

# GENERAL CONDITIONS OF CONSTRUCTION

## 1.00 DEFINITIONS

**Bulletin** - A bulletin is defined as a compilation of changes to the scope of the work issued by the Design Professional or University which requests that the Contractor to submit a quote for the changes.

**Change Order** - A written agreement entered into after the award of the Contract which alters or amends the executed Contract.

**Claim** - A Claim is a demand or assertion by one of the parties seeking 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 parties arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**Close-out Documents** - Close-out Documents shall include as-built record drawings and specifications, Operations and Maintenance Manuals, Requests for Information (RFIs), submittals, shop drawings, coordination drawings, warranties, lien waivers and governing approvals.

**Cost of Work** - The term Cost of Work, as may be used herein, is that portion of the Project Cost, that is the estimated or actual costs of that Work performed (or to be performed) on the Project by the Contractor and all subcontractors. Such Cost shall not be inclusive of the Contractor's fee for overhead and profit, preconstruction services, nor General Requirements.

**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 duly executed written Change Order.

**Contract Documents** - The Contract Documents consist of the bonds, insurance certificates, plans, specifications, drawings, bulletins, addenda, Agreement, General Conditions of Construction, Supplementary General Conditions, progress schedules and change orders.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project. 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 to be consistent with the Contract Documents and the highest standard of care. In the case of an inconsistency between, or perceived omission or error in the Drawings, Specifications, or other Contract Documents which is not clarified by addendum or RFI, or should the Contractor be in doubt as to their exact meaning, the Contractor shall notify the Design Professional and the University at once. The University shall not be responsible or for the Contractors misinterpretations of Drawings and Specifications and/or other Contract Documents.

Nothing contained in the Contract Documents shall create a contractual relationship between  
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University and any third party; however, the University is an intended third-party beneficiary of all contracts for design and engineering services, all subcontracts, purchase orders and other agreements between Contractor or Design Professional and third parties. The Contractor and Design Professional shall incorporate the obligations of the Contract Documents into its respective subcontracts, agreements and purchase orders.

**Contractor's Construction Schedule-** The construction schedules required by the Contract Documents shall be a logic network prepared in the critical path method or other sequential network in use within the construction industry and shall depict: (1) a sequence of operations mutually agreeable to the University, Design Professional and Contractor; (2) the dates of commencement and completion of each task of the Work (including lead time activities, drawing and sample submissions, bidding, awarding Trade Contracts, manufacturing and shipping); (3) delivery dates for materials and equipment; and (4) at the University's request shall include all Finish Work to be performed by separate Contractors. The construction schedule includes a complete itemized breakdown of the Work including a detailed resource loading plan for each activity within the Project and shall illustrate each resource time phased requirements.

**Contract Sum-** The Contract Sum shall be the total dollar value of the Agreement between the University and Contractor.

**Delay** – A delay shall be recognized as a time of completion impact on the performance of the Work by the Contractor that extends the overall duration of the Project beyond the substantial completion and final completion dates specified in the Agreement. A delay shall not be recognized if the time of completion impact on the performance of the Work occurs on a non-critical path activity, and does not extend the overall duration of the Project.

**Day** - "Days" means business days unless specifically provided to the contrary herein or in the Construction Agreement; provided, however, if any day falls on a weekend or a holiday, same shall refer to the next business day thereafter.

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

**Final Completion** - "Final Completion" means the completion of all the Work in accordance with the Contract Documents and the acceptance thereof by the University. Completion of the Work includes (1) full performance of all Contract terms; (2) acceptance of the Work by University; (3) resolution of all outstanding Changes of Contract; (4) completion of all "punch-list" items; and (5) delivery of all Close-out Documents.

**Knowledge** - The terms "knowledge," "recognize" or "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should reasonably recognize and discovers or should reasonably discover in exercising the care, skill and diligence

required by the Contract Documents.

**Master Project Schedule** - The Master Project Schedule shall show the sequence, duration in calendar days, interdependence and resources required for each activity for the complete performance of all Work. The Master Project Schedule shall begin with the date of issuance of the Notice to Proceed and conclude with the date of final completion.

**Notice to Proceed** - A "Notice to Proceed" means written notice given by the University to the Contractor fixing the date on which the Contract Time will commence to run and/or on which Contractor shall start to perform Contractor's obligations under the Contract Documents. A Notice to Proceed by the University shall authorize all or a portion of the Work for the Costs so defined.

**Persistently fails** - The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, which cause the University to reasonably conclude that the Contractor will not complete the Work within the Contract Time, or for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

**Plans** - The drawings prepared by the Design Professional and approved by the University which include elevations, sections, details, schedules, diagrams, information, notes, or reproductions or any of these, and which show the location, character, dimension, or details of the Work. These include the graphic and pictorial portions of the Contract Documents as listed in the Agreement.

**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 University or by separate Contractors.

**Punchlist** - Punchlist items shall include all Work identified and documented by the Design Professional and University and issued to the Contractor with a Certificate of Substantial Completion. It is understood and accepted that the Punchlist included with the Certificate of Substantial Completion may not represent all remaining Work for which the Contractor is obligated and that Punchlist may be expanded prior to Final Completion.

**Reasonably inferable** - The phrase "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Contractor familiar with the Project and exercising the care, skill and diligence required by Contract Documents.

**Senior Vice-president of Finance and Administration** - The Senior Vice-President of Finance and Administration shall be the only individual authorized to execute the Agreement or any Change Order.

**Site** - The area specified in the Contract Documents and the area made available for the Contractor's operation.

**Soft Costs** - "Soft Costs" are those costs derived by the University and shall include, but not be

limited to, items such as Environmental services, State administration fees, Design Professional fees, moving furniture, fixtures and equipment, and telecommunications, unless otherwise agreed to by the Parties.

**Specifications** - The term Specifications shall mean the written instructions and requirements prepared by the Design Professional which complement the plans and which describe the manner of executing the Work or the qualities and types of materials to be furnished.

**Statement of Probable Cost** - The Statement of Probable Cost, as developed by the Contractor, is essential to the budgetary and management processes of the University. The Statement of Probable Cost, once established and accepted by the University, is relied upon by the University for its subsequent budgetary planning and financial needs for the Project.

The Statement of Probable Cost, applicable to either an estimated or actual cost, is the sum of all costs for a completely constructed, functionally ready-for-use project, in accordance with the scope, scheme, concept, and statement, as developed, documented and accepted by the University, and as constructed by the accepted contracting method or methods. The Statement of Probable Cost shall be provided at regular intervals during the duration of the Project and shall include all costs included in the Contract Sum. The University shall be responsible for the derivation and provision of all Soft Costs that comprise the Project scope and budget.

**Subcontractor** - The term "subcontractor" shall mean any business entity under contract to the Contractor for services on or regarding the Project. Nothing contained in this contract shall create any contractual relationship between the University and any subcontractor. However, the University is the intended third-party beneficiary of all contracts for design, engineering or consulting services, all Trade Contracts, subcontracts, purchase orders and other agreements between the Contractor and third parties. The Contractor shall incorporate the obligations of this Agreement into its respective Trade Contracts, subcontracts, supply agreements and purchase orders.

**Substantial Completion** - "Substantial Completion" shall mean the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the University can occupy or utilize the Work for its intended use. Substantial Completion shall only be determined as described in the Contract Documents.

**Unsafe Persons** – Unsafe persons shall be those individuals that present a safety hazard to themselves or others.

**University** - The University 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 "University" means the University or the University's authorized representative. Any reference to "Board of Governors" shall be considered to mean "University."

**University's Representative** - The University's Representative shall include the Assistant Vice President for Facilities Planning and Management, the Director of Design Services and the Project Manager. Any of these individuals may make Project decisions on behalf of the University.

**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, licenses, permits, insurance 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.

## **2.00 BIDDING**

### **2.01 Duty to Carefully Examine These Instructions**

Prospective bidders for this project shall carefully examine the instructions contained herein and be cognizant of and satisfied with the conditions which must be satisfied prior to submitting a proposal and to the conditions which affect the award of the Contract.

### **2.02 Prequalification of Bidders**

The Construction Manager shall accept proposals from at least three (3) subcontractors who must be pre-approved by the University.

### **2.03 Clarification During Bidding**

The Construction Manager shall examine the plans and specifications in preparing the bid and shall immediately report to the Design Professional any omissions, discrepancies, or apparent errors found in the plans and specifications. Prior to the date of bid opening, bidders shall submit a written request for clarification to the Design Professional who may give such clarification in the form of addenda to all bidders if time permits.

### **2.04 Bidding Documents**

#### **2.04.1 Bid Proposal Package**

Each pre-qualified bidder will receive a bid proposal package containing a standard proposal form which shall be used for bidder's proposal. Each proposal shall give the prices proposed in the manner required by the proposal and shall be signed by the bidder or the bidder's duly authorized representative, with its address and telephone number. If the proposal is made by an individual, the individual's name, postal address, and telephone number must be shown. If made by a partnership, the proposal shall have the signature of all partners or an affidavit signed by all partners empowering one partner as an agent to act in their behalf and the address and telephone number of the partnership. A proposal submitted by a corporation shall show the name of the state in which the corporation is chartered, the name of the corporation, its address and telephone number, and the title of the person who signs on behalf of the corporation.

#### **2.04.2 Listing of Proposed Subcontractors Pre-approved by the University**

Each proposal shall have listed therein the name and location of the place of business of each subcontractor proposed by the Contractor, which will perform work or labor or render services for the Contractor in excess of one-half of one percent of the Contractor's total bid. The proposal shall also state the portion of work or labor or rendition of services that each such subcontractor will do.

#### **2.04.3 Bidder's Security**

All bids shall be presented under sealed cover and have enclosed an amount equal to at least 5

percent of the bid as bid security. The bid security may be a cashier's check, or certified check made payable to Wayne State University or a bidder's bond. No bid shall be considered unless one of these forms of bid security is enclosed therewith.

If the bid security is a bond, it shall be executed by a corporation authorized as an admitted surety to issue surety bonds in the State of Michigan, and it shall be executed on the form prescribed in the Contract Documents. The bid bond expires upon execution of the Contract.

## **2.05 Bid Proposals**

### **2.05.1 Submission of Proposals**

Proposals shall be submitted to the office indicated on the bid proposal. It is the responsibility of the bidder to see that its bid is received in the proper time. Delays in timely receipt of the bid caused by the United States or the University mail system, independent carriers, acts of God, or any other cause shall not excuse late receipt of a bid. Any bid received after the scheduled closing time for receipt of bids shall not be considered and will be returned to the bidder unopened.

### **2.05.2 Withdrawal of Proposals**

Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids but only by a written request from the bidder or its authorized representative filed with the University. An oral, telegraphic, faxed, or telephonic request to withdraw a bid proposal is not acceptable. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid. This paragraph does not authorize the withdrawal of any bid after the time fixed in the public notice for the opening of bids.

### **2.05.3 Public Opening of Proposals**

Proposals will be publicly opened and read at the time and place stated in the Notice to Contractors. Bidders or their agents are invited to be present.

### **2.05.4 Rejection of Irregular Proposals**

Proposals may be rejected if they show any alterations of forms, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind. If the bid amount is changed after the amount has been once inserted, the change shall be initialed.

### **2.05.5 Power of Attorney or Agent**

When proposals are signed by an agent, a power of attorney shall either be on file with the University prior to the opening of bids or be submitted with the proposal. Failure to submit a power of attorney may result in the rejection of the proposal as irregular and unauthorized. A power of attorney is not necessary in the case of a general partner of a partnership.

### **2.05.6 Waiver of Irregularities/University's Right to Reject Bids**

The University reserve the right to waive any or all irregularities in proposals submitted. The University reserves the right to reject any or all of the bids submitted.

### **2.05.7 Exclusion from Contract Documents**

Nothing in any of the bidding documents, including but limited to Request for Proposal form, Notice to Contractors, Proposal by Contractor and Design Professional and bids by Contractor, shall be considered part of the Contract Documents unless specifically incorporated.

### **2.06 Mistake in Bid**

A bidder shall not be relieved of a bid without consent of the University nor shall any change be made in a bid because of mistakes. Failure by the Contractor to honor his proposal following the public opening of bids for any reason shall result in the forfeiture of the Bid Security.

### **2.07 Non-Discrimination**

Wayne State University is an affirmative action/equal opportunity employer. The University has a strong commitment to the principle of diversity in all areas.

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor will ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall, in all solicitation or advertisements for employees place by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight or marital status.

The Contractor shall comply with all requirements of the Elliott-Larsen Civil Rights Act being 1976 PA 453, as amended.

The Contractor shall also comply with the Persons with Disabilities Civil Rights Act being 1976 PA 220, as amended.

The Contractor shall include, or incorporate by reference, the provisions of this Article 2.07 in each and every subcontract or purchase order and shall provide in each and every subcontract or purchase order that said provisions will be binding upon each and every subcontractor and Supplier and Vendor.

Any breach of the requirements and covenants of this Article 2.07 shall constitute a material breach of the Contract Documents.

### **3.00 AWARD AND EXECUTION OF CONTRACT**

#### **3.01 Contract Bonds and Insurance**

##### **3.01.1 Payment and Performance**

The Contractor shall forward to the University fully executed Payment & Performance Bonds in the amount of 100 percent of the Contract value on the AIA Form 312 and in compliance with MCL 129.201 et seq. within five (5) days after execution of the Agreement or acceptance of the GMP.

In the same five (5) day period the Contractor shall present to the University, in an acceptable form, evidence of the insurance as required by the Contract Documents. Actual Work shall not commence until the bond and insurance is received by the University. Failure to provide the bond and insurance in the time-frame allowed shall not be cause for an extension of Contract Time.

All alterations, extensions of time, extra and additional work, and other changes authorized by any part of the Contract, including determinations made under Article 7.00, Claims and Disputes, shall be made without securing the consent of the surety or sureties on the Contract bonds.

Whenever the University has cause to believe that the surety has become insufficient, the University may demand in writing that the Contractor provide such further bonds or additional surety, not exceeding that originally required, as in the University's opinion is necessary, considering the extent of the work remaining to be done. Thereafter no payment shall be made to the Contractor or any assignee of the Contractor until the further bonds or additional surety have been furnished.

Contract bonds shall remain in full force and effect during the two-year guarantee period, unless a longer bond period is stipulated in the Contract Documents.

##### **3.01.2 Maintenance and Guarantee Bond**

The Contractor shall obtain, upon request of the University, a Maintenance and Guarantee Bond in a form and with a surety acceptable to the University. The bond shall guarantee that any defects in workmanship or materials arising during the guarantee period shall be rectified. The bond shall be in effect for the entire guarantee period identified in the Contract Documents.

#### **3.02 Execution of Contract**

The Contract shall be signed by the Contractor in three (3) duplicate counterparts and returned to the University within five days of receipt from the University, not including Saturdays, Sundays, or legal holidays. The Contractor and the University shall each sign three sets of plans, specifications, and addenda (usually at the preconstruction conference) one set for each party to be filed with the Contract. No Contract shall be binding upon the University until it has been executed by the Contractor and the University. Such signatures on the Plans and Specifications are meant to acknowledge that these represent the original contract documents which form the basis of the Contract Sum.

### **3.03 Failure or Refusal to Execute Contract**

Failure or refusal by the Contractor to execute the Contract within the time set in Section 3.02 shall be just cause for the rescission of the award and the forfeiture of bidder's security. Failure or refusal to file acceptable bonds within the time set in Section 3.01 constitutes a failure or refusal to execute the Contract. If the Contractor fails or refuses to execute the Contract, the University may award the Contract to another contractor and the Contractor shall forfeit his bid bond.

## **4.00 RESPONSIBILITIES OF THE PARTIES**

### **4.01 University**

#### **4.01.1 Information and Services Required of the University**

The University shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project. Unless otherwise agreed to, the University shall be responsible for the abatement of asbestos containing materials and/or site related environmental hazards. The University will provide documentation regarding the presence of asbestos containing materials or other possible environmental hazards to the Contractor. Second opinion on previously documented clean conditions shall be provided at the Contractor's expense. Positive results regarding environmental hazards shall become the University's obligation. If, during the execution of the Work, previously unknown environmental hazards are encountered, the University shall be allowed 20 days to abate environmental hazards before delay claims shall be valid.

The University shall provide available information regarding requirements for the Project including plans and specifications for the buildings and a topographic survey of the site where required. The University shall assume that information provided by the University is accurate and correct for its intended use. If any inaccuracies in the information supplied by the University result in increased costs to the Contractor, the University shall affect a reasonable adjustment to the Contract Sum via change order. While the University does not expressly or implicitly warrant or guaranty the adequacy or sufficiency of the plans, drawings or specifications prepared by the Design Professional for this Project, the University shall give consideration to affecting an adjustment in the Contract Sum for obvious errors and omissions in these documents. However, and under no condition, will such considerations waive or lesson the Construction Manager's obligation as defined in Article 4.02.2, Review of Contract Documents and Field Conditions by Contractor, nor impact those obligations that include "reasonably inferable" work.

Except for permits and fees, which are the responsibility of the Contractor under the Contract Documents, the University shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

Information or services under the University's control shall be furnished by the University with reasonable promptness to avoid delay in orderly progress of the Work.

Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, three sets of reproducible documents for construction purposes. All reproduction required for construction is the obligation of the Contractor.

The foregoing are in addition to other duties and responsibilities of the University enumerated herein.

#### **4.01.2 University's Right to Stop the Work**

If, in the University's determination, the Contractor fails to correct work which is not in accordance with the requirements of the Contract Documents as required, or persistently fails to carry out work in accordance with the Contract Documents, the University Representative, by written order may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the University to stop the Work shall not give rise to a duty on the part of the University to exercise this right for the benefit of the Contractor or any other person or entity.

It is understood that while the Contractor is fully responsible for the safety of the Work, and for the methods of its execution, if the University deems that the Contractor is failing to provide safe conditions, the University may stop the Work under such conditions. However, this ability shall not create such duty on the University. Under no circumstance shall the Contractor be granted a time extension or Contract Sum increase for conditions resulting by a stop work order.

#### **4.01.3 University's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the University to commence and continue correction of such default or neglect with diligence and promptness, the University may after such three (3) day period, without prejudice to other remedies the University may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Design Professional'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 University.

#### **4.02 Contractor**

The Contractor recognizes the relationship of trust and confidence established between the University and the Contractor by this Contract. The Contractor shall furnish the University with its best skill and judgment and fully cooperate with the University in forwarding its best interests. All the Work is to be done in the best manner by persons skilled in the type of Work to be performed.

##### **4.02.1 Contractor's Responsibility for the Work**

The Contractor shall be responsible to the University for all Work performed under this Contract. For purposes of assessing responsibility to the Contractor by the University, all persons engaged in the Work shall be considered employees of the Contractor. The Contractor shall give its personal attention to the fulfillment of the Contract and keep all phases of the Work under its control.

##### **4.02.2 Review of Contract Documents and Field Conditions by Contractor**

The Contractor shall have a continuing duty to read, carefully study and compare the Contract Documents and product data with each other and with information furnished by the University, and shall at once report to the Design Professional and the University, any errors, inconsistencies,

ambiguities and omissions before proceeding with the affected Work. The Contractor shall be liable to the University for damage resulting from errors, inconsistencies or omissions in the Contract Documents, if the Contractor recognized or should have recognized such error, inconsistency, ambiguity or omission and failed to report it to the Design Professional and the University. If the Contractor performs any construction activity which involves such error, inconsistency, ambiguity or omission in the Contract Documents without such notice to the Design Professional and the University, the Contractor shall assume responsibility for such performance and shall bear all costs attributable for correction. If the Contractor submits authorized substitutes that cost in excess of the Contract Sum or which cause coordination conflicts, the Contractor shall bear all costs attributable to correction.

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 Design Professional and University at once.

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

#### **4.02.3 Supervision and Construction Procedures**

The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible to the University for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

The Contractor shall be responsible to the University for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the Work under a Contract with the Contractor.

The Contractor agrees to furnish efficient business administration, coordination, supervision and superintendence of the Work and to furnish at all times a competent and adequate administrative and supervisory staff and an adequate supply of workmen and materials to perform the Work in the best and most sound way in the most expeditious and economical manner consistent with the interests of the University. The Contractor agrees from time to time at the University's request to furnish estimates and technical advice as to construction methods and equipment to the University and Design Professional.

For Projects utilizing Construction Management or Design-Build relationships, the Contractor agrees to review the plans and specifications, shop drawings, landscaping drawings, furniture, fixtures, and equipment plans and specifications, and any other drawings, plans and specifications developed with respect to the Project, as they are being developed and to advise and make recommendations with respect to such factors as construction feasibility, cost saving, availability of material and labor, time requirements for procurement and construction and projected costs. Additionally, the Contractor shall assist in the coordination of all sections of the plans and specifications without, however, assuming the Design Professional's customary responsibilities for

design or any liability therefore.

The Contractor agrees to cooperate with the Design Professional, University's Representative, commissioning agents, and all persons or entities retained by the University to provide consultation and advice, and to coordinate the Work with the Work of such parties so that the Project shall be completed in the most efficient and expeditious manner. In the event that Contractor's failure to efficiently sequence or coordinate the Work results in additional costs to the University, the Contractor shall promptly reimburse the actual costs incurred.

#### **4.02.4 Quality Control**

The Contractor shall be fully responsible for the quality of materials and workers' skill in the Project. The Contractor shall not rely upon the inspection and testing provided by the University or Design Professional other than those special inspections and tests performed by the University's selected laboratories for which there are written reports. Reports issued by the University's commissioning agent are to be considered complementary in nature and in no way relieve the Contractor of its responsibility to deliver Work in compliance with the Contract Documents.

The Contractor shall inspect the Work of the subcontractors on the Project, while the Work is being performed through final completion and acceptance of the Project by the University to assure that the Work performed and the materials furnished are in strict accordance with the drawings and specifications; the Contractor shall also inspect the Work to verify that Work on the Project is progressing on schedule.

The Contractor shall be responsible for inspection of portions of Work performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. In the event that it becomes necessary to interpret the meaning and intent of the plans and specifications during construction and the meaning is not reasonably inferable, the Contractor shall submit as a Request For Information (RFI) to the Design Professional to make the interpretation in writing and transmit same to appropriate Subcontractors and the University in accordance with the procedures established in section 5.02 of these General Conditions.

The Contractor shall not be relieved of obligations to performing the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

#### **4.02.5 Labor and Materials**

The Contractor shall provide an analysis of the types and quantity of labor required for the Project and review the availability of the appropriate categories of labor required for all Work, and the Contractor shall be responsible to provide the necessary and adequate labor needed to complete the Project by the Contract Time. During the course of the Project, the Contractor shall endeavor to maintain harmonious labor relations on the Project.

Unless otherwise provided in the Contract Documents, the Contractor shall provide any 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 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 unsafe persons or persons not skilled in tasks assigned to them.

#### **4.02.6 Disputes with Subcontractors**

Wherever any provision of any section of the Plans and Specifications conflicts with any agreement or regulation of any kind at any time in force among members of any Trade Associations, Unions or Councils which regulate or distinguish what Work shall or shall not be included in the Work of any particular trade, the Contractor shall make all necessary arrangements to reconcile any such conflict without delay, damage, increase to the Contract Sum or recourse to the University. The University will not arbitrate disputes among subcontractors nor between the Contractor and one or more subcontractors concerning responsibility for performing any part of the Project.

In case the progress of the Work is affected by any undue delay in furnishing or installing any items of material or equipment required under the Contract Documents because of conflict involving any agreement or regulation of the type described above, the University's Representative may require that other material or equipment of equal kind and quality be provided at no additional cost to the University.

#### **4.02.7 Project Manager and Superintendent**

The Contractor shall have at the Project site, during the full term of the Contract, an approved, competent, Project Manager and Superintendent, and any necessary assistants, all satisfactory to the University's Representative. The Project Manager or the Superintendent shall not be changed, except with the written consent of the University's Representative unless the Project Manager or the Superintendent ceases to be in the employ of the Contractor. The Project Manager or the Superintendent shall represent the Contractor and all directions given to either of them by the University or the University's Representative shall be as binding as if given to the Contractor. All directions and communications shall be confirmed in writing.

If a Project Manager or a Superintendent approved by the University's Representative ceases to be in the Contractor's employ, the Contractor shall immediately replace him with a person acceptable to the University's Representative. The University in its sole discretion shall have the right to require the removal of any agent or employee of the Contractor or any subcontractor without cause at any time.

#### **4.02.8 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations

concluded, whether or not yet effective or merely scheduled to go into effect and such taxes are included in the Contract Sum. The Contractor agrees to cooperate with the University in the event that the University seeks the refund or return of such taxes, including but not limited to participating at the University's expense in legal or administrative processes to effect that purpose.

#### **4.02.9 Permits and Notices**

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.

#### **4.02.10 Allowances**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such stated amounts, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection. Unless otherwise provided in the Contract Documents:

1. materials and equipment under an allowance shall be selected promptly by the University 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. the 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 allowances;
4. if allowance assumptions prove inappropriate, the Contract Sum may be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances.

#### **4.02.11 Use of Site**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The site shall be safely maintained and kept clean, orderly and neat.

#### **4.02.12 Safety**

The Contractor shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Contractor's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to University. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site. A regular watering program shall be initiated to adequately control the amount of fugitive dust.

The Contractor is knowledgeable of and understands that the University intends to maintain occupancy of certain portions of the existing facility. The Contractor shall exercise precaution at all times for the protection of persons and their property. 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. The Contractor shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the Work or permanently installed as part of the Project.

The Contractor shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Contractor shall comply with all applicable laws relating to safety precautions. The Contractor shall establish and maintain and update as required a Project Specific Safety Program.

The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the University and Design Professional.

The Contractor shall require each and every one of its subcontractors and Trade subcontractors to comply with all of the provisions of this section.

The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

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

#### **4.02.13 Hazardous Condition**

The University and/or the Design Professional may bring to the attention of the Contractor a possible hazardous situation in the field regarding the safety of personnel on the site. The Contractor shall be responsible for verifying that all local, state, and federal workplace safety guidelines are being observed. In no case shall this right to notify the Contractor absolve the Contractor of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Contractor has assumed any responsibility for field safety operations.

Explosives shall not be used without first obtaining written permission from the University and then shall be used only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. Storage of explosives on the

Project site or University is prohibited. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

The Contractor shall report in writing to the University's Representative, within eight (8) hours, all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. If any claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall report promptly the facts in writing to the University's Representative, giving full details of the claim.

#### **4.02.14 Cutting, Patching and Sequencing**

The Contractor shall be responsible for all cutting, fitting or patching required to complete the Work and to ensure the complete and effective coordination of the Work.

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the University 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 University or a separate Contractor except with written consent of the University and of such separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the University or a separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

#### **4.02.15 Access to Site**

The Contractor shall at all times permit the University and the Design Professional to visit and observe the Work, and the shops where Work is in preparation, and shall maintain proper facilities and provide safe access for such observation. Work requiring testing, observation or verification shall not be covered up without such test, observation, or approval. Appropriate advance coordination of such testing, observation or verification is expected. Whenever the Contractor intends to perform Work on a Saturday, Sunday, or holiday, it shall provide a minimum of 48 hours written notice of such intention prior to performing such Work.

The Contractor acknowledges that during the performance of the Work, the affected building and surrounding campus buildings will remain occupied and will require access by the public. The Contractor further acknowledges that other Contractors will be working on or near the Project site to accomplish the University's purposes and projects. To the greatest extent possible, the Contractor shall cooperate fully with the University and its guests, students, employees, invitees, and other Contractors in performing the Work required under the Contract. The Contract Sum includes any and all reasonably necessary costs expended to minimize interference with the University's activities as well as to coordinate schedules with other contractors' projects as required by the University.

#### **4.02.16 Burden for Damage**

From the issuance of the official Notice to Proceed until the formal acceptance of the Project by the University, the Contractor shall have the charge and care of and shall bear all risk of damage to the Project and materials and equipment for the Project. Unless specifically noted in the Contract Sum or GMP, the Contractor shall bear the cost of Builder's Risk Insurance.

#### **4.02.17 Payments by Contractor**

The Contractor agrees to promptly pay all subcontractors upon receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed Contractor on account of the Work performed by its subcontractors to the extent of each such subcontractor's interest therein.

In the event the University becomes informed that the Contractor has not paid a subcontractor as herein provided, the University shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such subcontractor as joint payees. Such joint check procedure, if employed by the University, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit or obligate the University to repeat the procedure in the future. This provision shall not supersede the procedures set forth in Article 8.00 of these General Conditions.

#### **4.02.18 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.**

The Contractor shall secure all permits and licenses required for any operations required under this Contract and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State, the county, the city, a public utility, telephone company, special district, or quasi-governmental entity. It is the responsibility of the Contractor to ascertain the necessity of such permits and licenses in preparing its bid, Contract Sum or GMP and include in its bid, Contract Sum or GMP the cost thereof, as well as any time requirements for securing such permits and licenses.

#### **4.02.19 Patented or Copyrighted Materials**

The Contractor shall pay all royalties and license fees for the use of patented or copyrighted processes or materials. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the University and Design Professional 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 Design Professional and University in writing.

#### **4.02.20 Property Rights in Materials and Equipment**

Nothing in the Contract shall be construed as vesting in the Contractor any property right in the materials or equipment after the materials or equipment have been attached to or permanently

placed in or upon the Work or the soil or after payment has been made for fifty percent or more of the value of the materials or equipment delivered to the site of the Work whether or not they have been so attached or placed. All such materials or equipment shall become the property of University upon being so attached or placed, or upon payment of fifty percent or more of the value of the materials or equipment delivered on the site but not yet installed and the Contractor warrants that all such property shall pass to the University free and clear of all liens, claims, security interests, or encumbrances.

#### **4.02.21 Utilities**

The Contractor shall refer to and abide by the standard Wayne State University Excavation Policy included in the Supplementary General Conditions.

The Contractor shall provide as-built drawings of all utilities encountered and constructed for the University, indicating the size, horizontal location, and vertical location based on the Project bench mark or a stable datum.

Unless otherwise specifically stated, the Contractor shall provide or otherwise make all arrangements for utilities required to deliver the Work. The costs of utility consumption to deliver the Work shall be the responsibility of the University and shall not be included in the Contract Sum.

The Contractor shall endeavor to prevent unnecessary waste of utility resources. Willfully wasting utilities shall result in a Contract Sum deduction through a Change Order.

#### **4.02.22 Asbestos and Hazardous Materials**

The Contractor is prohibited from installing any asbestos containing materials or products, and other prohibited and hazardous materials in the Work. The Contractor shall be responsible for removal and replacement costs should it be determined this provision has been violated, regardless of whether the job has been completed.

### **4.03 Design Professional**

#### **4.03.1 Design Professional's Administration of Contract**

The Design Professional will provide one or more Project Representatives to assist in the administration of the Contract as described in the Contract Documents, and to assist the University's Representative (1) during the construction, (2) until final payment is due and (3) with the University's concurrence, from time to time during the correction and warranty period. The Design Professional will advise and consult with the University on issues relating to contract performance and interpretation. The Design Professional will have no authority to act on behalf of the University except as provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

The Design Professional will visit the site at intervals defined in the Design Professional's Proposal to become familiar with the progress and quality of the completed Work and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in

accordance with the Contract Documents. On the basis of on-site observations as an architect, the Design Professional will keep the University and Contractor informed of progress of the Work by written field reports, and will endeavor to guard the University against defects and deficiencies in the Work.

The Design Professional will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Design Professional will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

#### **4.03.2 Communications Facilitating Contract Administration**

The Design Professional and Contractor shall communicate directly concerning the Project and shall keep the University advised of their communications. Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with subcontractors and material suppliers shall be through the Contractor. Communications by and with separate Contractors shall be through the University.

#### **4.03.3 Evaluation of Applications for Payment**

Based on the Design Professional's observations and evaluations of the Contractor's Applications for Payment, the Design Professional will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

The Design Professional will have authority to reject Work which does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Professional will have authority to require additional observation or testing of the Work in accordance with section 5.06, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

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

The Design Professional will review and approve or take other appropriate action upon the Contractor's submittal of Shop Drawings, Product Data and Samples. The Design Professional's action will be taken within 10 days from receipt so as not to cause delay in the Work or in the activities of the University, Contractor or separate Contractors, while allowing sufficient time in the Design Professional's professional judgement to permit adequate review. Review of such submittal 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 Design Professional's review of the Contractor's submittal shall not relieve the Contractor of the obligations under Article 5.04. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of any construction means, methods, techniques, sequences or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

#### **4.03.5 Site Observations to Determine Substantial and Final Completion**

The Design Professional will conduct observations to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the University for the University's review and retention all written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

#### **4.03.6 Interpretation of Contract Performance**

The Design Professional will interpret and render an opinion on matters concerning performance under and requirements of the Contract Documents on written request of either the University or Contractor. The Design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Design Professional shall be furnished, then delay shall not be recognized on account of failure by the Design Professional to furnish such interpretations until 15 days after written request is made for them.

Interpretations and opinions of the Design Professional shall be non-binding and consistent with the intent of and reasonably inferable from the Contract Documents, and in writing or in the form of drawings. When making such interpretations and opinions, the Design Professional will endeavor to secure faithful performance by both the University and Contractor, will not show partiality to either and will not be liable for results of interpretations or opinions so rendered in good faith.

#### **4.04 Delegation of Performance and Assignment of Money Earned**

The performance of all or any part of this Contract may not be delegated by the Contractor or Design Professional without the written consent of the University. Consent will not be given to any proposed delegation which would relieve the Design Professional, the Contractor or its surety of their responsibilities under the Contract.

The Contractor may assign moneys due or to become due under the Contract, only upon written consent of the University. Assignments of moneys earned by the Contractor shall be subject to proper retention in favor of the University and to all deductions provided for in the Contract and such moneys shall be subject to being used by the University for the completion of the Work in the event the Contractor is in default.

#### **4.05 Contractor's Insurance**

The Contractor shall not commence Work under this Contract until it has obtained all the insurance required by the Contract Documents and such insurance has been approved by the University; likewise, no subcontractor or subconsultant shall be allowed to commence Work until the insurance required has been obtained. The Contractor shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and the University from claims, such as for bodily injury, death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by the Contractor, by any subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The types of such insurance and any additional insurance requirements are specified herein with the amounts and limits set forth in the Supplementary General Conditions.

#### **4.05.1 Policies and Coverage**

The following policies and coverages shall be furnished by the Contractor:

- (1) Comprehensive or Commercial Form General Liability Insurance covering all Work done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and Contractual liability. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to work required of the Contractor by these Contract Documents. This insurance shall include the contractual obligations assumed under the Contract Documents and specifically section 4.06.
- (2) Business Automobile Liability Insurance on an "Occurrence" form covering owned, hired, leased, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and Contractual liability.
- (3) Worker's Compensation and Employer's Liability Insurance as required by Federal and Michigan law. The Contractor shall also require all of its Subcontractors to maintain this insurance coverage.
- (4) The Umbrella Excess Liability insurance must be consistent with and follow the form of the primary policies, except that Umbrella Excess Liability insurance shall not be required for the Medical Expense Limit.
- (5) Builder's Risk Insurance: The Contractor, at his sole expense, shall purchase and maintain property insurance upon the entire Project for the full replacement cost at the time of any loss. This insurance shall include "All Risk" coverage against physical loss or damage including the perils of Fire and Extended Coverage, Theft, Vandalism, and Malicious Mischief, Transit and Collapse. The Contractor will be responsible for any co-insurance penalties and/or deductibles.

#### **4.05.2 Proof of Coverage**

Certificates of Insurance, as evidence of the insurance required by these Contract Documents, shall

be submitted by the Contractor to the University. The Certificates of Insurance shall state the scope of coverage and deductible, and list the University as an additional insured. Any deductible shall be the Contractor's liability. The Certificates of Insurance shall provide for no cancellation or modification of coverage without thirty (30) days prior written notice to the University. Acceptance of Certificates of Insurance by the University shall not in any way limit the Contractor's liabilities under the Contract Documents. The Contractor shall maintain required insurance for the entire duration of the Contract. In the event the Contractor does not comply with these insurance requirements, the University may, at its option, provide insurance coverage to protect the University; the cost of such insurance shall be deducted from the Contract Sum or otherwise paid by the Contractor. Renewal certifications shall be filed in a timely manner for all coverage until the Project is accepted as complete. Upon the University's request, the Contractor shall provide copies of the policies obtained from the insurers.

#### **4.05.3 Subcontractor's Insurance**

The Contractor shall either require subcontractors to carry the insurance or the Contractor shall insure the activities of the subcontractors in the amount, types and form of insurance required under by the Contract Documents. If the Contractor elects to have its subcontractors purchase individual insurance policies, the Contractor shall cause its trade contracts to include a clause requiring that copies of any insurance policies which provide coverage to the Work shall be furnished to the University upon request. The Contractor shall supply the University with a list of all subcontractors showing whether or not they have individual insurance policies and certifying that those subcontractors without individual insurance policies are insured by the Contractor.

#### **4.05.4 Scope of Insurance Coverage**

The Contractor's insurance as required by the Contract Documents (including subcontractors' insurance), by endorsement to the policies and the Certificates of Insurance, shall include the following and may be presented in the form of a rider attached to the Certificates of Insurance:

- (1) The Board of Governors of Wayne State University, the University, their officers, employees, representatives and agents including the Design Professional, shall be included as insured for and relating to the Work to be performed by the Contractor and subcontractors. This shall apply to all claims, costs, injuries, or damages.
- (2) A Severability of Interest Clause stating that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurer's or insurers' liability."
- (3) A Cross Liability Clause stating that, "In the event of claims being made under any of the coverages of the policy or policies referred to herein by one or more insured hereunder for which another or other insured hereunder may be liable, then the policy or policies shall cover such insured or insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurer's limits of liability as set forth in the insuring agreements."

- (4) The Board of Governors of Wayne State University, the University, their officers, employees, representatives and agents, shall not by reason of their inclusion as insured incur liability to the insurance carriers for payment of premiums for such insurance. However, the Board of Governors of Wayne State University may, in their sole discretion after receiving a notice of cancellation for nonpayment, elect to pay the premium due and deduct such payment from any sums due to the Contractor or recover the amount paid from the Contractor if the sums remaining are insufficient.
- (5) Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by the Board of Governors of Wayne State University, the University, their officers, employees, representatives and agents.

#### **4.05.5 Miscellaneous Insurance Provisions**

The form and substance of all insurance policies required to be obtained by the Contractor shall be subject to approval by the University. All such policies shall be issued by companies lawfully authorized to do business in Michigan and be acceptable to the University. All property insurance policies to be obtained by the Contractor shall name the University as loss payee as its interest, from time to time, may appear.

The Contractor shall, by mutual agreement with the University and at the University's cost, furnish any additional insurance as may be required by the University. The Contractor shall provide Certificates of Insurance evidencing such additional insurance.

Should the Project involve asbestos abatement, the Contractor or subcontractor, as appropriate, shall provide asbestos liability insurance.

The Contractor acknowledges that the University is self-insured and participates in the Michigan Universities Self-Insurance Corporation program and the Contractor agrees that the University is not required to provide or purchase any additional insurance with respect to this Project or the Work required by the Contractor for the Project.

#### **4.05.6 Loss Adjustment**

Any insured loss is to be adjusted with the University and made payable jointly to the University and the Construction Manager. The Construction Manager shall cooperate with the University in a determination of the actual cash value or replacement value of any insured loss. Any deductible amount shall be the responsibility of the Construction Manager to resolve.

#### **4.05.7 Compensation Distribution**

The University upon the occurrence of an insured loss shall account for any money so received and shall distribute it in accordance with such agreement as the interested parties may reach. Claim payments received shall be distributed proportionately according to the actual percentages of losses to both. If after such loss no other special agreement is made, replacement of damaged work shall

be covered by an appropriate contract change order. Any dispute shall be resolved by the University.

#### **4.05.8 Waivers of Subrogation**

The University and Contractor waive all rights against (1) each other and any of their subcontractors, subcontractors, agents and employees, each of the other, and (2) the Design Professional, Design Professional's consultants, separate Contractors 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 paragraph or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the University as fiduciary. The University or Contractor, as appropriate, shall require of the Design Professional, Design Professional's consultants, separate Contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, Contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

#### **4.06 Indemnification**

##### **4.06.1**

To the fullest extent permitted by law, the Contractor shall hold harmless, defend, and indemnify the Board of Governors of Wayne State University, the University, and officers, employees, representatives and agents of each of them, from and against any and all claims or losses arising out of or are alleged to be resulting from, or relating to (1) the failure of the Contractor to perform its obligations under the Contract or the performance of its obligation in a willful or negligent manner; (2) the inaccuracy of any representation or warranty by the Contractor given in accordance with or contained in the Contract Documents; and (3) any claim of damage or loss by any subcontractor, or supplier, or laborer against the University arising out of any alleged act or omission of the Contractor or any other subcontractor, or anyone directly or indirectly employed by the Contractor or any subcontractor.

##### **4.06.2**

To the fullest extent permitted by law, the Contractor shall be liable for and hereby agrees to defend, discharge, fully indemnify and hold the University harmless from and against any and all claims, demands, damages, liability, actions, causes of action, losses, judgments, costs and expenses of every nature (including investigation costs and/or expenses, settlement costs, and attorney fees and expenses incident thereto) sustained by or asserted against the University arising out of, resulting from, or attributable to the performance or nonperformance of any Work and/or obligation covered by the Contract or to be undertaken in connection with the construction of the Project contemplated by the Contract (collectively, "Claim"), including, but not limited to, any

Claim for: (a) any personal or bodily injury, illness or disease, including death at any time resulting therefrom of any person, (including, but not limited to, employees of the University, the Contractor, any subcontractor, and any materialman and the general public); (b) any loss, damage or destruction of any property; (c) any loss or damage to the University's operations, arising out of, resulting from, or attributable in whole or in part to (i) any negligence or other act or omission of the Contractor, and any subcontractor, any materialman and/or any other person or any of the directors, officers, employees or agents of any of them or (ii) any defects in material or equipment furnished hereunder; (d) any payments allegedly owed to subcontractors, sub-subcontractors or materialmen; (e) any acts or omissions relative to conditions of safety and protection of persons on the Project site; and/or (f) any act or omission relative to the Contractor's breach of obligations and regarding non-discrimination as set forth in these General Conditions. The Contractor shall not be liable hereunder to indemnify the University against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence or willful misconduct of the University, its agents or employees. The Contractor, at its own cost and expense, shall take out and maintain at all times during the effective period of the Contract, contractual liability insurance insuring the performance by the Contractor of its contractual duties and obligations under this Article, which insurance shall name the University as additional insured and shall be in form and amount and from an insurance company satisfactory to the University. The Contractor's duty to fully indemnify the University shall not be limited in any way by the existence of this insurance coverage.

#### **4.06.3**

The Contractor shall also be liable for and hereby agrees to pay, reimburse, fully indemnify and hold the University harmless from and against all costs and expenses of every nature (including attorney fees and expenses incident thereto) incurred by the University in collecting the amounts due from the Contractor, or otherwise enforcing its rights, under the indemnifications described in this Article.

#### **4.06.4**

In claims against any person or entity indemnified under this Article made by an employee of the Contractor or a subcontractor, or indirectly employed by either of them, or anyone for whose acts either made by liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a subcontractor under workers compensation laws, disability benefit laws, or other laws providing employee benefits.

#### **4.06.5**

The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

#### **4.06.6**

The Contractor shall hold harmless, defend, and indemnify the University from and against losses

resulting from any claim of damage made by any separate Contractor of the University against the University arising out of any alleged acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by either the Contractor or subcontractor, or anyone for whose acts either the Contractor or subcontractor may be liable.

#### **4.07 Occupancy by University Prior to Acceptance**

The University 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 public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the University and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a description of the area substantially complete to the Design Professional. 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 University and Contractor or, if no agreement is reached, by decision of the Design Professional.

Immediately prior to such partial occupancy or use, the University together with the Contractor and Design Professional shall jointly observe and/or 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.

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. Likewise, partial occupancy or use of a portion or portions of the Work shall not alter, change or modify the requirements for Substantial or Final Completion within Contract Time.

#### **4.08 Contract Time**

##### **4.08.1 Time of the Essence**

All time limits specified in this Contract are of the essence of the Contract.

##### **4.08.2 Starting and Completion Date**

The University shall designate in the Notice to Proceed the starting date of the Contract on which the Contractor shall immediately begin and thereafter diligently prosecute the Work to completion. The Contractor agrees to complete the Work on the date specified for completion of the Contractor's performance in the Contract unless such time is adjusted, in writing, by change order issued by the University. The Contractor may complete the Work before the completion date if it will not interfere with the University or their other Contractors engaged in related or adjacent Work. The date of Substantial Completion shall be used as the commencement date of the guarantee.

### **4.08.3 Delay**

Within ten (10) days from the commencement of a delay, Contractor shall submit to the University's Representative a written notice of the delay. Such notice of delay shall describe the nature and cause of the delay, provide a preliminary estimate of the impact of said delay on the construction schedule and provide a recovery plan to mitigate the delay. The Contractor's failure to give such notice to the University shall constitute a waiver by the Contractor of its ability to request an extension of time. In the case of a continuing cause of delay, only one claim shall be necessary. The giving of such notice shall not of itself establish the validity of the cause of delay or of the extension of the time for completion. Submission of reports and/or updates required at regularly scheduled meetings or as a part of a regularly submitted report shall not constitute such required notice.

The Contractor expressly agrees that delays to construction activities which do not affect the overall time of completion of the Work shall not entitle the Contractor to an extension of the Contract Time or provide a basis for additional cost or damages. No delay, obstruction, interference, hindrance, or disruption, from whatever source or cause in the progress of the Contractor's Work shall be a basis for an extension of time unless the delay, obstruction, interference, hindrance, or disruption is without the fault and not the responsibility of the Contractor and directly affects the overall completion of the Work as reflected in the Contractor's updated and accepted Project schedule.

Within fifteen (15) days from the submittal to the University of the notice of delay detailed in the previous paragraphs, Contractor shall submit to the University's Representative a request for an extension of time which shall include all documentation supporting the request. Such submittal shall include a detailed description of all changes in activity duration, logic, sequence, or otherwise in the Project schedule. The filing of such a request for an extension of time shall not of itself establish the validity of the cause of delay or of the extension of time for completion. Submission of construction reports and/or updates required by these General and Supplementary Conditions shall not constitute such a request.

### **4.08.4 Adjustment of Contract Time**

If the Contractor is delayed, obstructed or hindered at any time in the progress of the Work by any act or neglect of the University or by any Contractor employed by the University, or by changes ordered in the scope of the Work, or by fire, adverse weather conditions not reasonably anticipated, or any other causes beyond the control of the Contractor with the exception of labor disputes or strikes, then the duration set forth in the Master Project Schedule, and established for Substantial and Final Completion may be extended as agreed to by the University, Contractor and Design Professional. When such delays result in an agreement to adjust the Time of Completion, then the Contractor may also request, and the University may consider affecting a reasonable adjustment to the Contract Sum for Project costs directly attributable to the delay. It will be the Constructors obligation to demonstrate to the complete satisfaction of the University, that the direct Project costs associated with such delays are justified, fair, and reasonable. The University does not recognize labor disputes, strikes, work stoppages, picketing or boycotting to be cause for extending the Construction Project Schedule or the Contract Time. Pursuant to section 9.01.1 such labor

disputes, strikes, work stoppages, picketing or boycotts may constitute grounds for termination of the Contractor.

#### **4.08.5 Contractor to Fully Prosecute Work**

No extension of time will be granted unless the Contractor demonstrates to the satisfaction of the University that the Contractor has made every reasonable effort to complete all Work under the Contract not later than the date prescribed.

#### **4.08.6 University's Adjustment of Contract Time**

Even though the Contractor has no right to an extension of time for completion, the University may in the exercise of its sole discretion extend the time at the request of the Contractor if it determines it to be in the best interest of the University. If the time is extended, the University may, in lieu of assessing liquidated damages, charge the Contractor, its successors, heirs, assigns, or sureties, and deduct from the final payment for the Work all or any part, as they may deem proper, of the value of the lost use of the completed project, and of the actual cost to the University of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension.

#### **4.08.7 Adjustment of Contract Time Due to Reasons Beyond University Control**

Should the University be prevented or enjoined from proceeding with Work either before or after the start of construction by reason of any litigation or other reason beyond its control, the Contractor may request an adjustment in the Time of Completion and/or Contract Sum by reason of said delay. It will be the Contractor's obligation to demonstrate to the complete satisfaction of the University, that all Time of Completion and Contract Sum adjustments associated with such delays are justified, fair, and reasonable.

### **4.09 Progress Schedule**

#### **4.09.1**

The Contractor shall prepare and submit to the University the Contractor's Construction Schedule within ten (10) days after starting date on the Notice to Proceed. It shall be the Contractor's responsibility to use its best efforts and to act with due diligence to maintain the progress of the Work in accordance with the schedule. The time for completion may be extended only by a written Change Order executed by the University and the Contractor. The work activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that, in the sole judgment of the University, it provides an appropriate basis for monitoring and evaluating the progress of the Work. The Contractor shall also submit a separate progress schedule listing all submittals required under the Contract and the date by which each submittal will be submitted allowing 15 days for the Design Professional's review.

#### **4.09.2**

For projects involving value engineering prior to commencement of the Work, the Contractor shall show the period allowed for value engineering as part of the construction schedule. The Contractor shall perform an analysis of schedule effects as part of any value engineering proposal.

#### **4.09.3**

For Projects involving preconstruction services, the Contractor shall develop a Master Project Schedule which shall coordinate and integrate project planning activities, design reviews and approvals, bidding and related preconstruction services with the proposed construction schedule. The Master Project Schedule shall show the interrelationship of activities and clearly indicate the activities on the Critical Path for completion of the Project. The Master Project Schedule shall be prepared and submitted to the University for approval within 15 days of the Notice to Proceed. The Master Project Schedule shall provide for Substantial Completion of the Project within the Contract Time. Once established and approved by the University, the Contractor shall revise and update the schedule regularly as requested by the University and on no less than a monthly basis, to incorporate the effects of actual job conditions, performance and changes. Failure of Contractor to provide the schedules requested by University shall constitute a material breach of this Agreement.

#### **4.09.4**

Float, slack time, or contingency within the schedule at the activity level and total float within the overall schedule, is not for the exclusive use of either the University or the Contractor, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contract completion date.

#### **4.09.5**

The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float time within the construction schedule is jointly owned, it is acknowledged that University caused delays on the Project may be offset by University caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension until all University caused time savings are exceeded and the Contract completion date is also exceeded.

#### **4.09.6**

Regardless of which schedule method the Contractor elects to use in formulating the Master Project Schedule or Contractor's Construction Schedule, an updated construction schedule shall be submitted to the University five (5) days prior to the submittal of the Contractor's monthly payment request. The submittal of the updated construction schedule which satisfies the requirements of this Article, accurately reflects the status of the Work, and incorporates all changes into the schedule, including actual dates and cost of Work performed, shall be a condition precedent to the processing of monthly payment applications. Updated schedules shall also be submitted at such other times as

the University may direct. Upon approval of a change order or issuance of a direction to proceed with a change, the approved change shall be reflected in the next schedule update submitted by the Contractor.

#### **4.09.7**

If completion of any part of the Work, the delivery of equipment or materials, or issuance of the Contractor submittals is behind the updated Construction Schedule and will cause the end date of the Work to be later than the Contract completion date, the Contractor shall submit in writing a plan acceptable to the University for completing the Work on or before the current Contract completion date.

#### **4.09.8**

No time extensions shall be granted unless the delay can be clearly demonstrated by the Contractor on the basis of the updated Construction Schedule current as of the month the change is issued or the delay occurred, and the delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of Work or other means.

#### **4.09.9**

As a condition precedent to the release of retained funds, the Contractor shall, after completion of the Work has been achieved, submit a final Construction Schedule or Master Project Schedule which accurately reflects the manner in which the Project was constructed and includes actual start and completion dates and resources consumed for all Work activities on the Project schedule.

### **4.10 Coordination With Other Work**

The University reserves the right to do other Work in connection with the Project or adjacent thereto and the Contractor shall at all times conduct the Work so as to impose no hardship on the University or others engaged in the University's Work nor to cause any unreasonable delay or hindrance thereto.

Where two or more Contractors are employed on related or adjacent work, each shall conduct their operation in such a manner as not to cause delay or additional expense to the other.

The Contractor shall be responsible to others engaged in the related or adjacent work for all damage to Work, to persons and to property, and for loss caused by failure to complete the Work within the specified time for completion. The Contractor shall coordinate its Work with the Work of others so that no discrepancies shall result in the Project.

### **4.11 As-built Drawings Reflecting Actual Construction**

During the course of construction, the Contractor shall maintain drawings kept up each day to show the Project as it is actually constructed. Every sheet of the plans and specifications which differs from the actual construction shall be marked and sheets so changed shall be noted on the title sheets

of the plans and specifications. All change orders shall be shown by reference to sketch drawings, and any supplementary drawings or change order drawings shall be included. The Contractor shall review the "As-built" drawings with the University at least once a month to demonstrate that all changes that have occurred are being fully and accurately recorded. The altered Contract drawings shall be sufficiently detailed so that future Work on the Project or in adjacent areas may be conducted with a minimum of difficulty. Prior to the completion of the Project, and prior to release of the final retention payments, the "As-built" drawings and specifications shall be transmitted to the Design Professional for further handling. A copy of the transmittal shall be sent to the University and included in the formal closeout documents.

#### **4.12 Cleanup of Project and Site**

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.

If the Contractor fails to clean up as provided in the Contract Documents, the University may do so and the cost thereof shall be charged to the Contractor. Any additional cleaning requirements are as stated in the Supplementary General Conditions.

Upon completion of the Work, the Contractor shall promptly remove from the premises construction equipment and any waste materials not previously disposed of, leaving the premises thoroughly clean and ready for occupancy.

When two or more Contractors are engaged in work at or near the site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed.

In the event the Contractor does not maintain the Project or the site clear of debris and rubbish in a manner acceptable to the Design Professional or University, the University may, at its option, cause the Project or site to be properly cleaned and may withhold the incurred expense from payments due the Contractor or otherwise receive reimbursement from the Contractor.

#### **4.14 Project Sign, Advertising**

The Contractor shall furnish and install a project sign as designed by the Design Professional and accepted by the University as part of the Work under the Contract. As a minimum, the sign shall be four feet by eight feet, made from three-quarter inch plywood. The sign shall identify the Project name, the University, the Design Professional, and the Contractor. No advertising is permitted on the Project or site without written permission from the University.

## **5.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS**

### **5.01 Interpretation of Contract Requirements**

#### **5.01.1 Conflicts**

In the event of conflict in the Contract Documents, the priorities stated below shall govern:

- (1) Addenda shall govern over all other Contract Documents and subsequent addenda shall govern over prior addenda only to the extent that they modify prior addenda. Such addenda shall only govern the scope of Work, Contract Sum, and Time of Completion, and shall not be deemed to amend the Contract, General Conditions of Construction, or Supplementary General Conditions of Construction.
- (2) In case of conflict between plans and specifications, the specifications take precedence over drawings for the specific type or quality of materials or the quality of installation; the drawings take precedence over the specifications with regard to quantities, locations or detail of installation.
- (3) Conflicts within the plans:
  - (a) Schedules, when identified as such, shall govern over all other portions of the plans.
  - (b) Specific notes shall govern over all other notes and all other portions of the plans except the schedules described in Article 5.01.1, above.
  - (c) Larger scale drawings shall govern over smaller scale drawings.
  - (d) Figured or numerical dimensions shall govern over dimensions obtained by scaling. Scaling the drawings is prohibited.
- (4) Conflicts within the specifications:

“General Conditions for Construction” shall govern over all sections of the specifications except for specific modifications thereto that may be stated in Supplementary General Conditions or addenda. No other section of the specifications shall modify the General Conditions for Construction.
- (5) In the event provisions of codes, safety orders, Contract Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

#### **5.01.2 Omissions**

If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard. “Minor

Detail” shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial.

The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Documents.

### **5.01.3 Miscellaneous**

Portions of the Work which can be best illustrated by the Drawings may not be included in the Specifications and portions best described by the Specifications may not be depicted on the Drawings.

If an item or system is either shown or specified, all material and equipment normally furnished with such items and needed to make a complete operating installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted. The University shall not be held responsible for the absence of any detail that the Contractor may require for any construction which may be found necessary as the Work progresses. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

The General Conditions and Supplementary General Conditions are a part of each and every section of the Specifications.

All drawings, Project Plans and Specifications, renderings and models or other documentation, and copies thereof, furnished by the University or any agent, employee or consultant of the University, or Design Professional, are and shall remain the property of the University. They are to be used only with respect to this Project and are not to be used on any other project.

### **5.01.4 Interpreter of Documents**

The University’s Representative shall be the Interpreter, with the advice of the Design Professional, of the Contract Documents and shall be the judge of the performance of the Contractor and subcontractors. Subject to the provisions Article 7, claims, disputes and other matters of controversy relating to the Contract Documents or the Work shall be decided by the University’s Representative. The decision of the University’s Representative shall be final if consistent with the Contract Documents. The authority of the University’s Representative contained in this section shall be deemed to be an independent covenant of the Contract Documents.

## **5.02 Issuance of Interpretations, Clarifications, Additional Instructions (Requests for Information)**

Should the Contractor discover any conflicts, omissions, or errors in the Contract or have any question concerning interpretation or clarification of the Contract Documents, the Contractor shall

request in writing an interpretation, clarification, or additional detailed instructions before proceeding with the Work affected. The written request shall be given to the Design Professional and University within 5 days of discovery.

The Design Professional, with review as required by the University, shall, within 10 days or other reasonable time, issue in writing the interpretation, clarification, or additional detailed instructions requested. In the event that the Contractor believes that the progress of the Work is being delayed by an Request for Information or a response to an Request for Information, Contractor shall comply with the procedures stated in section 4.08 of these General Conditions for an extension of time.

Should the Contractor proceed with the Work affected before receipt of the interpretation, clarification, or instructions from the Design Professional, the Contractor shall replace or adjust any Work not in conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification, or additional detailed instructions, in the opinion of the Contractor, constitute Work beyond the scope of the Contract, the Contractor must submit written notice thereof to the Design Professional and University within five (5) calendar days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of Work thereon. The Contractor shall submit an explanation of how the interpretation, clarification, or additional detailed instruction constitutes work beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts. The Design Professional shall consider such notice and make a recommendation to the University. If, in the judgment of the University, the notice is justified, the interpretation, clarification or additional detailed instructions shall either be revised or the extra work authorized by Contract change order or by field instruction with a change order to follow. If the University decides that the request is not justified and the Contractor does not agree, the Contractor shall nevertheless perform such Work upon receipt from the University of written authorization to do so. In such case, the Contractor shall have the right to have the Claim later determined only pursuant to the requirements of this Contract. However, any such Claim for additional compensation because of such interpretation, clarification, or additional detailed instruction is waived, unless the Contractor gives written notice to the Design Professional and University within five (5) calendar days as specified above.

### **5.03 Product and Reference Standards**

#### **5.03.1 Product Designation**

When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications of current issue at the date of Contract execution.

#### **5.03.2 Reference Standards**

When standards of the federal government, trade societies, or trade associations are referred to in the Contract Documents by specific date of issue, these shall be considered a part of this Contract. When such references do not bear a date of issue, the current and most recently published edition at

the date of Contract execution shall be considered a part of this Contract.

## **5.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions**

### **5.04.1 Submittal Procedure**

Shop drawings include drawings, diagrams, illustrations, schedules, performance charts, brochures and catalogs and other data prepared by the Contractor or any subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work. The Contractor shall promptly review and mark all shop drawings as approved and then submit the shop drawings to the Design Professional so as to cause no delay in the Work together with samples as required by the Contract Documents and shall also submit any offers of alternatives or substitutions. The Design Professional shall have 10 days to respond with an acknowledgement of approval, clearly defined exceptions, or rejections. Rejections shall be cause for re-submission and no contract time adjustments will be granted for such requirements. At least six copies of brochures, one copy of shop drawings and one reproducible copy of shop drawings shall be submitted as well as additional copies as required by Design Professional. All such submittals shall be sent to Design Professional at the address given in the instructions to the Contractor at the job start meeting. A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations shown in the shop drawings and samples from the requirements of the Contract Documents. Failure by the Contractor to identify all deviations may render void any action taken by the Design Professional on the materials submitted. Whether to void such action shall be in the discretion of the Design Professional. The letter and all items accompanying it shall be fully identified as to project name and location, the Contractor's name, and the University's Project number. By submitting the approved shop drawings and samples, the Contractor warrants and represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the Contract Documents.

### **5.04.2 Samples**

Samples are physical examples furnished by the Contractor to illustrate materials, equipment, color, texture, or worker ship, and to establish standards by which the Work will be judged. Unless otherwise approved, at least four samples will be submitted for each item requiring samples to be submitted.

The Work shall be in accordance with the samples and reviewed by Design Professional. Samples shall be removed by the Contractor from the site when directed. Samples not removed by the Contractor, will become the property of the University and will be removed or disposed of by the University at the Contractor's expense.

### **5.04.3 Alternatives or Equals**

For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by

brand name.” Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Contractor complies with the requirements stated in this section.

#### **5.04.3.1**

The Contractor shall submit its proposal to Design Professional for an alternative in writing within the time limit designated in the Contract, or if not so designated, then within a period which will cause no delay in the Work. In exceptional cases where the best interests of the University so requires, the Design Professional may give written consent to a submittal or resubmittal received after the expiration of the time limit designated.

#### **5.04.3.2**

No proposal will be considered unless accompanied by information necessary to permit a determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the Design Professional and/or the University.

#### **5.04.3.3**

The burden of proving the comparative quality and suitability of the offered materials or equipment shall be upon the Contractor. Where the material is specified by capacity or performance, the burden of proof shall be on the Contractor to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The Contractor shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met. Such information shall be submitted so as to not cause a delay in delivery and/or progress of the Work. The Design Professional and University shall be the judge of such matters. If the Design Professional or University rejects the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

#### **5.04.3.4**

If changes or delays are required for proper installation or fit of alternative materials, articles, or equipment, or because of deviations from Contract Documents, such changes or delays shall be made at the Contractor’s expense without recourse for reimbursement from the University.

### **5.04.4 Substitutions**

If the Contractor proposes a product that is of lesser or greater quality or performance than the specified material or equipment, Contractor must both comply with the provisions of section 5.04 and submit any cost impact. By submitting a substitute, the Contractor waives any rights to claim a delay due to the processing of this substitution.

The Contractor may offer a substitution of a specified or indicated item if it presents complete information concerning the substitution and the benefits thereof to the University by reason of lower cost or improved performance, or both, over the specified or indicated item. However, such

submission of a proposed substitution does not relieve the Contractor from its obligations under the Contract. In proposing a substitution, the Contractor warrants that the substitution is, at a minimum, equivalent in performance to the specified or indicated item. A substitution shall not be effective unless accepted in writing by the University.

Any additional costs and changes to the Work (including, but not limited to the Work of other Contractors and additional design costs which may be affected thereby) which may result from the proposed substitution shall be disclosed at the time the substitution is proposed to the University. Changes to the Work and any additional costs therefrom shall be the sole responsibility of the Contractor and shall not increase the Contract Sum or GMP.

The Contractor's substitution proposals shall include written descriptions of the items to be substituted (including drawings and/or specifications) and referenced information of the proposed substitution. The Design Professional and University's Representative's signature on this proposal is required for acceptance. Shop Drawings will not be considered a substitution proposal pursuant to this section. Verbal approvals or approved Shop Drawings will not be considered as acceptance of proposed substitutions.

#### **5.05 Quality of Materials, Articles and Equipment**

Materials, articles and equipment furnished by the Contractor for incorporation into the Work shall be new. When the Contract requires that materials, articles or equipment be furnished, but the quality or kind thereof is not specified, the Contractor shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment which are specified.

#### **5.06 Testing Materials, Articles, Equipment and Work**

Materials, articles, equipment or other Work requiring tests are specified in the Contract Documents. Materials, articles and equipment requiring tests shall be delivered to the site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval. The Contractor shall be solely responsible for notifying the University where and when materials, articles, equipment and Work are ready for testing. Should any such materials, articles, equipment or Work be covered without testing and approval, if required, they shall be uncovered at the Contractor's expense. The University has the right to order the testing of any other materials, articles, equipment or Work at any time during the progress of the Work. Unless otherwise directed, all samples for testing shall be taken by the University from materials, articles or equipment to be used on the project or from Work performed. All tests will be under the supervision of, and at locations convenient to, the University. The University shall select the laboratories for all tests. Decisions regarding the adequacy of materials, articles, equipment or Work shall be issued to the University in writing. The University may decide to take further samples and tests, and if the results show that the Work was not defective, the University shall bear the costs of such samples and tests. In the event the results of such additional samples and tests show that the Work was defective, the Contractor shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of the Contractor. All retesting and reinspection costs may be back charged to the Contractor by the University.

### **5.07 Rejection**

Should any portion of the Work or any materials, articles or equipment delivered to the Project fail to comply with the requirements of the Contract Documents, such Work, materials, articles or equipment shall be rejected in writing and the Contractor shall immediately correct the deficiency to the satisfaction of the Design Professional and the University at no additional expense to the University. Any Work, materials, articles or equipment which are rejected shall immediately be removed from the premises at the expense of the Contractor. The University may retain one and one-fourth times the cost of the rejected materials, articles, equipment, and Work from any payments due the Contractor until such time as the deficiency is made acceptable to the Design Professional and University.

### **5.08 Responsibility of Quality**

The testing and inspection provided by the University shall not relieve the Contractor of its responsibility for the quality of materials and workmanship provided by the Contractor, and the Contractor shall make good all defective Work discovered during or after completion of the Project.

## **6.00 CHANGES IN THE WORK**

### **6.01 Change Orders**

#### **6.01.1 Generally**

The University reserves the right to issue written orders whether through a formal Change Order or Construction Change Directive, directing changes in the Contract at any time prior to the acceptance of the Project without voiding the Contract, and Contractor shall promptly comply with such order. The Contractor may request changes in the Work, but shall not act on the changes until approved in writing by the University. Any change made without authority in writing from the University shall be the responsibility of the Contractor.

Any such changes in the Work that have a cost impact shall only be authorized by Change Orders approved by the University. No action, conduct, omission, prior failure or course of dealing by the University shall act to waive, modify, change or alter the requirement that Change Orders must be in writing and signed by the University and Contractor and that such written Change Orders are the exclusive method for changing or altering the Contract Sum/GMP or Contract Time. The University and Contractor understand and agree that the Contract Sum/GMP and Contract Time cannot be changed by implication, oral agreements, actions, inactions, course of conduct or construction change directive.

On the basis set forth herein, the Contract Sum/GMP may be adjusted for any Change Order requiring a different quantity or quality of labor, materials or equipment from that originally required, and the partial payments to the Contractor, set forth in section 8.01, may be adjusted to reflect the change. Whenever the necessity for a change arises, and when so ordered by the University in writing, the Contractor shall take all necessary steps to mitigate the affect of the ultimate change on the other Work in the area of the change. Changed Work shall be performed in accordance with the original Contract requirements except as modified by the Change Order. Except as herein provided, the Contractor shall have no claim for any other compensation including lost productivity or increased overhead expenses due to changes in the Work.

#### **6.01.2 Proposed Change Orders**

The Design Professional, with approval of the University, shall issue to the Contractor a cost request Bulletin for a proposed change order describing the intended change and shall require the Contractor to indicate thereon a proposed amount to be added to or subtracted from the Contract Sum due to the change supported by a detailed estimate of cost. Upon request by the University, the Contractor shall permit inspection of the original Contract estimate, Trade Contract agreements, or purchase orders relating to the change. Any request for adjustment in Contract Time which is directly attributable to the changed Work shall be included with substantiating detailed explanation by the Contractor in its response to the cost request bulletin. Failure by Contractor to request adjustment of Contract Time on the response to the cost request Bulletin shall waive any right to subsequently claim an adjustment of the Contract Time based on the changed Work. The Contractor shall submit the response to the cost request Bulletin with detailed estimates and any time extension request thereon to the Design Professional within ten (10) days after issuance of the

cost request Bulletin. Upon its submission, the Design Professional will review it and advise the University who will make the decision regarding the request. The University retains sole discretion to accept, reject, or modify the proposed change. If the Contractor fails to submit the response within the required ten (10) days, and the Contractor has not obtained the Design Professional's and the University's permission for a delay in submission, the University may order the Contractor in writing to begin the Work immediately, and the Contract Sum/GMP shall be adjusted in accordance with the University's estimate of cost. In that event, the Contractor, within fifteen days following completion of the changed Work, may present information to the University that the University's estimate was in error; the University, in its sole discretion, may adjust the Contract Sum/GMP. The Contractor must keep and submit to the University time and materials records verified by the University to substantiate its costs. The University may require the Contractor to proceed immediately with the changed Work in accordance with section 6.01.4, "Failure to Agree as to Cost" or section 6.02 "Emergency Changes."

When the University and the Contractor agree on the amount to be added to or deducted from the Contract Sum/GMP and the time to be added to or deducted from the Contract Time and a Contract Change Order is signed by the University and the Contractor, the Contractor shall proceed with the changed Work. If agreement is reached as to the adjustment in compensation for the performance of changed Work but agreement is not reached as to the time adjustment for such Work, the Contractor shall proceed with the Work at the agreed price, reserving the right to further pursue its Claim for a time adjustment. Any costs incurred to acquire information relative to a proposed Change Order shall not be borne by the University.

### **6.01.3 Allowable Costs Upon Change Orders**

The only estimated or actual costs which will be allowed because of changed Work and the manner in which such costs shall be computed as described by this section.

#### **6.01.3.1 Labor**

Costs are allowed for the actual payroll cost to the Contractor for direct labor, engineering or technical services directly required for the performance of the changed Work, (but not site management such as field office estimating, clerical, project engineering, management or supervision) including payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act of August 14, 1935, as amended, unless the time of completion adjustments affect the general condition inclusion of the Contract Sum/GMP.

No labor cost will be recognized at a rate in excess of the prevailing wages in the locality at the time the Work is performed as published by the U.S. Department of Labor, nor will the use of a classification which would increase the labor cost be permitted unless the Contractor established to the satisfaction of the University the necessity for payment at a higher rate.

#### **6.01.3.2 Materials**

Costs are allowed for the actual cost to the Contractor for the materials directly required for the

performance of the changed Work. Such cost of materials may include the costs of transportation, sales tax, and delivery if necessarily incurred. However, overhead costs shall not be included. If a trade discount by the actual supplier is available to the Contractor, it shall be credited to the University. If the materials are obtained from a supply or source owned wholly or in part by the Contractor, payment therefor will not exceed the current wholesale price for such materials.

If, in the opinion of the University, the cost of materials is excessive, or if the Contractor fails to furnish satisfactory evidence of the cost from the actual suppliers thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed.

### **6.01.3.3 Equipment**

Costs are allowed for the actual cost to the Contractor for the use of equipment directly required in the performance of the changed Work except that no payment will be made for time while equipment is inoperative due to breakdowns or for non-working days. The rental time shall include the time required to move the equipment to the Project site from the nearest available source for rental of such equipment, and to return it to the source. If such equipment is not moved by its own power, then loading and transportation costs will be paid. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project in any other way than upon the changed Work. Individual pieces of equipment having a replacement value of \$250.00 or less shall be considered to be tools or small equipment, and no payment therefor will be made.

For equipment owned or furnished by the Contractor, no cost therefor shall be recognized in excess of the rental rates established by distributors or equipment rental agencies in the locality where the Work is performed. Blue Book rates shall not be used for any purpose.

The amount to be paid to the Contractor for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators who shall be paid for as provided in Article 6.01.3.1) and any and all costs to the Contractor incidental to the use of such equipment.

### **6.01.3.4 Change Order Mark-up Allowance**

For Change Order scope whose cost is derived according to the Cost of Work plus a Fee as defined in 6.01.3.1 through 6.01.3.3, the mark-up allowance shall be as defined in the Contract. Lump-sum conditions shall include the mark-up allowance. When agreement as to cost cannot be reached, the Contractor shall execute the Work according to time and materials with the Contractor and University acknowledging such costs by signature on a daily basis, and as set forth below.

### **6.01.3.5 Credit for Deleted Work**

For proposed change orders which involve both added and deleted Work, the Contractor shall

separately estimate the cost of the added Work before mark-ups, and separately estimate the cost of the deleted Work before allowance of a credit. If the difference between the costs results in an increase to the Contract Sum, the mark-up for added Work shall be applied to the difference, and if the difference in the costs results in a decrease, then the mark-up for deleted Work shall be applied to the difference.

#### **6.01.3.6 Market Values**

Cost for added Work shall be no more than market values prevailing at the time of the change, unless the Contractor can establish to the satisfaction of the University that it investigated all possible means of obtaining Work at prevailing market values and that the excess cost could not be avoided.

When a change order deletes Work from the Contract, the computation of the cost thereof shall be the values which prevailed at the time bids for the Work were opened or the Contract Sum/GMP established.

#### **6.01.4 Failure to Agree as to Cost**

##### **6.01.4.1 For Added Work**

Notwithstanding the failure of the University and the Contractor to agree as to the cost of the proposed Change Order, the Contractor, upon written order from the University, shall proceed immediately with the changed Work. A Construction Change Directive or letter signed by the University shall be used for this written order. At the start of each day's Work on the change, the Contractor shall notify the University in writing as to the size of the labor force to be used for the changed Work and its location. Failure to so notify may result in the non-acceptance of the costs for that day. At the completion of each day's Work, the Contractor shall furnish to the University a detailed summary of all labor, materials, and equipment employed in the changed Work. The University will compare his/her records with Contractor's daily summary and may make any necessary adjustments to the summary. After the University and the Contractor agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional Work. The sum of these costs when added to an appropriate mark-up will constitute the payment for the changed Work. Subsequent adjustments, however, may be made based on later audits by the University. When changed Work is performed at locations away from the job site, the Contractor shall furnish in lieu of the daily summary, a summary submitted at the completion of the Work containing a detailed statement of labor, material, and equipment used in the Work. This latter summary shall be signed by the Contractor who shall certify thereon that the information is true.

The Contractor shall maintain and furnish on demand of the University itemized statements of cost from all vendors and subcontractors who perform changed Work or furnish materials and equipment for such Work. All statements must be signed by the vendors and the subcontractors.

##### **6.01.4.2 For Deleted Work**

When a proposed Change Order contains a deletion of any Work, and the University and the Contractor are unable to agree upon the cost thereof, the University's estimate shall be deducted from the Contract Sum/GMP and may be withheld from any payment due the Contractor until the Contractor presents adequate substantial information to the University that the University's estimate was in error. The amount to be deducted shall be the actual costs to the Contractor for labor, materials, and equipment which would have been used on the deleted Work together with an amount for mark-up as defined in the Contract Documents.

#### **6.01.5 Allowable Time Extensions**

For any change in the Work, the Contractor shall only be entitled to such adjustments in Contract Time due solely to performance of the changed Work. The procedure for obtaining an extension of time is set forth in Section 4.08 of these General Conditions. No extension of time shall be granted for a change in the Work unless the Contractor demonstrates to the satisfaction of the University that the Work is on the critical path and submits an updated CPM schedule showing that an extension of time is required and that the Contractor is making, or has made, every reasonable effort to guarantee completion of the additional Work called for by the change within the time originally allotted for the Contract. Failure by the Contractor to make the required submission or showing constitutes a waiver of any possible adjustment in Contract Time.

Any adjustment in Contract time shall specify the exact impact on the date of Substantial Completion and Final Completion.

#### **6.02 Emergency Changes**

Changes in the Work made necessary due to unforeseen site conditions, discovery of errors in plans or specifications requiring immediate clarification in order to avoid a serious Work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the University are kinds of emergency changes which may be authorized by the University in writing to the Contractor. The Contractor shall commence performance of the emergency change immediately upon receipt of written direction from the University.

If agreement is reached as to compensation adjustment for the purpose of any emergency change, then compensation will be as provided in this section relating to ordinary changes. If agreement is not reached as to compensation at the time of commencing the emergency change, then compensation will be as provided in section 6.01.4, that is, time and materials records and summaries shall be witnessed and maintained until either a lump sum payment is agreed upon, or the changed Work is completed.

## **7.00 CLAIMS AND DISPUTES**

### **7.01 Policy of Cooperation**

The parties shall endeavor to resolve all of their claims and disputes amicably and informally through open communication and discussion of all issues relating to the Project. To the greatest extent possible, the parties shall avoid invoking the formal dispute resolution procedures contained in the Contract Documents.

### **7.02 Recommendation of Design Professional**

Claims, including those alleging an error or omission by the Design Professional, must be referred initially to the Design Professional for action as provided in paragraph 7.09 as an express condition precedent to proceeding further in resolving any claim.

### **7.03 Time Limits on Claims**

Claims by either party must be made within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been resolved by Change Order will not be valid.

### **7.04 Continuing Contact Performance**

Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the University shall continue to make payments in accordance with the Contract Documents subject to the University's rights relative to payments, withholding of payments, termination, or all other rights afforded it in the Contract Documents.

### **7.05 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 written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 24 hours after first observance of the conditions. The Design Professional will promptly investigate such conditions and, if the conditions 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, the Design Professional will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Design Professional 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 Design Professional shall so notify the University and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be

made within 10 days after the Design Professional has issued such determination. If the University and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Design Professional for initial determination, subject to further proceedings pursuant to Paragraph 7.09.

#### **7.06 Claims for Additional Cost**

Any Claim by the Contractor for an increase in the Contract Sum shall be submitted in writing as required by the Contract Documents before proceeding to execute the Work. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design Professional, (2) an order by the University 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 Design Professional, (4) failure of payment by the University, (5) termination of the Contract by the University, (6) University's suspension or (7) changes in the scope of Work, the Contractor's claim shall be filed in strict accordance with the procedure established herein.

#### **7.07 Claims for Additional Time**

Any Claim by Contractor for an increase in the Contract Time shall be submitted in writing as required by the Contract Documents. The Contractor's Claim shall include an estimate of the 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.

#### **7.08 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 5 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 the Contract Documents.

#### **7.09 Resolution of Claims and Disputes**

##### **7.09.1 Review by Design Professional**

Design Professional will review all Claims and take one or more of the following preliminary actions within 10 days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Design Professional expects 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 Design Professional may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

If a Claim has been resolved, the Design Professional will prepare or obtain appropriate documentation. If a Claim has not been resolved, the party making the Claim shall, within 10 days after the Design Professional's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Design Professional, (2) modify the initial Claim or (3) notify the Design Professional that the initial Claim stands.

If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Design Professional, the Design Professional will notify the parties in writing that the Design Professional's opinion will be rendered within 5 days.

Upon expiration of such time period, the Design Professional will render to the parties the Design Professional's written opinion 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 Design Professional may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. The opinion of the Design Professional shall be subject to the review of the Senior Vice-President for Finance and Administration at Wayne State University.

#### **7.09.2 Review by Senior Vice-President of Finance and Administration**

The Senior Vice-President of Finance and Administration shall review the Design Professional's opinion and the supporting information submitted by the parties for the purpose of upholding the Design Professional's opinion, modifying the Design Professional's opinion, or rejecting the Design Professional's opinion. The Senior Vice-President of Finance and Administration shall render a decision within forty-five days of the completion of any submissions by the parties. The decision of the Senior Vice-President of Finance and Administration is final unless it is challenged by either party by filing a lawsuit in the Court of Claims of the State of Michigan within one year of the issuance of the decision.

#### **7.09.3 Jurisdiction**

Sole and exclusive jurisdiction over all claims, disputes, and other matters in question arising out of or relating to this Contract or the breach thereof, shall rest in the Court of Claims of the State of Michigan. No provision of this agreement may be construed as the University's consent to submit any claim, dispute or other matter in question for dispute resolution pursuant to any arbitration or mediation process, whether or not provisions for dispute resolution are included in a document which has been incorporated by reference into this agreement.

#### **7.09.4 Condition Precedent**

The process and procedures described in Article 7.09 are an express condition precedent to filing or pursuing any legal remedy including litigation. Pursuing litigation prior to exhaustion of the Dispute Resolution process set forth herein shall be premature and a material breach of this Agreement.

## **8.00 PAYMENT AND COMPLETION**

### **8.01 Progress Payments**

To assist in computing partial payments, the Contractor shall submit to the Design Professional and University a "Schedule of Values" of the Contract Sum costs for each item of work. The cost breakdowns shall be in sufficient detail for use in estimating the Work to be completed each month and shall be submitted within 15 days after the date of commencement of Work given in the Notice to Proceed.

Once each month during the progress of the Work, the Contractor shall submit to the Design Professional a partial payment request for review and approval. The partial payment request shall be based on the approved bid breakdown for the cost of the Work completed plus the acceptable materials delivered to the site or stored subject to the control of the Contractor and not yet installed. The Design Professional and University shall review and certify as to the validity of the request. No partial payment shall be made without the certification of the Design Professional. Partial payment requests shall be processed with a ten percent (10%) retention. The University shall withhold no more retainage on a particular line item after completion of 50% of the scheduled value of that particular line item. At substantial completion of that line item, the University, may reduce or eliminate the amount of retainage withheld if the University is satisfied with the Contractor's progress, the University has received adequate assurance from the Contractor that the Work will be timely completed, and pursuant to the retainage requirements defined in the Contract for Construction or the Contract for Construction Management Services. Partial payments shall not be construed as acceptance of any Work which is not in accordance with the requirements of the Contract. Once the partial payment request has been certified by the Design Professional, it shall be submitted to the University for approval and processing. Payment will be within thirty (30) days of approval. No interest shall accrue or be paid on any payments or monies relating to this project.

The Contractor warrants that title to the Work, materials and equipment covered by an Application for Payment shall pass to the University upon the earlier of either incorporation in construction or receipt of payment by Contractor; that Work, materials and equipment covered by previous Applications for Payment are free and clear of liens, claims, security interests or encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by Contractor or by any other person performing Work at the Project or furnishing materials or equipment for the Project subject to an agreement under which an interest or encumbrance is retained by the seller or otherwise imposed on the Contractor or buyer.

All Applications for Payment shall include lien waivers from all subcontractors, certifying payments received from previous payments. Failure to provide such lien waivers will be cause for the University to delay payment until received.

### **8.02 Substantial Completion and Punchlist**

When the Contractor considers that the Work, or a portion thereof which the University agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Professional a comprehensive punchlist of items to be completed or corrected. The Contractor shall

proceed promptly to complete and correct items on the punchlist. Failure to include an item on such punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's punchlist, the Design Professional will make an observation to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's observation discloses any item, whether or not included on the Contractor's punchlist, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Design Professional.

The Contractor shall then submit a request for another observation by the Design Professional to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the University and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time, generally 45 days, within which the Contractor shall finish all punchlist items accompanying the Certificate. 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. The Certificate of Substantial Completion shall be submitted to the University and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

The punchlist and acceptance procedure shall be as defined by the University.

### **8.02.1 Partial Completion**

From time to time, as portions of the Work are completed by the Contractor, the University shall have the right, upon giving the Contractor prior written notice, to accept any portion of the Work that the University desires to use and occupy. Such partial acceptance shall be made in writing and thereafter the Contractor shall have no further obligation with respect to the Work accepted, except to correct the Work subsequently found to have been improperly done, to replace defective materials or equipment, or as defined by Substantial Completion and Punchlist requirements.

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

Upon the Final Completion of the Work by the Contractor, the acceptance of the Work by the University, and the release of all claims against the University and the Work by the Contractor and its subcontractors and suppliers (which releases shall be evidenced by final waivers and releases, properly recorded releases of liens, or other documents acceptable to the University), the Contractor shall file a request for Final Payment.

#### **8.03.1 Final Application for Payment**

Upon the receipt of the Contractor's Final Application for Payment, including any and all waivers required by the University and the Contractor's provision of all Close-out Documents, the University shall promptly make a final inspection, and if the University finds the Work acceptable and complete in strict accordance with the Contract Documents, the University shall issue Final

Payment. Final Payment shall be made upon Completion of the Work and shall indicate the University's Final Acceptance of the Work and its acknowledgment that the Work (excluding any further warranty and guaranty obligations) has been completed and is accepted under the terms and conditions of the Contract Documents. If prior to the making of Final Payment the University finds deficiencies in the Work, the University shall promptly notify the Contractor thereof in writing, describing such deficiencies in detail. After the Contractor has remedied any deficiencies noted by the University, the Contractor shall request a final inspection and the University shall make such inspection and follow the procedure set forth in this Paragraph.

### **8.03.3 Final Payment by the University**

The making of Final Payment shall constitute a waiver of all claims by the University except those arising from: (1) unsettled liens; (2) faulty or defective work appearing after completion; (3) failure of the work to comply with the requirements of the Contract Documents; (4) terms of any special or extended warranties required by the Contract Documents; or (5) the obligations of the Contractor under the indemnification provisions of Paragraph 4.06 hereof.

The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor.

### **8.04 Guarantee**

The Contractor unconditionally guarantees the Work under this Contract to be in conformance with the Contract Documents and to be and remain free of defects in workmanship and materials not inherent in the quality required or permitted for a period of two years from the date of Substantial Completion, unless a longer guarantee period is stipulated in the Contract Documents. By this guarantee the Contractor agrees, within the guarantee period, to repair or replace any Work, together with any adjacent Work which may be displaced in so doing which is not in accordance with the requirements of the Contract or which is defective in its workmanship or material, all without any expense whatsoever to the University.

Special guarantees that are required by the Contract Documents shall be signed by the Contractor who is responsible for the entire work and countersigned by the subcontractor who performs the work.

The Contractor further agrees that within five calendar days after being notified in writing by the University of any Work not in accordance with the requirements of the Contract Documents or of any defects in the Work, it shall commence and prosecute with due diligence all Work necessary to fulfill the terms of this guarantee and to complete the Work in accordance with the requirements of the Contract with sufficient manpower and material to complete the repairs as expeditiously as possible. The Contractor, in the event of failure to so comply, does hereby authorize the University to proceed to have the Work done at the Contractor's expense, and it agrees to pay the cost thereof upon demand. The University shall be entitled to all costs necessarily incurred upon the Contractor's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health, safety or damage of the University's employees, property, or licenses, the

University may undertake at the Contractor's expense, without prior notice, all Work necessary to correct such hazardous conditions caused by the Work of the Contractor not being in accordance with the requirements of this Contract.

The Contractor shall require a similar guarantee in all subcontracts, including the requirement that the University be reimbursed for any damage or loss to the Work or to other Work resulting from such defects.

The Maintenance and Guarantee Bond required by the Contract Documents shall be in full force and effect during the entire two year guarantee period, unless a longer bond period is stipulated in the Contract Documents.

## **9.00 TERMINATION**

### **9.01 Termination by the University for Cause**

#### **9.01.1**

The University may terminate the Contract if the Contractor: (a) becomes insolvent; (b) files or has filed against it any Petition in Bankruptcy or makes a general assignment for the benefit of its creditors; (c) fails to pay, when due, for materials, supplies, labor, or other items purchased or used in connection with the Work; (d) refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion of the Work in accordance with the Master Project Schedule; (e) in the University's opinion, persistently fails, refuses or neglects to supply sufficient labor, material or supervision in the prosecution of the Work; (f) interferes with or disrupts, or threatens to interfere with or disrupt the operations of the University, or any other Contractor, supplier, subcontractor, or other person working on the Project, whether by reason of any labor dispute, picketing, boycotting or by any other reason; (g) for conditions when an agreement regarding an acceptable GMP cannot be reached for whatever reason, or (h) commits any other breach of this Contract.

When any of the above reasons exist, the University may, without prejudice to any other rights or remedies of the University and after giving the Contractor and the Contractor's surety, if any, three days written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety: (1) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; (2) accept assignment of subcontracts; and (3) finish the Work by whatever reasonable method the University may deem expedient.

#### **9.01.2**

If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's services and expenses made necessary thereby, the remaining balance shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the University. The amount to be paid to the Contractor or University, as the case may be, shall be certified by the Design Professional, upon application, and this obligation for payment shall survive termination of the Contract. The Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination. However, the University shall be entitled to retain whatever amount is remaining unpaid to the Contractor in order to correct the cause for termination; such action is in addition to any other right or remedy which the University may have.

### **9.02 Suspension by the University for Convenience**

#### **9.02.1**

The University 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 University may determine.

### **9.02.2**

An adjustment shall be made for increases in the Contract Sum and/or Time of Completion of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. 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 this Contract. The Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

## **9.03 Termination By The University For Convenience**

### **9.03.1**

The University, with or without cause, may terminate all or any portion of the services by the Contractor under this Agreement, upon giving the Contractor 30 days written notice of such termination. In the event of termination, the Contractor shall deliver to the University all reports, estimates, schedules, subcontracts, Contract assignments, purchase order assignments, and other documents and data prepared by it, or for it, pursuant to this Agreement.

### **9.03.2**

Unless the termination is for cause, the Contractor shall be entitled to receive only the payments provided for in Article 8, pro rated to the date of termination (including payment for the period of the 30 day notice) plus reimbursement for approved and actual costs and expenses incurred by the Contractor to the date of termination. Prior to payment, the Contractor shall furnish the University with a release of all claims against the University. The Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

## **9.04 Termination By The Contractor**

### **9.04.1**

The Contractor may terminate the Contract if the Work is stopped for a period of 60 days through no act or fault of the Contractor or a subcontractor, sub-subcontractor or their agents or employees or any other persons performing portions of the Work under Contract with the Contractor, for any of the following reasons: (1) issuance of an order of a court or other public authority having jurisdiction; (2) an act of government, such as a declaration of national emergency, making material unavailable; (3) because the Design Professional has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification, or because the University has not made payment on a Certificate for Payment within the time stated in the Contract Documents; (4) if repeated suspensions, delays or interruptions by the University 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.

If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the University and Design Professional, terminate the Contract and recover from the University payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit.

#### **9.04.2**

If the Work is stopped for a period of 60 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 University has persistently failed to fulfill the University'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 University and the Design Professional, terminate the Contract and recover from the University as provided in Subparagraph 9.03.2

## **10.00 MISCELLANEOUS**

### **10.01**

These Contract Documents supersede all previous agreements between the University and the Contractor concerning this Work.

### **10.02**

No action or failure to act by the University shall constitute a waiver of a right afforded it under these General Conditions, nor shall such action or failure to act constitute approval or acquiescence of a breach of these General Conditions, except as may be specifically agreed in writing.

### **10.03**

The invalidity or unenforceability of any provision of these General Conditions shall not effect the validity or enforceability of any other provision.

**-End of General Conditions for Construction-**