor shall be held responsible for compliance with and enforcement of the Insurance Requirements and for any modifications in the Insurance Requirements as they apply to Subcontractors.

11.1.3 The Owner shall have the right to require that the limits of liability set forth in the Insurance Requirements be raised if in its judgment economic conditions warrant. If additional costs are increased because of raised limits, the additional cost shall be added to the Contract Sum.

11.1.4 In the event that the Contractor fails to carry out any of the provisions of the Insurance Requirements, the Owner shall, in addition to any right to recover damages or to obtain other relief, have the right to terminate this Agreement.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner may, if the Owner so elects, purchase and maintain such liability insurance as the Owner may deem appropriate, and/or other insurance for self-protection against claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the Site on a replacement costs basis. Such property insurance shall cover the Work and the property and 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 earlier. This property insurance policy shall be subject to such deductible amount as the Owner may deem appropriate (which shall be at least equal to any minimum deductibles required thereunder), and shall include the interests of the Contractor and Subcontractors of all tiers in the Work.

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

.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Owner shall pay costs not covered because of such deductibles. The Contractor shall only be responsible for deductibles up to a maximum of \$5,000.00. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off-Site only after written approval of the Owner at the value established in the approval.

- 11.3.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance or the equivalent through an all-risk property insurance policy pursuant to Section 13.3 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. The Contractor, Subcontractors and Sub-Subcontractor shall not be named as Loss Payees under any policy of Insurance purchased by the Owner under this Section and no draft or other instrument in payment of any Loss shall name the Contractor, Subcontractor or Sub-Subcontractor as Joint Payees.
- 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. The Owner waives all rights of action against the Contractor for Loss of Use of his property, including consequential losses due to fire or other hazards however caused but only to the extent the Owner is actually reimbursed by insurance under this Section 11.3.3.
- 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall have the option, if possible, to include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.
- 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, adjoining 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, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.
- 11.3.6** The Owner upon request shall file Certificates of Insurance with the Contractor setting forth coverage required by Sections 11.3.1 and 11.3.2.
- 11.3.7 Waivers of Subrogation.** 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, and (2) the Architect/Engineer, Architect/Engineer's consultants, separate Contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 11.3 and applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Architect/Engineer, Architect/Engineer's consultants, separate Contractors as described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- 11.3.8** A loss insured under Owner's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner for itself and for any other interests as specified in this Agreement, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. 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.

11.3.9 If required in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, deposit in a separate account any money so received, and he shall distribute it in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made, replacement of damaged Work shall be covered by an appropriate Change Order.

11.3.10 The Owner acting in good faith shall have power to adjust and settle a loss with insurers.

11.3.11 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 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.

11.4 PERFORMANCE BOND, PAYMENT BOND AND LIEN BOND

11.4.1 The Owner may require the Contractor to obtain the following bonds to assure compliance by the Contractor with its obligations hereunder and to enable the Owner and any construction lender to receive unqualified insurance protection from any title company against the existence or assertion of any liens of any nature against the Site for any work performed by the Contractor, any Subcontractor or mechanic or for any materials supplied by any materialman:

- .1** Performance Bond.
- .2** Labor and Material Bond.
- .3** Statutory Lien Bond.

Accordingly, if required, the Contractor shall furnish to the Owner, as a condition to the obligation of the Owner to make any payments hereunder, each of the aforesaid bonds, and failure of the Contractor to furnish such bonds shall constitute a default by the Contractor hereunder for which the Owner may, without waiving any other remedies available, terminate this Contract at no cost to the Owner. Each of such bonds shall be written in an amount equal to the full Contract Sum through companies qualified to do business in the Commonwealth of Massachusetts, which such companies and the form and substance of such bonds must be acceptable to the Owner and such construction lender and such title company and in which the obligees named thereunder shall be, the Owner, such construction lender and such title company. Further, the Contractor agrees, at all times while this Contract is in force, that, as a prior condition on his right to receive any payments hereunder, he shall supply and that he shall require all Subcontractors, mechanics and materialmen to supply certificates of the status of any such payments owing or made to any of the foregoing as may be permitted under said Chapter 254 including, without limitation, provisions of Section 32 thereof (as most recently amended). Such certificates shall be for the benefit of any or all of the Owner, such construction lender or such title company, as may be requested by any of them.

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 bonds or shall permit a copy to be made.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

- 12.1.1** If any portion of the Work is covered contrary to the request of the Architect/Engineer or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect/Engineer, be uncovered by the Contractor for observation by the Architect/Engineer and shall be replaced at the Contractor's expense without change in the Contract Time.
- 12.1.2** If any portion of the Work has been covered in accordance with all the requirements of the Contract documents, which the Architect/Engineer has not specifically requested to observe prior to being covered, the Architect/Engineer, with the Owner's written consent, may request to see such work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

- 12.2.1** The Contractor shall promptly correct Work rejected by the Architect/Engineer or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including the additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby and any cost, loss or damages to the Owner resulting from such failure or defect.
- 12.2.2** If, within one (1) 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 an 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 written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and actual performance of the Work. This obligation under this Section 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 12.2.3** The Contractor shall remove from the Site portions of the Work which 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** If the Contractor does not commence correction of such defective or non conforming work within five days after his receipt of Owner's or Architect/Engineer's notice to correct such work,, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or

private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect/Engineer's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. This remedy shall be in addition to all other remedies of the Owner under the Contract Documents or applicable law arising as a result of Contractor's breach of this Contract.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Section 12.2.2 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 NONCONFORMING WORK

12.3.1 If the Owner prefers to accept defective or nonconforming Work, he may do so by delivering to the Contractor and Architect/Engineer a signed writing specifically accepting such Work, instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made, and if payments due the Contractor are not sufficient to cover the adjustment, the Contractor shall pay the difference to the Owner.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located, exclusive of its choice of law principles.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract as a whole without written consent of the Owner. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 If, after making Final Payment, the Owner conveys as may be required as part of Owners financing to a third party any building or other improvement constructed under the Contract, any rights with respect to the property so conveyed which the Owner may have against the Contractor under Article 12 or by virtue of claims which, under the terms of

Section 9.10.4 are reserved to the Owner after the making and acceptance of Final Payment, shall automatically transfer to such third party.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to an authorized representative of the person or entity for whom it was intended, or if delivered at or sent by registered or certified mail or by facsimile to the address set forth in the Agreement or in a subsequent written notice.

13.4 RIGHTS AND REMEDIES

13.4.1 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.

13.4.2 No action or failure to act by the Owner, Architect/Engineer 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 in writing.

13.5 TEST AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor 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 shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations are concluded.

13.5.2 All material and workmanship shall be subject to inspection, examination, and testing by the Architect/Engineer during the manufacture and construction, in a manner which does not unnecessarily delay progress of the Work. The Contractor shall keep the Architect/Engineer informed of the progress of the Work so that the Architect/Engineer can reasonably schedule his inspection of the Work. If the Architect/Engineer or the Owner determines that any work requires special inspection, testing or approval which Section 13.5.1 does not include, the Architect/Engineer will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the contractor shall give notice as provided in Section 13.5.1. The Contractor shall furnish promptly all reasonable facilities, labor and materials necessary for the safe and convenient inspection and testing of the Work as may be requested by the Architect/Engineer. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Architect/Engineer's additional services made necessary by such failure, otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect/Engineer's services and expenses.

- 13.5.4** The Contractor shall obtain and deliver promptly to the Owner/Architect/Engineer an unconditional, permanent, and full occupancy permit or any certificates of final inspection of any part of his Work exclusive of the Owners Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits and certificates by the Owner/Architect/Engineer shall be a condition precedent to Substantial Completion of the Work.
- 13.5.5** If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing.
- 13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 CONSTRUCTION

- 13.6.1** This agreement shall not be construed against the party preparing it, and this Agreement shall be construed without regard to the identity of the party who prepared it and as if the parties hereto had jointly prepared this agreement and it shall be deemed their joint work product. Any uncertainty or ambiguity shall not be interpreted against any one party, and any rule of construction that a document is to be construed against the drafting party shall not be applicable.

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 or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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; or
 - .3** Because the Owner has defaulted, beyond any applicable notice and cure periods, in its payment obligations to Contractor under this Contract.
- 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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 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' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to

materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

- .1** refuses or fails to supply enough properly skilled workers or proper materials; or fails to meet any of the Substantial Completion Dates set forth in the Construction Schedule and such failure continues beyond fourteen (14) days after receipt of written notice from the Owner thereof; or files for protection under the Federal Bankruptcy Act, or any other creditor protection laws; or there is an involuntary filing against the Contractor under the Federal Bankruptcy Act or any other creditor protection laws;
- .2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3** disregards any applicable laws, statutes, ordinances, codes or rules, regulations or orders or other requirements of a public authority having jurisdiction; or
- .4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .1** Exclude the Contractor from the site and take possession of the site and all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2** Accept assignment of any 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, after final completion of the Work, the Owner determines that the unpaid amount (if any) due to the Contractor for the portion of the Work performed by the Contractor exceeds any costs and damages incurred by the Owner as the result of the Contractor's breach of this Agreement, such excess shall be paid to the Contractor. If the costs and damages incurred by the Owner as the result of the Contractor's breach of this Agreement exceeds the unpaid amount (if any) due to the Contractor for the portion of the work performed by the Contractor, the Contractor shall pay such excess on demand.

14.2.5 In the event of a termination of the Contract pursuant to this Article 14, the Owner and the Contractor shall forthwith return to the other all papers, materials and other properties of the other held by each for the purposes of execution of the Contract. In addition, each party will assist the other party in an orderly termination of this 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 as described in 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 written 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; 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 case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and third-party direct costs incurred by reason of such termination. The Contractor shall use reasonable efforts to minimize any and all such costs incurred by reason of such termination.

ARTICLE 15

OTHER PROVISIONS

15.1 Weather Conditions: In the event of temporary suspension of Work, or during inclement weather, or whenever the Owner or the Architect/Engineer shall direct, the Contractor will, and will cause his Subcontractors to protect carefully his and their Work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer any Work or materials shall have been damaged or injured by reason of negligence on the part of the Contractor or any of his Subcontractors so to protect his Work, such materials shall be removed and replaced at the expense of the Contractor.

15.2 Equal Employment Opportunity: In connection with the Work, the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, sexual preference, national origin or on the basis of being a handicapped, but otherwise qualified individual. Further, the Contractor will not condone any form of sexual harassment defined as unwelcome sexual advances, requests for favors, and other verbal or physical conduct

of a sexual nature as an explicit or implicit condition of employment, as the basis for employment decisions, or when such conduct interferes with an individual's work performance by creating an intimidating, hostile, or offensive work environment. The Contractor will not discriminate against employees regarding upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Contractor will subject to all equal opportunity and affirmative action rules and regulations applicable to the Project at the time of this Agreement and the attached "Northeastern University's Contract Bid Conditions outlining Affirmative Action Requirements". The Contractor shall include these provisions in all subcontracts.

- 15.3 Compliance with Labor Laws:** The Contractor acknowledges that it is familiar with all provisions of the Contract Documents relative to equal employment opportunity, anti-discrimination, affirmative action requirements, with the Occupational Safety and Health Act, the Fair Labor Standards Act, the Davis-Bacon Act, the Contract Work Hours Safety Act and Executive Order 11246 of September 24, 1965, as amended and with all applicable state and local labor laws, shall comply with all such provisions, Acts, Orders, requirements and laws in the performance of the Work. The Contractor further agrees to insert this Section in all subcontracts and to require all Subcontractors to incorporate this Section in all subcontracts. The Contractor shall indemnify, defend with counsel acceptable to the Owner and hold harmless the Owner from all loss, liability and expenses of the Owner arising out of any violations by the Contractor or Subcontractors of any of such provisions, Acts, Orders, requirements and laws.
- 15.4 MBE, WBE, SLBE Participation:** The Contractor shall make good faith efforts to achieve combined subcontracting goals for this contract of 12% of the total contract value utilizing minority and women owned business enterprises, as well as small local business enterprises ("MBEs," "WBEs," and "SLBEs" respectively).

For the purposes of these participation goals, MBEs and WBEs shall be defined as companies with certified MBE and/or WBE status with the Commonwealth of Massachusetts' Supplier Diversity Office's "Directory of Certified Businesses" or with the Greater New England Minority Supplier Development Council.

SLBEs shall be defined as companies: (1) whose primary office is located within the City of Boston (as confirmed by ZIP Code), and (2) with fewer than 500 employees and less than \$14,000,000 in annual sales).

The Contractor may propose using M/W/SLBEs that do not hold the above certifications, provided that any such proposed M/WBE must provide a self-certification for the University's review, and any such proposed SLBE must provide a self-certification regarding their annual sales, for the University's review. The University may, in its sole discretion, accept such self-certification(s) and permit the Contractor to count such participation toward the project goals.

The attached **Schedule I to Exhibit A** is hereby made a part of this Agreement. The Contractor shall substantiate its use good faith efforts in cooperation with the Owner to procure M/W/SLBE subcontractor participation during the subcontractor buyout phase and shall substantiate its participation (or reasons for not obtaining the project goals) on the schedule included on **Schedule I-1 to Exhibit A**. If the Contractor is using M/W/SLBE subcontractors, it shall substantiate its participation by submitting an **Schedule I-2 or I-3 to Exhibit A** with each of its Applications for Payment. The Owner may retain fifty percent (50%) of the Contractor's total fee from future Applications for Payment until the Contractor provides the required documentation.

- 15.6 Project Support Services:** Contractor shall make reasonable efforts to reassign Contractor personnel, including Subcontractors' personnel working on Owner's premises if such personnel are deemed by Owner to be disruptive, dangerous, incompetent, or otherwise non-compliant with reasonable conduct guidelines. Contractor shall make reasonable efforts to educate and inform all personnel assigned to the project of the University's policies related to Sexual Harassment. Such

education may include but shall not be limited to the distribution of pamphlets and informative material supplied by the University.

15.7 Licenses: To the extent required under applicable law, Contractors, Subcontractors and individuals supervising work shall be certified by the Commonwealth of Massachusetts and licensed by the municipality where the project is located to perform the work required of them in their capacity as Contractor, Subcontractor or supervisor, and shall present to the Owner evidence of state certification and city licenses covering the types of work being performed.

15.8 Ownership of Documents: The Owner shall at all times be deemed the owner of all drawings, documents and other work produced by the Contractor which are stored electronically and that are intended for use in connection with the Project, and shall have an irrevocable and perpetual non-exclusive royalty free license to exercise all rights under the copyright laws of the United States, including but not limited to re-printing, distributing in print or electronic format any of the work, which shall survive the termination of this Agreement.

15.8 E-Builder Contract Administration:

15.8.1 Project Management Communications: The Contractor and Architect/Engineer shall use the web based project management communications tool, E-Builder® ASP software, and protocols included in that software (the “Software”) during this Project, or such successor software tools as required by the University for the purposes stated in this Section 6.6. The use of project management communications as herein described does not replace or change any contractual responsibilities of the participants.

15.8.2 Training: Contractor shall require its Project personnel to attend and participate in Software training sessions at the cost of the University. Project personnel may not be given access to the Software without agreeing to a specified terms of use for the Software.

15.8.3 Authorized Users: All Project personnel of the Contractor shall, based on their roles, be given access and right to use the Software solely in accordance with the University’s procedures relating to the Software to fulfill certain of Contractor’s reporting, billing, and notice requirements under the Contract Documents, including, but not limited to the following:

- 15.8.3.1** RFI, Request for Information response
- 15.8.3.2** Submittals review, including record numbering by drawing and specification section
- 15.8.3.3** Transmittals, including record of documents and materials delivered in hard copy
- 15.8.3.4** Meeting Minutes
- 15.8.3.5** Review Comments
- 15.8.3.6** A/E Field Observation Reports
- 15.8.3.7** Payment Application Review
- 15.8.3.8** Construction Photographs
- 15.8.3.9** Drawings
- 15.8.3.10** Supplemental Sketches
- 15.8.3.11** Schedules
- 15.8.3.12** Specifications
- 15.8.3.13** Punch list
- 15.8.3.14** Commissioning Issues
- 15.8.3.15** UTSW CIP Inspection Reports
- 15.8.3.16** Proposal Request, Proposed Change and Architectural Supplemental Instructions

15.8.4 Record Keeping:

- 15.8.4.1** The Owner and its representatives, the Contractor and its representatives, the Architect and its consultants, and the Contractor and its sub-contractors and suppliers at every tier shall respond to documents received in electronic form on the web site, and consider them as if received in paper document form.
- 15.8.4.1** The Owner and his representatives, the Contractor and his representatives, the Architect and his consultants, and the Contractor and his sub-contractors and suppliers at every tier reserves the right to and shall reply or respond by transmissions in electronic form on the web site to documents actually received in paper document form.
- 15.8.4.1** The Owner and his representatives, the Contractor and his representatives, the Architect and his consultants, and the Contractor and his sub-contractors and suppliers at every tier reserves the right to and shall copy any paper document into electronic form and make same available on the web site.

15.9 Confidential Information

Contractor acknowledges that in connection with this Agreement and the Work performed by Contractor under this Agreement, the Owner may provide, and the Contractor may acquire and make use of, certain confidential information of the Owner relating to the performance of the Work, which may include, but is not limited to, this Agreement, reports, methods of operation, trade secrets, training materials, policies, protocols, and procedures (administrative, research, and clinical), budgeting, staffing needs, databases, student-related information, faculty lists marketing research, equipment capabilities, fee schedules, and other proprietary, business, financial and other information connected with or related to the Owner that is not generally known to the public (collectively, "Confidential Information").

Except as otherwise required by applicable law, during the term of this Agreement and for a period of three (3) years thereafter, Contractor shall not use such Confidential Information except in connection with the performance of the Work, or divulge the Confidential Information to any third party, unless the Owner consents in writing to such use or divulgence or such disclosure is required by law. In the event the Contractor receives a request or demand from a third party for the disclosure of Confidential Information, Contractor shall promptly (within two (2) business days after receipt of such request or demand) provide written notice to the Owner of such request or demand, including a copy of any written document of such request or demand.

Contractor agrees to protect and safeguard from and against unauthorized access, use or disclosure the Confidential Information of the Owner in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

Upon expiration or termination of this Agreement, Contractor shall not take nor retain, without prior written consent from the Owner, any Confidential Information or copies thereof in any form or medium of any kind. Upon the expiration or termination of this Agreement or otherwise upon the request of the Owner, all Confidential Information received by Contractor shall be promptly returned to the Owner or, upon request of the Owner, destroyed with such destruction confirmed in a form reasonably satisfactory to Owner by Contractor. Without limiting other possible remedies for the breach of these covenants relating to Confidential Information, the parties agree that injunctive or other equitable relief shall be available to enforce any and all of these covenants, such relief to be without the necessity of posting a bond, cash or otherwise.