

GENERAL CONDITIONS  
TO  
OWNER BUILDER AGREEMENT  
STIPULATED SUM CONTRACT

FOR

PROJECT: CONSTRUCTION SERVICES-7TH FLOOR CONVENTUS CENTER FOR COLLABORATIVE MEDICINE  
FIT-UP

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*Fort Schuyler Management Corporation*  
*General Conditions for Owner - Builder Agreement*

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**EXHIBIT G – NON-DISCRIMINATION AND AFFIRMATIVE ACTION POLICY**

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**1.1.17. STIPULATED SUM.** "Stipulated Sum" shall have the meaning set forth in Section 4.1 of the Agreement.

**1.1.18. LABOR LAW.** "Labor Law" shall have the meaning set forth in Paragraph 3.4.14 of these General Conditions.

**1.1.19. LIEN LAW.** "Lien Law" shall have the meaning set forth in Paragraph 9.1.2 of these General Conditions.

**1.1.20. MANAGEMENT TEAM.** "Management Team" shall have the meaning set forth in Paragraph 3.6.1 of these General Conditions.

**1.1.21. OPERATING MANUALS.** "Operating Manuals" shall have the meaning set forth in Paragraph 4.10.2.4 of these General Conditions.

**1.1.22. OTHER TERMS; DEFINITIONS.** Capitalized terms shall have the meanings ascribed to them herein or in the Agreement. Other terms not capitalized and/or not expressly defined shall have their customary meaning in the construction industry.

**1.1.23. OWNER.** "Owner" is Fort Schuyler Management Corporation with an address at 100 Seymour Road, Utica, New York 13502.

**1.1.24. OWNER PARTIES.** "Owner Parties" shall mean Owner, The Research Foundation for the State University of New York, and the State University of New York College of Nanoscale Science and Engineering/State University of New York Institute for Technology, and their respective officers, directors, members, agents and employees.

**1.1.25. PRODUCT.** "Product" shall have the meaning set forth in Paragraph 3.3.2 of these General Conditions.

**1.1.26. PRODUCT DATA.** "Product" shall have the meaning set forth in Paragraph 3.3.2 of these General Conditions.

**1.1.27. PROJECT.** The Project is the total undertaking of the Owner described in the Owner's program as set forth in the Request for Proposal of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate Builders or Contractors.

**1.1.28. RESERVED**

**1.1.29. PROJECT MANAGER.** "Project Manager" shall have the meaning set forth in Paragraph 3.6.1 of these General Conditions.

**1.1.30. RECORD DOCUMENTS.** "Record Documents" shall have the meaning set forth in Paragraph 4.8.4.3 of these General Conditions.

**1.1.31. SAMPLES.** "Samples" shall have the meaning set forth in Paragraph 3.14.3 of these General Conditions.

**1.1.32. SHOP DRAWINGS.** "Shop Drawings" shall have the meaning set forth in Paragraph 3.14.1 of these General Conditions.

**1.1.33. SUBSTANTIAL COMPLETION.** "Substantial Completion" shall have the meaning set forth in Paragraph 4.8 of these General Conditions.

**1.1.34. THE WORK.** The "Work" comprises the construction services and management as set forth in the Scope of Work documents attached to the Agreement and/or additional Scope of Work documents which are approved in writing by Owner during the period of the Agreement and the completed result required of the Builder by the Contract Documents, and includes all labor and services necessary to produce such results, and all materials and equipment incorporated or to be incorporated in the construction necessary to reach the results or otherwise required to be provided by the Contract Documents.

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**1.2.7.** The intent of the Contract Documents is to include all items necessary for the proper execution of the Work, including all Work reasonably inferable, as necessary to produce the intended results. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings unless otherwise stated.

**1.2.8.** All changes made to the Drawings, Specifications and other Contract Documents shall be dated and sequentially recorded. All modifications to Drawings and Specifications shall be interpreted in conformity with the Contract Documents. Should a conflict or discrepancy occur in or between or among any parts of the Contract Documents, the Owner accepted document bearing the latest date shall govern. Should a conflict occur in or between or among any parts of the Contract Documents of the same date, the better quality of material to achieve the purpose intended shall govern, unless the Owner otherwise directs.

### **1.3. OWNERSHIP AND USE OF DOCUMENTS**

**1.3.1.** The Drawings, Specifications and other Contract Documents are instruments through which the Work to be executed by the Builder is described, and along with all Shop Drawings, Product Data, Samples and other similar submittals, is the property of the Owner. The Builder may retain one contract record set. Neither the Builder nor any Contractor, Subcontractor or material or equipment supplier shall own or claim a copyright in any of the Contract Documents, Shop Drawings, Product Data, Samples and other similar submittals. Builder acknowledges and agrees that all current and future Contract Documents, Drawings, Specifications, Shop Drawings, Product Data, Samples and other similar submittals have been or will be prepared for the benefit of Owner, shall be deemed to be the property of Owner and, in order to confirm same, Builder hereby transfers,

assigns and set over to Owner all such Contract Documents, Drawings, Specifications, Shop Drawings, Product Data, Samples and other similar submittals. All copies of them, except the Builder's record set, which record sets may be maintained both in hard copy and on electronic media, shall be returned or suitably accounted for to the Owner, upon completion of the Work. The Drawings, Specifications, other Contract Documents, Shop Drawings, Product Data, Samples and other similar submittals and copies thereof furnished in connection with the Project, are for use solely with respect to this Project. They are not to be used by the Builder or any Contractor, Subcontractor or material or equipment supplier on other projects or for other purposes outside the scope of the Work without the specific written consent of the Owner. The Builder, Contractors, Subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, other Contract Documents, Shop Drawings, Product Data, Samples and other similar submittals appropriate to and for use in the execution of their work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents provided to or by the Builder. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as derogation of the copyright or other reserved rights.

## **ARTICLE 2**

### **2. ARCHITECT'S DUTIES**

**2.1** The Architect shall at all times have access to the Work wherever it is in preparation and progress. The Architect does not have authority to act on behalf of the Owner.

**2.2** The Architect will render interpretations necessary for the proper execution or progress of the Work upon written request of either the Owner or the Builder. The

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and the Architect. Builder shall be responsible for determining the exact location of and to verify the spatial relationships of all Work. If any conflicts, inconsistencies, or lack of coordination is found in or amongst the Contract Documents and/or other Owner provided information, or if Builder has any questions concerning the foregoing, he shall immediately notify Owner and Architect and provide reasonable recommendations. The Architect shall advise the Owner concerning such conflicts as to the appropriate resolution. Builder shall thereafter perform the work in accordance with directions from Owner. Failure to detect and report conflicts, inconsistencies, or lack of coordination will relieve the Owner of liability from any and all claims, including delay claims, to recover costs, expense, loss or damage resulting therefrom. In the event that Builder shall before proceeding with the Work, or at any time during performance of the Work, encounter any toxic materials, then Builder shall promptly notify Owner and Architect thereof, and shall not perform any work to remove, replace, repair or otherwise disturb such toxic materials without first receiving written direction with regard thereto from the Owner. Nothing contained herein, shall preclude the Builder from recovering costs, expense, loss or damage resulting from inconsistencies, or lack of coordination as part of the Cost of the Work, provided however, Builder shall not be entitled to an extension of the Contract Time or an increase in the Stipulated Sum by reason other than Owner approved Change Order for added scope or errors or omissions.

**3.1.4.** The Builder shall perform all Work in accordance with the Contract Documents and submittals approved in accordance with these General Conditions.

**3.1.5.** The Builder shall furnish and install all Work in full compliance with all applicable laws, statutes, codes, regulations, rules.

**3.1.6.** The Owner makes no warranty or representation as to conditions not expressly shown on Owner provided information. The Builder shall not be entitled to any adjustment in the Stipulated Sum, the Contract Time or other terms and conditions of the Agreement unless conditions found to exist are contrary to and in express conflict with the conditions shown on Owner furnished documents, or reasonably inferable therefrom, and provided further, the Builder shall not be entitled to adjustment of any terms and conditions of the Contract Documents by reason of such conflict unless the Builder has, in a timely manner, given notification under and otherwise fully complied with the provisions of Paragraph 3.1 of these General Conditions.

### **3.2. WARRANTIES AND REPRESENTATIONS**

**3.2.1.** The Builder warrants to the Owner that all materials and equipment furnished under this Agreement shall be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not in conformance to these requirements, including substitutions not properly authorized and approved, may, at Owner's option, be considered defective. If required by the Owner, the Builder shall furnish evidence as to the kind and quality of materials and equipment used in performing work or incorporated into or provided as part of the Work. Nothing contained in this Section 3.2 shall be interpreted so as to extend any warranties beyond the period provided for in Section 11.3.1.

**3.2.2.** The Builder represents and warrants:

3.2.2.1. that the Builder is financially solvent and has sufficient experience in and competent to perform the Work;

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**3.3.5.** Whenever a product is identified in the Contract Documents as a named product, said identification is intended to establish a standard. The substitution of other products may be permitted if, and only if, they are determined to be of equal or better quality, substance and function as determined by the Owner after recommendation by the Architect.

**3.3.6.** If the Builder desires to use a substitute product, the Builder shall make application in writing to Owner, with copy to the Architect within a reasonable time, and so as to cause no delay in the performance of the Work. The burden of proof that a proposed substitution is equivalent to a specified product shall be upon the Builder, who shall support Builder's application with sufficient data to permit the Owner to make a fair and equitable evaluation on the merits of the proposal. By making application for a substitution, the Builder represents and warrants that the product proposed is, in fact, equal to that specified and has demonstrated such equality by at least three (3) years satisfactory service, that it will fit into the space allocated and within the loading provided for the same, that it provides comparable ease of operation, maintenance and service, that its appearance, longevity and suitability for the climate and intended use are comparable to that specified, and that the substitution requires no change in the dimensions or design of any other portions of the Work.

**3.3.7.** At the election of the Owner, the Architect will make a written recommendation of acceptance or rejection of the Builder's application for a substitution, which recommendation shall not bind the Owner. The Owner will issue to the Builder a written approval or rejection of the proposed substitution. The Owner will be the sole judge of the equivalency of substitute products proposed. The Owner may condition approval of a substitute on the Owner receiving a credit, the Stipulated Sum being appropriately decreased. Further, the Builder shall not be entitled to any increase in the Stipulated Sum, arising from Owner's approval of a substitute product.

**3.3.8.** Acceptance of product substitutions shall not relieve the Builder from responsibility for compliance with all the requirements of the Contract Documents. If, notwithstanding the provisions above, changes in other parts of the Work, or the work of other contractors, are required as a consequence of substitutions, the Builder shall be responsible for the costs of any such changes, including the cost of design and redesign services related thereto. The Contract Time shall not be extended by any circumstances resulting from a proposed substitution, nor shall the Builder be entitled to any additional compensation by reason of substitution. The Owner may condition the use of a substitution upon a credit to the Owner.

#### **3.4. AWARD OF SUBCONTRACTS AND OTHER CONTRACTS**

**3.4.1.** The Builder shall comply with the Best Value Sourcing Overview provided by Owner to Builder for the award of subcontracts and other contracts.

**3.4.2.** The Builder shall not contract with any proposed person or entity to which the Owner has made reasonable objection. The Builder shall make no substitution for any previously selected and/or approved person or entity without the prior approval of the Owner, which shall not be unreasonably withheld.

**3.4.3.** RESERVED

**3.4.4.** RESERVED

**3.4.5.** RESERVED

**3.4.6.** RESERVED

**3.4.7.** RESERVED

**3.4.8.** RESERVED

**3.4.9.** RESERVED

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to the Work to bind Contractors to the Builder by the terms of any and all Contract Documents, insofar as applicable to the Work of each such Contractor, and to give the Builder the same power as regards terminating any Subcontract that the Owner may exercise over the Builder under any provisions of the Contract Documents.

**3.5.4.** The Builder may agree to arbitrate any disputes between the Builder and any Contractor or supplier, provided that no ruling of the arbitrators nor any judgment entered thereon shall bind, collaterally estop or be res judicata as to any claim or issue between Owner, Builder and/or Architect. Said agreement shall further provide that Owner shall not be a party to said arbitration but shall be entitled to notice of all proceedings and to observe such proceedings by representatives of its choosing.

**3.5.5.** The Builder shall include in any Subcontracts the equivalent of Paragraphs 3.5.1 through 3.5.4 of these General Conditions and also include a clause requiring Contractors to include clauses equivalent to these in any lower tier subcontract they may enter into.

### **3.6. BUILDER'S MANAGEMENT TEAM**

**3.6.1.** The Builder shall employ a Management Team consisting of a competent Project Manager and Superintendent, both acceptable to the Owner, and such assistants as the scope and complexity of the Work requires. At the Owner's request, the Builder shall furnish resumes of the qualifications of the proposed Management Team for approval by the Owner. The Superintendent or the Project Manager shall be replaced at the reasonable request of the Owner. So long as the Owner makes no objection to an approved Superintendent or approved Project Manager, neither said Superintendent nor Project Manager shall be removed without the Owner's consent, provided said Superintendent and Project manager remain in the employ of the Builder or of any entity controlled by the Builder.

### **3.7. SUPERVISION AND CONSTRUCTION PROCEDURES**

**3.7.1.** The Builder shall at all times enforce strict discipline and good order among the Builder's employees and other persons carrying out the Work. The Builder shall not permit employment of unfit persons or persons not skilled in the tasks assigned to them.

**3.7.2.** The Superintendent and necessary assistants shall be in attendance at the site during the progress of the Work. The Superintendent and the Project Manager shall represent the Builder and all communications given to either shall be as binding on the Builder. Communications shall be confirmed in writing.

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

**3.7.4.** The Builder shall be responsible to the Owner for acts and omissions of the Builder's employees, Contractors and their agents and employees, and other entities performing portions of the Work under a contract with the Builder.

**3.7.5.** The Builder shall be responsible for continuing inspection of portions of the Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**3.7.6.** The Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Agreement, or by tests, inspections or approvals required or performed by persons other than the Builder.

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**3.10.2.** The Builder shall prepare, in accordance with Paragraph 3.14.5 hereof, and keep current, for the Owner's acceptance a schedule of submittals which is coordinated with the Builder's construction schedule and allows the Owner sufficient time to review submittals.

**3.11. RESERVED**

**3.12. RECORD DOCUMENTS AND SAMPLES AT THE SITE**

**3.12.1.** The Builder shall maintain at the site one record copy of all Drawings, Specifications, Addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction and, in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available for periodic review by the Owner and the Architect and shall be delivered to the Owner upon completion of the Work.

**3.12.2.** The Builder shall furnish one soft copy and one hard copy reproducible set of the Drawings for use of the Builder for recording changes as the Work progresses and depicting the Work as installed. Information to be shown shall include, without limitation, structural, mechanical, electrical and other basic building and sitework systems, with particular attention paid to items of Work which will be buried or otherwise covered in the completed Work, such as underground utilities, piping and conduit in walls and chases, structural elements encased in concrete or masonry, etc. Such recording of information shall include final and actual sizes as well as location and elevation by off-set distances in feet and inches to permanent visible and accessible structures. The drawings shall be completely legible for future reference. Owner and Architect shall have access to such drawings during normal business hours. At completion of each subcontractor's Work the Builder shall submit prints of the Record Drawings to the Architect for review and upon the Architect's comments make necessary changes and complete, sign and date

the reproducible copies and deliver them to the Owner, all as a prerequisite to issuance of the Certificate for Final Payment.

**3.13. PROGRESS MEETINGS**

**3.13.1.** The Builder shall schedule progress meetings, not less frequently than once every two weeks, and shall notify the Owner and the Architect in advance, subject to approval of the Owner, as to date and time.

**3.13.2.** Builder shall cause its Project Manager and Superintendent to attend each job meeting unless excused by the Owner. The Owner may direct the attendance at any progress meeting of any other agents, servants or employees of the Builder and may require the Builder to direct the attendance of any agents, servants or employees of any Contractor or material supplier as, in the Owner's sole discretion, may be reasonably necessary and appropriate. Builder shall require Contractors to attend by appropriate agents, servants or employees such job meetings as may be reasonably necessary and appropriate.

**3.14. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**3.14.1.** Shop Drawings are drawings, diagrams, descriptive literature, illustrations, performance and test data, schedules and other data specially prepared for the Work by the Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**3.14.2.** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, photographic or artistic renderings and other information furnished by the Builder to illustrate materials or equipment for some portion of the Work.

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

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said log to be reviewed at each regular job meeting. Updated copies of said log shall be provided to Architect and Owner on request during the progress of the work.

### **3.15. USE OF SITE AND ACCESS TO WORK**

**3.15.1.** The Builder 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.

**3.15.2.** The Builder shall provide the Owner and the Architect access to the Work in preparation and in progress wherever located.

### **3.16. CUTTING AND PATCHING**

**3.16.1.** The Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

**3.16.2.** Neither the Builder nor anyone directly or indirectly employed by the Builder shall damage or endanger the Work or other work or construction of the Owner or any separate Contractors by cutting, patching or otherwise altering such work or construction, or by excavation. The Builder shall not cut or alter the work or construction of the Owner or any separate Contractor without the written consent of the Owner or such separate Contractor. The Builder shall not unreasonably withhold from the Owner or any separate Contractor its consent to cutting or otherwise altering the Work.

### **3.17. TOXIC MATERIALS**

**3.17.1.** The Builder shall not use nor incorporate into the Work any materials which are now known, to irritate, or cause injury, allergic reaction or respiratory distress to persons using or occupying the Project (hereafter "toxic materials") without maintaining and providing to Owner, proper Material Safety Data Sheets (MSDS), and Owner's

written response authorizing the use of such toxic materials.

**3.17.2.** The Builder shall, prior to submitting any materials for approval, review and cause its Contractors to review the Drawings and Specifications and advise Owner if any specified materials are now known to irritate, cause injury, allergic reaction or respiratory distress to persons.

**3.17.3.** The submittal for approval of materials shall constitute a representation by Builder that it has reviewed available literature concerning the material and unless expressly noted in the transmittal to Owner and highlighted in the accompanying literature, a representation that such literature does not advise that the materials are now known to irritate, cause injury, allergic reaction or respiratory distress to persons.

### **3.18. CLEANING UP**

**3.18.1.** The Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work the Builder shall remove from and about the Project waste materials, rubbish, tools, scaffolding and surplus materials belonging to Builder and/or to Builder's Contractors, laborers or materialmen, it being specifically understood the Builder shall leave the work "broom clean", or its equivalent, unless otherwise specified by the Owner.

**3.18.2.** If the Builder fails to clean up as provided in the Contract Documents, the Owner may do so upon written notice to the Builder and the cost thereof shall be charged to the Builder.

### **3.19. ROYALTIES, PATENTS AND COPYRIGHTS**

The Builder shall pay all royalties and license fees in connection with the Builder's performance of the Work, or arising by reason of such Work, or by reason of the use of any

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by statute, law, ordinance, rule, order or regulation, the Builder shall defend and indemnify the Owner Parties against any liability or expense of any nature arising from the Work or the design of the Work to the fullest extent permitted by law, except the Builder shall not be liable to defend, indemnify or hold harmless the Owner Parties to the extent liability is due to the applicable Owner Parties' negligence.

**3.20.4.** If the Builder is required to defend any action or proceeding by reason of any occurrence to which any of the Owner Parties are made a party, and any such Owner Parties shall be entitled to appear, defend or otherwise take part in the matter involved at its election by counsel of its choosing at the Builder's expense provided such action by any such Owner Parties does not limit or make void any liability of any insurer of any Owner Parties or the Builder hereunder with respect to any claim or matter in question. Builder and its sureties shall be responsible for and shall pay to Owner Parties, all Owner Parties' costs incurred in connection with any such appearance or defense including Owner Parties' reasonable attorneys' fees promptly as such costs are incurred.

**3.20.5.** The Builder's liability under this Paragraph shall be reduced by the net proceeds paid to the Owner Parties from any insurance taken out by the Builder to cover losses from the events herein described.

**3.20.6.** It is the intention of the parties that payment by the Owner is not a condition precedent to enforcing these indemnities. Such obligation shall not be construed as to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist under this Agreement and/or under the law as to any party described in this Paragraph. The Owner shall assume all risk of loss or damage to all Work being constructed hereunder and all material, supplies and equipment used or to be used in the construction of such Work arising for any cause whatsoever through the date of Substantial Completion of the Work.

**3.20.7.** In any and all claims against the Owner by any employee of Builder, any Contractor, Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations hereunder shall apply and Builder's liability shall not be limited in any way by any limitation on the amount or type of damages amounts of insurance coverage, compensation or benefits payable by or for Builder, any Contractor or any Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts. Enforcement of the indemnification given hereinabove shall not in any manner limit an Owner Party's right or remedies under this Agreement. The provisions of this Paragraph 3.20 shall survive the expiration of this Agreement.

### **3.21. BONDS**

Builder shall provide labor and material payment and performance bonds as set forth below

**3.21.1.** Builder shall require labor and materials payment bond and a performance bond from each Contractor and materialmen, who have contracts with Builder to provide work, labor, materials, equipment or services in an amount exceeding \$25,000.00, in the amount of 100% of the Stipulated Sum between Builder and said Contractor or materialmen, unless waived in writing by Owner as to such, contractor, or materialmen. Owner will be named co-obligee on all performance bonds. Builder shall provide copies of such bonds to Owner and shall file all such bonds required to be filed pursuant to GOL section 5-322.3, with proof of filing, all given to Owner at the earlier of the following: i) within fifteen (15) days of the signing of the agreement with the contractor or materialman; ii) not later than fifteen (15) days before said contractor is scheduled to commence work; or iii) when the first order for materials or equipment is placed with the contractor or materialman. In the event that this Agreement is terminated before final completion of the Work, at Owner's election, Builder will assign to Owner contracts of Builder with contractors and materialmen, and will assign to Owner all rights under performance bonds as Owner shall designate.

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accompanied by the supporting documents required by this Article 4, the Owner will make progress payments, within thirty (30) days of receipt of the Architect's certificate for payment for ninety-five percent (95%) of the Cost of the Work performed during the preceding calendar month, provided however the Owner shall not be required to make payment for the Cost of the Work to the extent that the Cost as set forth in the application to perform any line item on the Project Cost Estimate, exceeds the pro rated amount of that line item, such pro ration to be based on the percentage of completion of that line item. Owner may, in its discretion, approve an application for payment before payment is required. Based on both acceptable Payment and Performance Bonds, to the extent herein required, furnished by the Builder and/or its Contractors and materialmen, Owner will retain only ten percent (10%) of Owner approved value of the Work performed, until Substantial Completion. Owner's obligation to make any progress payments shall be subject to receipt of acknowledgments of payment and waivers or releases from the Builder and each Contractor for such Work performed and materials furnished through the date of the last preceding disbursement, except for permitted retainages. Absence of such a release or waiver shall reduce the disbursement by the amount of the claim not so waived or released.

**4.2.2.** When the Construction Work is Substantially Complete, retainage on such Work will be reduced, to 2.5 percent (2.5%) and payment equal to ninety-seven and one-half percent (97.5%) of the amount due the Builder will be due and payable. However, after Substantial Completion and until Final Payment, and notwithstanding anything contained herein to the contrary, a cash retainage will be held for all Work, in at least the amount of twice the value of any uncompleted or unaccepted items of Work, or defective Work, plus any unsatisfied judgments and claims. After Final Payment, only the Payment and Performance Bonds will be required to secure the guarantee period.

**4.2.3.** No certification of a progress payment, any progress payment made, or any partial or entire use or occupancy of the Project

by the Owner, shall constitute an acceptance of any work not in accordance with the Contract Documents. No payment for any part of any work not completed, tested and accepted in the preceding calendar month shall be made, except at the reasonable discretion of Owner. Further, and notwithstanding anything to the contrary set forth in the Contract Documents, no disbursement of funds shall be made unless Owner, in its reasonable discretion, shall be satisfied that the work covered thereby was completed to its satisfaction and substantially in accordance with all requirements of the Contract Documents.

#### **4.3. PAYMENT FOR MATERIALS**

**4.3.1.** Stored materials must be clearly documented with photos and detailed material lists in order to apply for payments.

**4.3.2.** Any material quantity may be altered from that called for in the Contract Documents due to additions or deletions during the course of the Work. The Owner retains the right to delete portions of the Work even if such deletions involve materials which have already been delivered and paid for on the basis of such delivery.

#### **4.4. PAYMENTS WITHHELD**

**4.4.1.** The Owner may decline to approve payment or withhold from the Builder any approved payment, in whole or in part, to the extent necessary to reasonably protect the Owner. The Owner may also decline payment or, because of subsequently discovered evidence or subsequent observations, the Owner may nullify the whole or any part of any previously issued approval for payment to such extent as may be necessary, in the Owner's opinion, to protect the Owner from loss because of:

4.4.1.1. defective Work;

4.4.1.2. actual or possible third party claims and to assure payment of just claims, then due and unpaid, to persons or entities

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Project then, notwithstanding anything contained herein, the Owner may require the Builder, within forty-five (45) days after notice of the filing thereof, to cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If the Builder shall fail to take such steps, the Owner may take any such steps it shall deem necessary to discharge said liens and may charge all costs reasonable and incidental thereto, including the Owner's actual attorneys' fees, to the Builder.

**4.5.3.** Upon filing of a lien of \$10,000.00 or more, the Owner may, at the Owner's sole election, either notify the Builder that no further payments will be made until the lien is bonded or discharged or withhold from the next payment due the Builder a sum which shall be two times the amount stated to be due in the notice of lien. This sum will be withheld until the lien is discharged or, in the Owner's discretion, may be used to bond or discharge the lien. All costs to bond or discharge liens, including actual attorneys' fees, shall be the responsibility of the Builder and the Owner may backcharge the Builder therefor.

**4.5.4.** Upon the filing of a lien of \$10,000.00 or less, the Owner may withhold from the next payment due the Builder a sum which shall be two times the amount stated to be due in the notice of lien. This sum shall be withheld until the lien is bonded off or discharged or, at the Owner's discretion, may be used to bond or discharge the lien. All costs to bond or discharge liens, including actual attorneys' fees, shall be the responsibility of the Builder and the Owner may backcharge the Builder therefor.

**4.5.5.** In the event Builder shall fail to bond or otherwise cause a lien to be discharged after demand from Owner, and Owner shall elect to bond or otherwise cause the discharge of said lien, Builder shall defend, indemnify and save harmless the Owner from all claims, losses and liabilities assumed by or imposed upon Owner by reason of such action.

#### **4.6. TITLE WARRANTY**

**4.6.1.** The Builder warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens", either by incorporation into the Work or upon receipt of payment by the Builder, whichever occurs first. The Builder further warrants that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Builder, or by any other person or entity performing Work at the site or furnishing materials or equipment therefor, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Builder or such other person or entity. The Builder, at the request of the Owner, shall furnish to the Owner confirmatory bills of sale and other instruments as may be required by the Owner, properly executed, confirming to the Owner lien-free title to such materials and equipment or the satisfaction of such encumbrances.

**4.6.2.** In order to secure monies paid to Builder hereunder, Builder hereby grants and conveys to Owner a security interest in all of the parts, products and materials identified for the Work as they are acquired, fabricated, and/or manufactured, whether or not delivered and until passage of title to Owner. Builder shall require all its Contractors and materialmen to grant and convey to Owner, or to Builder as Owner's agent, a similar security interest. Builder agrees to execute and deliver to Owner any financing statement or other document necessary or appropriate to assign, and/or perfect the security interest(s) of Owner granted hereby. The Uniform Commercial Code of New York shall govern the rights and duties of the parties with regard to security interest(s) granted hereby. Owner is hereby authorized to file any and all UCC statements and notices necessary to perfect and/or assign the security interest(s) granted hereby, with or without the signature(s) of the Builder, or any Contractor or materialmen thereon. Builder agrees that it shall not, and it shall require that its Contractors and materialmen shall not, pledge any of the parts, products or materials acquired for the Work to anyone other than Owner.

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provided in the Contract Documents. Provided, however, such payment shall not be made until Builder has provided the following, all of which shall be dated as of delivery and signed by the Builder:

4.8.4.1. All required certificates of occupancy.

4.8.4.2. An approval of the entire electrical system by the New York Board of Fire Underwriters.

4.8.4.3. The record documents specified in Paragraph 3.12.

4.8.4.4. Operating Manuals for all mechanical and electrical systems, including parts lists, maintenance schedules, etc.

4.8.4.5. Attendance lists for instruction sessions provided by the Builder to Owner's personnel to demonstrate the proper use, operation and maintenance of all major equipment and systems.

4.8.4.6. Complete valve charts for all mechanical systems.

4.8.4.7. All keys and other devices usual and necessary for the operation of the building and its systems.

4.8.4.8. All other documents, products, catalogs and instructions required by the Contract Documents.

#### **4.9. BENEFICIAL OCCUPANCY**

**4.9.1.** If, prior to Substantial Completion, the Owner desires to occupy or to install furniture, fixtures or equipment into the Work or any portion or portions thereof, whether the Work or portion thereof is completed or partially completed, it may do so, with the consent of the insurer, and the Builder shall not object to or interfere with such beneficial occupancy. The Builder shall continue performance of the Work in the area or areas so

occupied in a manner which shall not unreasonably interfere with such occupancy and use by the Owner.

**4.9.2.** Immediately prior to such beneficial occupancy, the Owner, Builder and Architect shall jointly inspect the area or portion of the Work to be occupied or used to determine and record the condition of the Work. The stage of the progress of the Work and the responsibilities of the Owner and the Builder with respect to payments, retainage if any, security, maintenance, heat, utilities, damage to the Work, insurance and the period for correction of the Work shall be determined by written agreement between the Owner and the Builder.

**4.9.3.** Such beneficial occupancy shall not constitute acceptance of the Work or any space, systems, materials or elements thereof, nor affect the obligations of the Builder for any incomplete work or work which is not in accordance with the Contract Documents or other obligations of the Builder under the Agreement.

#### **4.10. FINAL COMPLETION**

**4.10.1.** When the Builder considers the Work ready for final inspection and acceptance including all Work shown on the punch list, the Builder shall submit written notice to the Owner accompanied by a final Application for Payment. Upon receipt, the Owner will make an inspection within a reasonable time. If the Owner finds the Work under the provisions of the Contract Documents fully performed, the Architect will issue a Certificate for Final Payment.

**4.10.2.** Neither final payment nor the remaining retainage shall become due until the Builder submits to the Owner:

4.10.2.1. an affidavit that all payrolls, bills for materials and equipment, or other indebtedness connected with the Work for

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"A", or required by law, whichever coverage is greater.

**5.1.2.** The Builder shall provide Comprehensive General Liability Insurance, which shall be written on an occurrence basis for all major divisions of coverage, including:

- 5.1.2.1. Premises-Operations
- 5.1.2.2. Explosion and Collapse Hazard
- 5.1.2.3. Underground Hazard
- 5.1.2.4. Independent Builders Protective Coverage
- 5.1.2.5. Broad Form Property Damage
- 5.1.2.6. Contractual Liability
- 5.1.2.7. Products and Completed Operations
- 5.1.2.8. All Blasting Operations, if Undertaken

**5.1.3.** The Builder shall provide Automobile Liability and Property Damage Insurance, written on an occurrence basis, and providing protection for all owned, non-owned and hired vehicles in at least the limits set forth on Exhibit "A".

**5.1.4.** The Builder shall provide Worker's Compensation Insurance, as required by law, and Employer's Liability Insurance, and all other insurance which it may be required to provide pursuant to law.

**5.1.5.** The Products-Completed Operations coverage of the Builder's General Liability Insurance shall remain in effect for at least three (3) years after final payment. Final payment shall not

become due until the Builder submits to the Owner i) a certificate evidencing that such insurance is currently in effect and ii) a written statement that the Builder knows of no substantial reason that the insurance will not be renewable to cover said period.

**5.1.6.** The Owner Parties shall be named as additional insureds in the policy providing the insurance required by Subparagraph 5.1.2 and such policy shall provide that such insurance is primary insurance with respect to other insurance available to the Owner Parties. Said policy shall not prohibit action between the parties to this Agreement and said policies shall provide defense and indemnification in such actions. Owner Parties' policies are excess and non-contributory. Builder shall cause all Contractors and Subcontractors to name the Owner Parties as Additional Insureds in accordance with the insurance requirements herein.

## **5.2. PROPERTY INSURANCE**

**5.2.1.** The Owner will provide adequate property insurance. Loss under this insurance shall be adjusted with the Owner and all proceeds shall be payable to the Owner as trustee for the insured parties. The Builder shall not violate, or permit to be violated, any condition of such insurance and shall at all times satisfy the reasonable property protection requirements of the Owner and the insurance carrier necessary to protect the Work or any other property of Owner from damage. The Builder is responsible for his own tools, equipment, etc. and is responsible to obtain such insurance as Builder desires therefor.

**5.2.2.** The Builder, all Contractors and Owner waive all rights against each other and Builder and Contractors waive all rights against Owner Parties for claims for damage or injury which may arise from operations under this Agreement to the extent covered by property insurance required to be provided by this Paragraph 5.2, except such rights as they may have against Owner as Trustee to the proceeds of such insurance in the event of loss, and except for deductibles and claims or portions thereof which are self-insured. All insurance policies required hereunder shall provide and acknowledge

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changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Builder shall proceed promptly, unless otherwise directed, and the Stipulated Sum and the Contract Time shall be adjusted as hereafter provided.

## **6.2. MINOR CHANGES IN THE WORK**

**6.2.1.** The Owner may order minor changes in the Work, provided the same shall not increase the Cost of the Work, nor result in a delay in the Work, thereby not involving an adjustment in the Stipulated Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order.

**6.2.2.** The Builder shall maintain at the site of the Work copies of all orders for minor changes in the Work issued by the Owner. The Builder shall also maintain at the site a log of all such orders, identifying the order by number, date received and indicating action taken by the Builder. The Builder shall deliver copies of said log to the Owner.

## **6.3. PROPOSAL REQUESTS**

**6.3.1.** The Owner may request the Builder to submit proposals for accomplishing changes in the Work which the Owner is contemplating. The Builder shall submit such proposals within fifteen (15) calendar days unless a longer or shorter time is mutually agreed upon by the Owner and the Builder.

**6.3.2.** In order to facilitate evaluation of quotations for changes in the Work all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Where major portions of the quotation are Subcontracts they shall also be itemized. In no case will a quotation involving more than \$2,000 be approved without such itemization.

**6.3.3.** The Builder shall maintain at the site of the Work copies of all requests for proposals. The Builder shall also maintain at the site a log of all such proposal requests, showing the date of the request, any action taken thereon by the Builder, the date of delivery of the proposal to the Owner, and whether said proposal was in whole or in part incorporated into any Change Order. The Builder shall deliver copies of the proposal log to the Owner on Substantial Completion.

## **6.4. CHANGE ORDERS**

**6.4.1.** A Change Order is a written instrument, issued after execution of the Agreement, signed by the representative of the Owner authorized to sign Change Orders and Change Directives, and the Builder, to indicate their agreement to a change in the Work, including the amount of adjustment in the Stipulated Sum, if any, and the extent of the adjustment in the Contract Time, if any.

**6.4.2.** The Builder shall maintain at the site of the Work copies of all Change Orders, which shall be sequentially numbered.

**6.4.3.** Builder shall maintain at the job site of the Work a log of all Change Orders issued by Owner, identifying the Number of the Change Order, the date signed by Owner, whether the Change Order has replaced a Change Directive, and the number of such Change Directive, and identifying any proposals of Builder incorporated in whole or in part into the Change Order. Builder shall deliver copies of such log to Owner on request during the progress of the Work and on Substantial Completion.

## **6.5. CONSTRUCTION CHANGE DIRECTIVE**

**6.5.1.** A Construction Change Directive is a written order prepared and signed by the representative of the Owner authorized to sign Change Orders and Change Directives, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Stipulated Sum or Contract Time, or both. The Owner may, by Construction

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provided in the Contract Documents, costs for the purposes of this Subparagraph 6.6.2 shall be limited to the following:

6.6.2.1. costs of materials, including sales tax where applicable, and cost of delivery;

6.6.2.2. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;

6.6.2.3. additional bond premiums;

6.6.2.4. rental value of equipment and machinery;

6.6.2.5. additional costs of supervision and field office personnel directly attributable to the change; and

6.6.2.6. additional Contractor (other than architectural) costs and overhead and profit.

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

**6.6.4.** The amount of credit to be allowed by the Builder to the Owner for any change or deletion which results in a decrease in the Stipulated Sum will be the amount of actual cost savings as confirmed by the Owner after consultation with the Builder. The amount of reduction shall not include the overhead and profit for the Builder for the eliminated Work. Builder shall provide a true copy of Builder's bid work sheets to determine the contract price for the elimination of any contract

Work. Should Builder fail to furnish Owner with such bid work sheets, Owner shall determine the amount of the reduction.

**6.6.5.** The determinations of Owner as to adjustments in the Stipulated Sum or the Contract Time shall be final and binding unless erroneously or fraudulently arrived at, or arbitrary and capricious.

**6.6.6.** When both additions and credits are involved in any one change, the allowance or credit for overhead and profit shall be applied to the net increase or decrease in cost, if any, with respect to that change.

**6.6.7.** In computations under this Paragraph 6.6 the total allowance for overhead and profit combined shall be as negotiated not to exceed the amounts based on the following schedule:

6.6.7.1. For the Builder, for any Work performed by the Builder's own forces, an equitable adjustment will be made in Owner's reasonable discretion, to compensate for increased overhead and an equitable profit.

6.6.7.2. For each Contractor involved except the Architect, for any work performed by that Contractors' own forces, an equitable adjustment will be made in Owner's sole discretion, to compensate for increased overhead and an equitable profit. The Builder shall also be entitled to an equitable adjustment for overhead and profit, which shall not exceed one third the amount of such adjustment had the work been performed by Builder's own forces.

**6.6.8.** When the Owner and the Builder agree concerning adjustments in the Stipulated Sum and Contract Time, such agreement shall be recorded by preparation and execution of a Change Order.

**6.6.9.** Unless otherwise specifically provided for in a Change Order or in a Change Directive, the compensation specified therein, or determined by the Owner in accordance

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the responsibility of the Builder; provided however Builder shall not be entitled to any adjustment in the Stipulated Sum or Contract Time for Work performed pursuant to an action plan.

**7.2.5.** In addition to other remedies provided elsewhere in the Contract Documents or available by law, if Builder fails to submit an action plan as required by Subparagraph 7.2.4, Owner may develop such action plan and Builder shall perform in accordance therewith. Further, at Owner's sole election, and in addition to and without limiting other remedies available, if Builder fails to follow action plans approved by Owner or developed by Owner as provided for in this Paragraph 7.2, Owner may provide or cause the labor, materials, equipment and services to be provided by others, and all costs and expenses incurred thereby shall be backcharged to Builder.

### **7.3. DELAYS AND EXTENSIONS OF TIME**

**7.3.1.** If the Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner, any of its employees, any separate Contractor employed by the Owner, or by changes ordered in the Work, strikes, acts of God, enemy action, civil commotion, fire, or unavoidable casualties, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**7.3.2.** Any claim for extension of Contract Time shall be made in writing to the Owner in accordance with Article 8.

**7.3.3.** Nothing contained in this Paragraph 7.3 shall create any right of recovery for damages for delay and the issue of change in the Stipulated Sum by reason of delay is governed elsewhere in the Contract Documents. Provided however, no claim for delay shall exist unless, as a condition precedent thereto, the Builder has given notice as required in the above Subparagraph 7.3.2.

## **ARTICLE 8**

## **8. CLAIMS AND ARBITRATION OF CLAIMS AND DISPUTES**

### **8.1. NOTICE OF INJURY OR DAMAGE CLAIM**

Should the Builder suffer injury or damage to person or property because of any act or omission of the Owner, or any of its employees, agents or others for whose acts the Owner may be legally liable, claims therefor shall be made in writing to the Owner no later than thirty (30) days after knowledge of such claim or first observance of injury or damage giving rise to such claim, whichever is the sooner. Timely notice as provided for herein shall be a condition precedent to Builder's right to commence an action for any such damage or injury.

### **8.2. CLAIMS FOR ADDITIONAL COST**

**8.2.1.** If the Builder wishes to make a claim for an increase in the Stipulated Sum, the Builder shall give the Owner written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Builder before proceeding with the execution of the affected portions of the Work, except in the case of an emergency endangering life or property, in which case the Builder shall give notice thereof to the Owner as soon as possible and shall proceed in accordance with the provisions of Paragraph 8.5.3 of these General Conditions.

**8.2.2.** Notwithstanding anything herein contained to the contrary, Builder shall not be entitled to any increase in the Stipulated Sum, unless Builder has performed work outside the scope of the Contract Documents after duly authorized to do so by Owner. The Builder agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission to act of Owner or any of its representatives, or for any other reason, and agrees that any such claim shall be fully compensated for by an extension of time to

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**8.6.2.** No action or proceeding, whether sounding in contract or tort, law or equity, shall lie or be maintained by the Builder against the Owner unless preserved in accordance with Subparagraph 8.5.3 and unless timely notice as required by the Contract Documents is given. Compliance with such requirements shall be conditions precedent to the Builder's right to arbitration or to commence an action for any such damage or claim. Said action shall be commenced within six (6) months after receipt by the Owner of the Builder's final Application for Payment or, if the Agreement is terminated by the Owner, said action shall be commenced within six (6) months after the date of said termination. Nothing contained herein shall affect the time in which the Owner may commence an action or proceeding which shall be governed by the applicable laws, statutes, ordinances and regulations.

### **8.7. REMEDIES**

**8.7.1.** Inasmuch as the Builder can be compensated adequately by money damages for any breach of the Agreement which may be committed by the Owner, the Builder agrees that no default, act or omission of the Owner shall constitute a material breach of Agreement entitling the Builder to cancel or rescind the same or to suspend or abandon the performance thereof; and the Builder hereby waives any and all rights and remedies to which the Builder might otherwise be or become entitled because of any wrongful act or omission of the Owner, saving only the Builder's right to money damages or an extension of Contract Time, as the case may be.

**8.7.2.** Nothing in the Agreement shall create or give to third parties any claim or right of action against the Owner beyond such as may legally exist irrespective of the Agreement.

**8.7.3.** The duties and obligations of the Builder imposed by the Contract Documents and the rights and remedies available to the Owner hereunder are cumulative and are in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

### **8.8. CLAIMS AND DISPUTES SUBJECT TO ARBITRATION**

**8.8.1.** Disputes or claims arising out of or related to this Contract or the breach thereof, which do not exceed the monetary limits hereinafter set forth, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the Arbitrator or Arbitrators may be entered in any court of the State of New York having jurisdiction thereof, except disputes or claims relating to aesthetic effect and except those waived by the Builder expressly or by failure of the Builder to preserve such claims as required by these General Conditions, and provided further that the notice of arbitration is strictly made and served within the time limits set forth herein and within the monetary limits set forth herein.

**8.8.2.** Demand for arbitration of any claim arbitrable, as provided herein, may not be made and served until the Certificate of Substantial Completion has been issued. Such claims must be made and served no later than six (6) months after receipt by the Owner of the Builder's Application for Final Payment or, if the Contract is terminated by the Owner, no later than six (6) after the date of said termination. Any demand for arbitration of any claim made before issuance of the Certificate of Substantial Completion shall be deemed null and void and further shall constitute a waiver of any such claims.

**8.8.3.** No Claim alleged in excess of \$10,000.00 shall be subject to Arbitration provided however, if Builder has preserved multiple claims, all of which are less than \$10,000.00 and in the aggregate all preserved claims are less than \$50,000.00, then all such claims shall be arbitrated. Provided, further if any claim preserved by the Builder and not waived by Builder exceeds \$10,000.00 or claims preserved and not waived by the Builder in the aggregate exceed \$50,000.00 then Builder shall not be entitled to arbitration for any claim.

**8.8.4.** As a condition precedent and prior to making demand for arbitration as

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failure of performance in accordance with the terms of such undertaking.

#### **9.2. ACCOUNTING RECORDS**

The Builder shall inspect all materials, equipment and labor which may be part of or related to the Work and shall keep such accounts as may be necessary for proper financial management under the Agreement. The Owner shall be afforded access at all reasonable times to audit and inspect the Builder's and any Contractor's and Subcontractors' contracts or subcontracts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Agreement. The Builder shall preserve all such records for a period of at least three (3) years after the Owner has made the Final Payment hereunder.

#### **9.3. TITLE TO THE WORK**

Title to all Work paid for by the Owner, whether completed or partially completed, and title to all materials and equipment, on account of which payment has been made by the Owner to the Builder, shall vest in the Owner upon payment or incorporation into the Work, whichever is sooner.

#### **9.4. WAIVER OF BREACH**

The failure of the Owner at any time to require performance of any provision hereto with respect to a particular matter shall in no way affect the right of the Owner to enforce such provision at a later date with respect to another matter. Nor shall waiver by the Owner of any breach of any provision hereof be taken or be held to be a waiver with respect to any succeeding breach of such provision or as a waiver of the provision.

#### **9.5. PROVISIONS REQUIRED BY LAW**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not included, or is not correctly included, then upon application of either party, the Agreement shall forthwith be physically amended to insert such provision.

### **ARTICLE 10**

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

##### **10.1. SAFETY PROGRAMS AND PRECAUTIONS**

**10.1.1.** The Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

**10.1.2.** The Builder shall designate a responsible member of the Builder's organization at the site whose duty shall be the prevention of accidents. This person shall be the Builder's superintendent unless otherwise designated by the Builder in writing to the Owner.

**10.1.3.** The Builder shall take all prudent precautions for the safety of, and shall provide all prudent protection to prevent damage, injury or loss to:

10.1.3.1. all persons who may enter on or near the site or may be affected by the Work including but not limited to Builders' and Contractors' employees;

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provided in the Contract Documents, the Builder shall bear all costs related to such inspection, tests and approvals.

**11.1.3.** If the Owner or public authorities having jurisdiction determine that portions of the Work require special inspection, testing or approval which Subparagraph 11.1.2 does not include, the Owner will instruct the Builder to make arrangements for such special inspection, testing or approval by an entity acceptable to the Owner. The Builder shall give timely notice of the readiness of the Work for such special inspection or testing not less than seventy-two (72) hours prior to the requested time for inspection or testing. If such inspection or testing reveals a failure of Work to comply with the requirements of the Contract Documents, the Builder shall bear all costs related to such inspection or testing, otherwise the Owner shall bear such costs and an appropriate Change Order shall be issued.

**11.1.4.** Required certificates of inspection, testing or approval shall be secured by the Builder, and the Builder shall promptly deliver them to the Owner.

**11.1.5.** If any portion of the Work, required to be tested, inspected or approved by the Contract Documents, Architect's instructions or public authority, should be covered without the approval or consent of the Owner, it must, if required by the Owner, be uncovered for the required testing, inspection or approval and replaced at the Builder's expense without change in the Contract Time or the Stipulated Sum.

**11.1.6.** Re-inspection of any Work may be ordered by the Owner and, if so ordered, shall be uncovered by the Builder. If the Owner was afforded a reasonable opportunity to inspect such Work before it was covered, and such Work is found to be in accordance with the Contract Documents, the Owner shall pay the costs of re-inspection and replacement. If any Work is found not to be in accordance with the Contract Documents, the Owner may order all similar Work, which was covered prior to inspection, uncovered, inspected, tested and

corrected, if necessary, all at the Builder's expense, whether or not correction is required.

**11.1.7.** Architect has authority to reject Work which does not conform to the Contract Documents. Owner shall notify Builder of such rejection within a reasonable time. Owner may require special inspection or testing of the Work in accordance herewith whether or not such Work is then fabricated, installed or completed.

**11.1.8.** The Owner, together with the Architect and the Architect's consultants, will conduct an inspection of the Work during the eleventh month after issuance of the Certificate of Final Completion. The Builder, whose participation is optional, will be given ten (10) days' written notice of the date set for said inspection. The Builder will be furnished a copy of the inspection report and the Builder shall promptly correct all non-conforming or defective Work noted in the report within sixty (60) days of its receipt. Nothing contained herein shall limit Owner's right to notify and require Builder to correct any defects which shall appear within the guaranty period.

## **11.2. CORRECTION OF WORK**

**11.2.1.** If any of the Work is rejected by the Owner or the Architect for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion or at any time during the period of any guarantee made by the Builder under the Contract Documents, and whether or not fabricated, installed or completed, the Builder shall, within ten (10) days after written notice by the Architect or the Owner, correct such Work or, if the condition is not capable of being corrected in such ten (10) day period, expeditiously commence to remedy the condition and thereafter proceed diligently and continuously with such remedy until the non-conforming Work is corrected. The Builder shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

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Contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall coordinate and connect the Builder's Work with theirs.

12.1.1.1. The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate Contractor with the Work of the Builder, who shall cooperate with them. The Builder shall participate with other separate Contractors and the Owner in reviewing their construction schedules when directed to do so. The Builder shall make revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The revised construction schedule shall then constitute the schedule to be used by the Builder, the Owner and the separate Contractors until subsequently revised.

12.1.2. If any part of the Builder's Work depends for proper execution upon the work of the Owner or any separate Contractor, the Builder shall inspect the work and promptly report to the Owner any apparent discrepancies in such work that would render it unsuitable for such proper execution. Failure of the Builder to so inspect and report shall constitute an acceptance of said work as fit and proper to receive the Work of the Builder, except as to latent defects not then reasonably discoverable.

12.1.3. Costs caused by delays or improperly timed activities or defective construction shall be borne by the party responsible therefor.

12.1.4. The Builder shall promptly remedy damage caused by the Builder or any of Builder's agents, employees, Contractors or materialmen, to completed or partially completed construction of the Owner or separate builders or contractors as provided in Article 11.

12.1.5. If a dispute arises among the Builder, separate builders or contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and the surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the

cost among those responsible as the Architect determines to be just.

12.1.6. The Owner and each separate builder or contractor shall have coordinate responsibilities for cutting and patching as set forth in Paragraph 3.16 of these General Conditions.

### **ARTICLE 13**

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

##### **13.1. TERMINATION BY THE OWNER FOR CAUSE**

13.1.1. If the Builder is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except for cases in which extension of Contract Time is provided, to provide enough properly skilled workers or sufficient proper materials to stay on schedule, or if it fails to make prompt payment to Contractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is guilty of a substantial violation of a provision of the Contract Documents, or is otherwise in default of its obligations under the Contract Documents, then the Owner may, without prejudice to any right or remedy, and after giving the Builder and its surety, if any, seven (7) days written notice, terminate the employment of the Builder. In such case, the Owner may take possession of the site and of all materials, equipment, tools, construction equipment, machinery appliances and plant as may be on the site, and may finish the Work by whatever method the Owner may deem expedient.

13.1.2. In the event of termination of the Agreement by the Owner for cause, the Builder shall not be entitled to receive further payment until the Work is completed. If the unpaid balance of the Stipulated Sum exceeds the costs of completing the Work, including compensation for the Architect's additional services made necessary as a

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segregation by reason of race, creed, color, national origin, ancestry, sex, sexual preference, age, veteran or marital status or, when otherwise qualified, by reason of mental or physical handicap or disability.

## **14.2. PROTECTED CLASSES**

### **14.2.1. Minorities**

14.2.1.1. Blacks, Not of Hispanic Origin: Persons having origins in any of the Black racial groups of Africa.

14.2.1.2. Hispanics: Persons of Mexican, Puerto Rican, Cuban, Central/South American or other Spanish culture or origin, regardless of race.

14.2.1.3. Asian or Pacific Islander: A person having origins in any of the original peoples of the Far East, Southeast Asia the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

14.2.1.4. American Indian or Alaskan Native: A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**14.2.2. Handicapped** - Any person who has a physical or mental impairment which substantially limits one or more major life activity, has a record of such an impairment, or is regarded as having such an impairment.

### **14.2.3. Disabled Veterans and Veterans of the Vietnam Era**

14.2.3.1. Disabled Veterans: Persons entitled to disability compensation under laws administered by the Veterans Administration for disability rated at 30% or more, or a person whose discharge or release from active duty

was for a disability incurred or aggravated in the line of duty.

14.2.3.2. Veterans of the Vietnam Era: Persons who served on active duty for a period of more than 180 days, any part of which occurred between August 4, 1964 and May 7, 1975, and was discharged or released with other than a dishonorable discharge.

## **14.3. POLICIES**

**14.3.1. Equal Employment Opportunity for Minorities and Women.**

(a) Builder shall comply and cause all Contractors and Subcontractors to comply with Article 15-A of the Executive law of the State of New York ("Executive Law"),

(b) In accordance with Section 312 of the Executive Law, if this Agreement is: i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or iii) a written agreement in excess of \$100,000.00 whereby the owner of a New York State ("State") assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then Builder shall comply and cause all

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however, that separate or single-user toilet facilities and necessary changing facilities shall be provided to insure privacy between the sexes;

**14.4.7.** Insure that all solicitations or advertisements for employees placed by or on behalf of the Builder or its Contractors and agents state that all qualified applicants shall be afforded equal employment opportunities without discrimination;

**14.4.8.** If directed by the Owner, request each employment agency, labor union and authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish it with a written statement that such employment agency, labor union or representative shall not practice discrimination; and

**14.4.9.** Review selection criteria, personnel policies and practices, all pay schedules, fringe benefits and other forms of compensation to insure that such criteria, policies, practices, employee compensation and benefits are applied without discrimination.

#### **14.5. SEXUAL HARASSMENT**

Owner is committed to a working and learning environment that is free of discriminatory intimidation. To that end, sexual harassment will not be tolerated on this Project

and the Builder shall assist Owner in discouraging such practices by posting the following at the Site of the Work.

#### **SEXUAL HARASSMENT**

UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS AND OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE CONSTITUTE SEXUAL HARASSMENT WHEN (1) SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF AN INDIVIDUAL'S EMPLOYMENT; (2) SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY AN INDIVIDUAL IS USED AS A BASIS FOR EMPLOYMENT DECISIONS AFFECTING SUCH INDIVIDUALS; OR (3) SUCH CONDUCT HAS THE PURPOSE OR EFFECT OF SUBSTANTIALLY INTERFERING WITH AN INDIVIDUAL'S WORK PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE OR OFFENSIVE WORKING ENVIRONMENT.

SEXUAL HARASSMENT IS A VIOLATION OF SECTION 703 OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED.

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- D) Commercial Umbrella Liability ("UL") with limits of insurance of not less than a limit of \$10,000,000.

UL coverage must include as Additional Insureds all entities that are Additional Insureds on the CGL and the AL. UL insurance for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds other than the CGL and WC/EL coverage maintained by the Builder.

- E) RESERVED

- F) Builder shall supply FSMC, FOUNDATION, SUNY Poly, SUNY, STATE and ESD with evidence of Contractor's Pollution Liability Coverage (CPL) in the form of a certificate of insurance. A minimum coverage limit of \$5,000,000 for CPL should be maintained by the Builder for the duration of this Agreement.

- G) Waiver of Subrogation: Builder, Contractor and Subcontractors waive all rights against FSMC, FOUNDATION, SUNY Poly, SUNY, STATE and ESD and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, AL, WC & EL, AEL, CPL or UL insurance maintained per the requirements stated above.

- H) Certificate of Insurance: Certificate of Insurance acceptable to FSMC, FOUNDATION, CNSE/SUNY, STATE and ESD must be provided prior to commencement of the Builder's work. A copy of the General Liability Additional Insured endorsement shall be attached to the Certificate of Insurance.

- I) Notice of Cancellation or Coverage Modification: No insurance policy required above shall be cancelled, modified allowed to expire, or reduced in coverage without at least 30 days prior written notice to the Owner.

- J) Builder shall cause its Contractors and Subcontractors to maintain CGL, AL, WC & UL insurance per the requirements stated above except that the amount of such coverage shall be \$1,000,000 per occurrence, \$2,000,000 aggregate in the case of the CGL coverage, \$500,000 in the case of the AL coverage and \$5,000,000 in the case of the UL coverage.

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County of New York )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, before me, the  
subscriber personally appeared to  
me personally know, who being by me duly sworn, did depose and say that he resides at \_\_\_\_\_  
that he is \_\_\_\_\_ of the corporation described  
in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal  
affixed to said instrument is said corporate seal; that the seal was so affixed by order of the Board of  
Directors of said corporation; and that he signed his name thereto by like order.

Notary Public - County of:  
My Commission expires:

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County of New York )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the subscriber personally appeared to me personally know, who being by me duly sworn, did depose and say that he resides at \_\_\_\_\_ that he is \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is said corporate seal; that the seal was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Notary Public - County of:

My Commission expires:

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such requirement affects any of the materials furnished and/or any of the work or labor performed or furnished by Builder pursuant to the Contract; and

5. Waive any and every lien, charge or claim in any nature which Builder has or may at any time be entitled to against the aforesaid premises of Owner upon which the Improvement is located, or against any funds that are or may be available to Owner to pay for the Improvement or any part thereof, and

6. Covenant and state that it has received all sums to which it is and will be entitled to pursuant to the Contract that there are no unpaid bills for labor or material furnished or to be furnished by Builder pursuant to the Contract and that all amounts due to subcontractors and materialmen of the undersigned in connection with the Improvement have been paid from the sums received by the undersigned; and

7. Agree that any matter relating to this Waiver and Release (including but not limited to its construction, interpretation, validity, and effect), shall be governed by the internal laws of the State of New York without regard to conflicts of law.

IN WITNESS WHEREOF, the undersigned has signed this Waiver and Release on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[Builder]

By: \_\_\_\_\_

Name:

Title:

STATE OF \_\_\_\_\_ )

S:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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The undersigned (the "General Contractor") has been paid and has received full payment for all services furnished by General Contractor and/or employees or others acting for General Contractor or claiming by, through or under General Contractor through

\_\_\_\_\_ to \_\_\_\_\_  
(Date)

on the job of \_\_\_\_\_  
(Owner)

located at \_\_\_\_\_  
(Job Description)

General Contractor represents and warrants that General Contractor and all persons and entities acting for or claiming by, through or under General Contractor have fully performed and furnished all services to have been performed or furnished by General Contractor and/or any such other person and that there is not now due or owing any amount of money or wages to any party or entity in connection with this job or any part thereof. The General Contractor does hereby release for itself and any party or entity action for General Contractor or claiming by, through or under General Contractor, from any mechanic's liens, stop notice, bond right or claim of any nature whatsoever that the undersigned or any such other party has or may have with respect to the above referenced job.

The General Contractor further agrees to reimburse and does hold harmless and fully indemnify ESD its successors and assigns for any losses or expenses should any such claim, lien, or right to a lien be asserted by the General Contractor or by any person or entity acting for or claiming by, through or under the General Contractor, including, without implied limitation, attorney's fees incurred in the defense thereof.

In addition, for and in consideration of the amounts and sums received, the undersigned hereby waives, releases and relinquishes any and all claims, rights or causes of action whatsoever arising out of or in the course of the work performed on the above-mentioned project, contract or event.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

NOTARIZED

\_\_\_\_\_  
(Company Name)

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above premises that he has no other outstanding and unpaid payment applications, invoices, retentions, holdbacks, chargebacks or unbilled work or materials, as of the date of the aforementioned last and final payment application of invoice; and that any materials which have been supplied or incorporated into the above premises were either taken from his fully-paid or open stock or were fully paid for and supplied as stated on the statement accompanying the last and final payment application or invoice.

The undersigned further agrees to reimburse and does hold harmless and fully indemnify Owner, ESD and for any losses or expenses should any such claim, lien, or right to a lien be asserted (by the undersigned or by any laborer, materialman or subcontractor of the undersigned), including, without implied limitation, attorneys' fees incurred in the defense thereof.

In addition, for and in consideration of the amounts and sums received, the undersigned hereby waives, releases and relinquishes any and all claims, rights or causes of action whatsoever arising out of or in the course of the work performed on the above-mentioned project, contract or event.

Signed and delivered this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_.

\_\_\_\_\_  
Individual or Corporation Name

By: \_\_\_\_\_

Title \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_ before me the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledge to me that se executed the same in her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:

Residence County:

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person upon behalf of which the individual acted, executed the instrument.

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Notary Public

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New York State; or (iii) banking services, insurance policies or the sale of securities. BUILDER or subcontractor will be considered in compliance with this section if there is compliance with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. BUILDER will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto. Attached hereto and made part of the Agreement.

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