

MISSISSIPPI STATE UNIVERSITY
Office of Planning Design and Construction Administration

SECTION 00 800 - 2017 SUPPLEMENTARY CONDITIONS

The following supplements modify, change, delete from, or add to the General Conditions of the Contract for Construction, AIA Document A201-2017 (the “General Conditions”). When any Article or provision of the General Conditions is modified, or deleted, by these *Supplementary Conditions*, the unaltered provisions of that Article, Paragraph, Subparagraph, or Clause will remain in effect. In the event of a conflict between the General Conditions and this Section 00 800, Section 00 800 shall control even if the conflicting provision in the General Conditions is not expressly revised or deleted by reference in Section 00 800. These Supplementary Conditions shall supersede and govern over any contrary, conflicting, or inconsistent provision of AIA Document A201-2017. The General Conditions may also be supplemented or amplified elsewhere in the Owner’s Contract Documents by provisions located in, but not necessarily limited to, Division 1 of the Specifications.

Article 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS: Amend Section 1.1.1 by adding the words “Plans” and “Exhibits” after the word “Specifications” in the third line. Delete the last sentence of this Subparagraph Section 1.1.1 and substitute the following sentence:

The Contract Documents include the Advertisement for Bids, Instructions to Bidders, the Project Manual, including all plans, all specifications, all Addenda and modifications to the plans and/or specifications, the Agreement between Owner and Contractor, the performance and payment bonds, the notice to proceed, any executed change orders, the bid proposal form, sample forms, all portions of addenda issued prior to execution of the Contract, and all other documents or exhibits identified in or attached to the Agreement, as that Agreement is amended by the Owner. Information and documentation pertaining to soil investigation data, laboratory investigations, soil borings and related information included herein are not part of the Contract Documents.

1.1.1.1 Add a new Section 1.1.1.1 to read as follows: The Contract Documents are complementary and what is required by one shall be as binding as if required by all. In the event of an ambiguity in the Contract Documents, the document that has the highest standards and most stringent requirements in favor of Owner shall govern and control. In the case of conflict between terms of the Contract Documents, the following order of precedence shall apply:

- .1 Change Orders;
- .2 The Standard Form of Agreement between the Owner and the Contractor, Section 00500, as amended by Owner’s Supplementary Conditions, if any;
- .3 The A201-2017 General Conditions, as amended by Owner’s Supplementary Conditions;
- .4 The Specifications;
- .5 The Drawings

1.1.2 Amend the fourth sentence of Section 1.1.2 by deleting “or” in front of “(4)”, and by adding the following before the end the sentence: “, or (5) between the Contractor and the Owner’s Representative, if the Owner has designated a third-party Representative.”

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1.1.3 Add a new sentence at the end of this Subparagraph: The Work shall include all items necessary to complete the construction and services required by the Contract Documents.

1.1.5 Add the following to the end of Section 1.1.5:

Large scale drawings shall govern over small scale drawings where there are differences or conflicts between such drawings. Where the word “similar” appears on the plans, it shall not be interpreted to mean “identical” and shall require the Contractor to coordinate the actual conditions and dimensions of the location where the “similar” conditions are shown to occur.

1.1.9 Add a new Subparagraph as follows: COMMISSIONING AUTHORITY PROFESSIONAL

A professional independent of the project engineer or architect retained by the owner who manages a quality focused process for enhancing the delivery of the project. The process focuses upon verifying and documenting that the facility and all of its systems are planned, designed, constructed, installed, tested, operated and maintained to meet the Owner’s project requirements.

1.2.1.1 Add a new Subparagraph as follows:

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

1.2.4 Add the following Section 1.2.4:

It is the intent of the Contract Documents that the Contractor shall, until final completion of the Project and Work, properly execute and complete the Work described by the Contract Documents, and unless otherwise provided in the Contract, the Contractor shall at all times provide all labor, services, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, whether temporary or permanent and whether or not incorporated in the Work, in full accordance with the Contract Documents and reasonably inferable from them and as otherwise necessary for proper execution and final completion of the Work and the Project.

1.2.5 Add the following Section 1.2.5:

The Contract Documents shall be interpreted collectively, each part complementing the others and consistent with the intent of the Contract Documents. Unless an item shown or described in the Contract Documents is specifically identified to be furnished or installed by the Owner or others or is identified as “Not In Contract” then the Contractor’s obligation relative to that item shall be interpreted to include furnishing, assembling, installing, finishing, and/or connecting the item at the Contractor’s expense to produce a product or system that is complete, appropriately tested, and in operable condition ready for use or subsequent construction or operation of the Owner or separate contractors. The omission of words or phrases for brevity of the Contract Documents, the inadvertent omission of words or phrases, or obvious typographical or written errors shall not defeat such interpretation as long as it is reasonably inferable from the Contract Documents as a whole.

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Words or phrases used in the Contract Documents which have well-known technical or construction industry meanings are to be interpreted consistent with such recognized meanings unless otherwise indicated.

Except as noted otherwise, references to standard specifications or publications of associations, bureaus, or organizations shall mean the latest edition of the referenced standard specification or publication as of the date of the Advertisement of Bids.

In the case of inconsistency between Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

Generally, portions of the Contract Documents written in longhand take precedence over typed portions, and typed portions take precedence over printed portions.

Any doubt as to the meaning of the Contract Documents or any obscurity as to the wording of them shall be promptly submitted in writing to the Architect for written interpretation, explanation, or clarification.

1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.5.1 Revise the first sentence of Section 1.5.1 by: deleting "Architect and the Architect's consultants" and replacing with "Owner"; deleting the phrase "authors and" and making "owners" the singular "owner"; and change "their" to "the". Revise the third sentence of Section 1.5.1 by deleting "Architect and the Architect's consultants" and replacing with "Owner". Also, add the following sentences to the end of the Subparagraph: "The Contract Documents and all copies thereof furnished to or provided by Contractor are the property of the Owner and are not to be used by Contractor on any other work or project. The intent of the changes to this Section are simply to shift ownership of the Contract Documents after completion of the Project from the Architect to the Owner. It is not the intent to shift authorship or to shift any design responsibility. The Owner specifically and expressly disclaims all responsibility and liability for design. This Paragraph in no way supersedes the Owner's document rights set forth in the Agreement between the Owner and the Professional."

1.6.1 Change this Subparagraph to read as follows:

Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic mail if accompanied by a delivery or read receipt or other confirmation of receipt.

1.6.2 Add the following to the end of this Subsection to appear after "delivery":

, or by electronic mail if accompanied by a delivery or read receipt or other confirmation of receipt.

1.7 In the first sentence, replace "shall" with "may". Delete the second sentence in its entirety.

1.8 Delete Section 1.8 and replace with the following: "Contractor, Subcontractors, Sub-subcontractors

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and vendors shall be entitled to use and rely upon all, or any portion, of a building information model or other similar electronic files containing Contract Documents that are produced by the Architect or the Architect's consultants. Any such use or reliance shall be at the using or relying party's sole risk."

Article 2 OWNER

2.1 GENERAL

2.1.1 Change this Subparagraph to read as follows:

The Owner, as used in these Documents, refers to Mississippi State University, an entity of the State of Mississippi for which the Work under this Contract is being performed. The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner's Representative, who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, is the individual who signed the Construction Contract for the Owner. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may at any time, and from time to time, and at its convenience, without prior notice to or approval of Contractor, replace Owner's Representative(s) with a new representative. Upon receipt of notice from Owner informing Contractor of such replacement and identifying the new Owner's Representative, the Contractor shall recognize such person or firm as Owner's Representative for all purposes under the Contract Documents.

2.1.3 Add a new Section 2.1.3 to read as follows: "Owner is not subject to any requirement to obtain or pay for any building permits, inspection fees, plan checking fees, or utility fees. Contractor will secure, obtain, and pay for all building permits, utility permits, demolition permits, fees, licenses, inspections, and government approvals necessary for the use or occupancy of permanent structures required in connection with the Work or for the proper execution and performance of the Work."

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 Delete this Section in its entirety.

2.2.2 Delete this Section in its entirety.

2.2.3 Delete this Section in its entirety.

2.2.4 Delete this Section in its entirety.

2.3.1 Amend this Section by deleting the part of the sentence that reads: "Except for" through "Section 3.7.1," and in the second line change "Owner" to "Contractor" and capitalize "the" which will be the new beginning of the sentence.

2.3.3 Amend Section 2.3.3 by placing a "period" after the word "successor" and deleting the remainder of the sentence.

2.3.4 Delete this Section in its entirety.

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2.3.6 Delete Section 2.3.6 and insert the following new Section 2.3.6:

Contractor will be furnished electronic copies of the Contract Documents, including Drawings. Contractor will be responsible to print any hard copies of the Contract Documents that it deems necessary for execution of the Work.

2.4 Change this Subparagraph to read as follows:

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, fails to carry out Work in accordance with the Contract Documents, fails to perform any of its obligations under the Contract Documents, or otherwise fails to perform the Work in a good, safe, and workmanlike manner, minimizing the impact of such Work on the Owner's campus, then the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Contractor, as determined in Owner's sole discretion. Contractor shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. Owner has no duty or responsibility to Contractor or any other party to exercise the right to stop the Work. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. The rights and remedies under this Section 2.4 are in addition to and do not in any respect limit any other rights of the Owner, including its termination rights under Article 14.

2.5 Change this Subparagraph to read as follows:

If the Contractor defaults, fails, or neglects to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Schedule, fails to comply with any material term of the Contract Documents, or otherwise fails to perform the Work in a good, safe, and workmanlike manner, minimizing the impact of such Work on the Owner's campus or business activities, and then if Contractor after receipt of written notice from the Owner, fails, within seven (7) calendar days after receipt of written notice from the Owner, or within such additional time as the Owner may specify, to commence and continue correction of such default, failure, or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies at Contractor's expense without further notice to the Contractor and/or its Surety. In such case, Owner will be entitled to issue a Change Order deducting from payments then or thereafter due the Contractor for the cost of correcting such deficiencies, including without limitation compensation for the Owner's expenses and for the additional services and expenses of the Owner's Representative, the Architect, and the Owner's consultants made necessary by Contractor's deficiencies, neglect, or failure, including reasonable attorneys' fees and costs incurred by the Owner. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor or its Surety shall pay the difference to the Owner.

Article 3 CONTRACTOR

3.1.1 Add the following at the end of Section 3.1.1:

The relationship of Contractor to Owner shall be that of independent contractor, and nothing in

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Contract Documents is intended to nor should it be construed as creating any other relationship, expressed or implied, between Owner and Contractor.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.1.2 Add the following three sentences to the end of this Subparagraph:

Contractor shall maintain a valid general contractor's license and all other required licensing in the State where the Project is located until Final Completion and any time thereafter when it is performing work on the Project. The Contractor shall only retain Subcontractors who are duly licensed to perform their respective scopes of work in the State where the Project is located. The Contractor shall defend, indemnify, and hold harmless Indemnitees from any and all damages, costs, or fees, including reasonable attorneys' fees, arising out of the performance of work by any Subcontractor that is not duly licensed to perform its scope of work.

3.4 LABOR AND MATERIALS

3.4.2 Add the following to the end of Section 3.4.2:

Some Sections of the Specifications may not allow substitution of materials, products or equipment. Where "or equal" substitution is allowed the request for substitution will only be considered if made in strict accordance with the requirements of Article 3.4.6 below.

3.4.3 Add the following two sentences to the end of this Subparagraph:

Contractor shall use commercially reasonable efforts to perform background checks on all Contractor's employees. In addition, Contractor shall include in its subcontracts a requirement that its subcontractors use commercially reasonable efforts to perform background checks on their employees.

3.4.4 Add a new Subparagraph as follows:

The Contractor shall comply with the Mississippi Employment Protection Act in accordance with Section 71-11-3 of the Mississippi Code 1972, annotated. The Contractor further agrees to maintain records of such compliance, and upon request of the University to provide a copy of each such verification to the University.

3.4.5 Add the following Subparagraph 3.4.5:

Contractor represents that it has independently investigated, considered and understands the labor conditions in the area surrounding the Project and acknowledges that such conditions may impact the Contractor's cost and/or time of performance of the Contract. Therefore, Contractor further represents that the Contract Price is based upon Contractor's independent investigations into such labor conditions and that the Contract time is reasonable and the date of Substantial Completion is obtainable. As a result, Contractor assumes the risk of increased costs, if any, incurred by, or arising out of, or related to such labor conditions and acknowledges that Contractor and its surety will reimburse Owner for any additional costs Owner incurs arising out of or related to such labor conditions.

3.4.6 Add the following Section 3.4.6.

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After the Contract has been executed, the Owner and the Architect may consider a request for the substitution of products in place of those specified only under the conditions set forth in the Project Specifications. By making requests for substitutions, the Contractor:

- .1 Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 Certifies that any cost data presented is complete and waives all claims for additional costs related to the substitution which subsequently becomes apparent; and
- .4 Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be completed in all respects.

3.5.1 Change this Subparagraph to read as follows:

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and the requirements of all governmental authorities having jurisdiction over the Project and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty provided in this Paragraph 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to include the requirement that Contractor replace non-compliant materials and equipment and re-execute non-compliant Work which is disclosed to the Contractor by the Owner. Unless a longer time is allowed by law or by the Contract Documents or by manufacturer's warranties, equipment warranties, or other warranties, the minimal duration of all warranties of any kind from Contractor to Owner shall be for a period of one (1) year following the date of Substantial Completion. To be clear, all warranties begin at the time of Substantial Completion and not at the time of equipment shipment, installation, or startup.

3.6. Amend Section 3.6 by deleting the phrase "when bids are received or negotiations concluded" and replace same with the phrase "before or during the Project, including any increases in such taxes that may be assessed after execution of the Agreement".

3.7.4 Add the following sentence to appear after the second sentence of this Subparagraph:

No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's prior inspections, tests, reviews and preconstruction services, which the Contractor had the opportunity to make or should have performed in connection with the Project.

3.9 SUPERINTENDENT

3.9.1.1 Add the following new Subparagraphs as follows:

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General: Provide minimum administrative and supervisory personnel as follows:

1. Minimum Contractor Staffing Requirements: Contractor will provide qualified staff for the following positions during the project as outlined below. Superintendents cannot perform the roles of two concurrent positions, but can transition to a subsequent role when work is substantially complete.
 - a. Project Superintendent – on site full time for all buildings; assigned to the project from initial mobilization through substantial completion and punch list.
 - b. Field Project Manager – on site full time; minimum 7 years commercial experience.
 - c. Quality Control and Scheduling Manager – on site full time and dedicated to QA and Scheduling duties. Minimum 5 years commercial experience.

Submit all resumes within 10 days of Notice of Award of Contract.

After Owner's approval of the superintendents, none shall be replaced by the Contractor without the Owner's consent, unless the Contractor submits evidence that a superintendent should be terminated for cause.

All Contractor superintendence personnel must have 10-hour OSHA training certification.

The Contractor is required to maintain a dedicated superintendent for phases of the work that are behind schedule or experiencing quality or safety issues.

The MEP subcontractors shall provide a full force of superintendents for the duration of the project.

Contractor shall employ a competent superintendent(s) satisfactory to Owner who shall be in attendance at the Project site at all times during the performance of the Construction Work. Any superintendent shall represent Contractor and communications given to and received from superintendent shall be binding on Contractor. Failure to maintain a superintendent on the Project site at all times Construction Work is in progress shall be considered a material breach of this Contract, entitling Owner to terminate the Contract or alternatively, issue a stop Construction Work order until the superintendent is on the Project site. If, by virtue of issuance of said stop Work order, Contractor fails to complete the Contract on time, Contractor will be assessed Liquidated Damages in accordance with the Agreement.

The superintendent approved for the Project must be able to read, write and verbally communicate in English. The superintendent may not perform the Construction Work of any trade or perform any Construction Work not directly related to the supervision and coordination of the Construction Work at the Project site when Construction Work is in progress.

Contractor shall at all times provide key personnel (including Superintendent) who are approved by the Owner. Owner may at any time and its sole discretion request that Contractor replace its superintendent, project manager, or other key personnel, except that the Owner will not make such requests unreasonably. Substitution or replacement of any named individual requires the written approval of the Owner's Representative and approval will be at the sole discretion of Owner.

Failure to provide sufficient key personnel at all times the Work is in progress shall be considered a material breach of this Contract unless the named individuals are no longer employed or retained

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by Contractor, a company Contractor has a financial interest in, or a parent company of Contractor; such material breach shall entitle Owner to terminate the Contract or alternatively, issue a Stop Work order until the individual or an acceptable replacement is provided. If, by virtue of issuance of said Stop Work order, Contractor fails to complete the Contract on time, Contractor will be assessed Liquidated Damages in accordance with the Agreement.

The Owner reserves the right to require Contractor to replace or supplement any management personnel the Owner deems to be unfit to perform the functions of his or her job. The Owner may exercise this right at no additional cost to the project. This authority will also extend to subcontractor management personnel.

3.9.2 Change this Subparagraph to read as follows:

The Contractor shall designate its superintendent and provide Owner with his/her qualifications no later than the preconstruction conference. The Architect shall, within a reasonable time, notify the Contractor in writing of any objection to the proposed superintendent. After Owner's approval of such superintendent, he or she shall not be replaced by the Contractor without the Owner's prior written consent, which consent is required unless the Contractor submits proof satisfactory to the Owner that the superintendent should be terminated by the Contractor for cause.

3.10.1 Replace this Subparagraph with the following: Contractor shall, promptly after being awarded the Contract, prepare and submit for the Owner's and Architect's review and approval a Critical Path Schedule that meets the requirements of the Contract Documents, and which includes dates of commencement, interim milestones, substantial completion, and final completion, and which breaks down the work by activity and time required for each activity. The schedule shall not exceed the time limits under the Contract Documents, and the native schedule file and PDF version of the schedule shall be provided for review and approval. The approval of the schedule is strictly for compliance with the specified format, contract time, and suitability for monitoring progress and shall not be construed as the Architect's or Owners approval of the Contractor's means, methods, sequences, or durations of activities. Contractor shall update the schedule at two week intervals by inputting the actual percentage complete, start, and finish date for each activity.

3.10.2 Add a sentence to the end of the Subparagraph:
The Contractor shall submit the initial submittal schedule within (10) ten days of the letter of intent or notice to proceed, whichever is earlier.

3.10.3 Change this Subparagraph to read as follows:

Time being of the essence, the Contractor shall perform the Work in accordance with the most recent schedule submitted to and approved by the Owner and Architect.

3.10.4 Add a new Subparagraph to read as follows:

If at any time during the performance of the Work any of the following conditions should exist for any reason, Owner may, in addition to any other rights granted to Owner under this Contract or at law or equity, require Contractor to prepare a proposed Recovery Schedule, and, together with those Subcontractors as Owner may require, to participate in such meetings as Owner may require Contractor to explain and display how Contractor intends to recover:

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A) Contractor fails, or Owner reasonably believes that Contractor will fail, to achieve the Substantial Completion of any building or of the Project within the time set forth in the Contract Documents; or

B) Contractor is, or Owner reasonably believes that Contractor is, more than fourteen (14) days behind the latest Project Schedule that has been approved by the Owner.

If either of these circumstances exist, Contractor shall immediately implement and comply with a Recovery Schedule that is acceptable to the Owner. To the extent the delay was caused by the Contractor, Contractor shall proceed implementing the Recovery Schedule at its own cost and without any adjustment to the Contract Sum or the Contract Time.

3.12.6 Delete Section 3.12.6 and insert the following:

By submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that it has approved them, that it has determined and verified all dimensions, quantities, field dimensions, relationships to existing Work, coordinated with Work to be installed later, coordinated with information on previously accepted shop drawings, Product Data, Samples, and similar submittals, and that it has verified compliance with all requirements of the Contract Documents. The accuracy of all such information is the responsibility of Contractor. Architect's or Owner's review or approval of any such Shop Drawings, Product Data, Samples and similar submittals does not relieve Contractor from constructing all aspects of the Work in accordance with the Contract Documents.

3.12.8 Insert "and in accordance with all manufacturers' installation instructions" after "submittals" in the first line of the first sentence.

3.12.9 Add the following to the end of Section 3.12.9: The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

3.14.1 Insert the following two sentences to appear after the first sentence of this Subparagraph:

The Contractor shall not cut and patch structural, operational or other portions of the Work in a manner that could change their load-carrying or deflection capacity or intended use capacity. In addition, the Contractor shall cut and patch in such a manner so that there is no visual evidence of cutting and patching.

3.15 CLEANING UP

3.15.2 Change this Subparagraph to read as follows:

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

3.16 ACCESS TO WORK: Change this Paragraph to read as follows:

The Contactor shall provide the Owner, Owner's Separate Contractors, Architect, Commissioning

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Authority Professional, and their authorized representatives access to the Work in preparation and progress wherever located.

3.18 INDEMNIFICATION

3.18.1 Change this Subparagraph to read as follows:

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the Owner, any affiliated entit(ies) of the Owner, the Board of Trustees of State Institutions of Higher Learning (IHL), Architect, Owner's consultants, Owner's Representative, Owner's Representative's consultants, and all of their respective trustees, directors, officers, staff, agents, representatives, employees, and volunteers, including in their official and individual capacities, (collectively used throughout the Contract as "Indemnitees") from and against all losses, damages, costs, and expenses (including without limitation the cost of repairing defective work and remedying the consequences of defective work) and reasonable attorneys' fees arising out of, resulting from, or relating to the following: (1) negligent acts or omissions of Contractor, its Subcontractors, or others for which Contractor is responsible; (2) the failure of Contractor or anyone working under it to perform its obligations under the Contract Documents; (3) the inaccuracy of any representation or warranty by Contractor given in accordance with or contained in the Contract Documents; (4) any claim of damage or loss by any Subcontractor against Owner arising out of any alleged act or omission of Contractor or any other Subcontractor, or anyone directly or indirectly employed by Contractor or any Subcontractor; (5) any claim of damage or loss resulting from Hazardous Materials introduced, discharged, or disturbed by Contractor; and (6) any claim of damage or loss by any third party against Owner arising out of or related to any alleged act or omission of Contractor or any Subcontractor, or anyone directly or indirectly employed by them.

3.18.3 Add a new Section 3.18.3 to read as follows:

The Owner shall not be liable or responsible for any accidents, loss, injury (including death) or damages happening or accruing during the term of the performance of the Work herein referred to or in connection therewith, to persons and/or property, and Contractor shall fully indemnify, defend and hold harmless Indemnitees and protect them from and against the same. In addition to the liability imposed by law upon the Contractor for damage or injury (including death) to persons or property by reason of the negligence of the Contractor, its officers, agents, employees or Subcontractors, which liability is not impaired or otherwise affected hereby, the Contractor shall, indemnify, defend, hold harmless, release and forever discharge the Indemnitees from and against and waive any and all responsibility of same for every expense, liability, or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any alleged negligent act, omission, or willful misconduct of the Contractor, its officers, agents, employees, or any of its Subcontractors, or anyone directly or indirectly employed by either of them or from the condition of the premises or any part of the premises while in control of the Contractor, its officers, agents, employees, or any of its Subcontractors or anyone directly or indirectly employed by either of them, arising out of the performance of the Work called for by the Contract Documents. Nothing contained herein shall require the Contractor or any of its agents, employees, or representatives to indemnify or hold harmless the Indemnitees from any claim or damage to the extent and degree such claim or damage is caused by a negligent act or omission of Indemnitees.

3.18.4 Add a new Section 3.18.4 to read as follows:

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The indemnification obligations under this Article 3.18 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty. Contractor shall also indemnify the Indemnitees from and against losses resulting from any claim of damage made by any Separate Contractor against Owner arising out of any alleged acts or omissions of Contractor, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable. Contractor shall indemnify Separate Contractors from and against losses arising out of the negligent acts, omissions, or willful misconduct of Contractor, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

3.19 Add a new Section 3.19 titled “As-Built Documents and Commissioning”.

3.19.1 Add a new Section 3.19.1 to read as follows:

Contractor shall maintain one set of as-built drawings and specifications, which shall be kept up to date during the Work and which shall also be kept: (1) digitally using software that allows revised PDF drawings to be shared over the internet; and (2) in the Revit Model. All changes which are incorporated into the Work which differ from the documents as drawn and written shall be noted on the as-built set. Notations shall reflect the actual material, equipment and installation methods used for the Work and each revision shall be initialed and dated by Contractor’s Superintendent. Prior to filing of the Notice of Completion each drawing and the specification covered shall be signed by Contractor and dated attesting to the completeness of the information noted therein. As-built documents shall be turned over to the Architect and Owner’s Representative.

3.19.2 Add a new Section 3.19.2 to read as follows:

Unless otherwise stated in the Contract Documents, Contractor and its Subcontractors will coordinate all commissioning requirements set by code or regulation or as determined by Architect, Commissioning Authority Professional, or Owner’s Representative, or required by the Contract Documents for all applicable systems. Contractor shall be responsible for coordinating, and ensuring the performance and completion of, all commissioning services and requirements with the Owner’s Commissioning Authority Professional, the Owner’s Representatives, the Contractor’s Subcontractors, and the Architect.

Article 4 ARCHITECT

4.1 GENERAL

4.1.2 Amend Section 4.1.2 by deleting the phrase “and Architect” in the second line so that written consent must only be obtained from “the Owner and Contractor.”

4.1.3 Add a new Subparagraph as follows:

The term “Architect,” “Engineer,” or “Professional” as used in these Documents refers to the Professional firm indicated in Paragraph 5.3.1 of the Standard Form of Agreement Between the Owner and the Contractor who has been directed by the Owner to design and inspect construction of this Project.

4.2 ADMINISTRATION OF THE CONTRACT

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- 4.2.1 Change the first sentence of this Subparagraph to read as follows:

The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until the final payment is due and (3) with the Owner's concurrence, from time to time during the one year period for correction of Work described in Section 12.2.

- 4.2.4 Change the first sentence of this Subparagraph to read as follows:

4.2.4 Amend Section 4.2.4 by deleting the first sentence and substituting the following: "Owner and Contractor shall communicate directly regarding the Contract and shall endeavor to advise Architect of matters affecting the Architect's administration of the Contract." Further, delete the second sentence of Section 4.2.4 and substitute the following: "Owner and Contractor may communicate with each other directly or through the Architect about matters arising out of or relating to the Contract.

Article 5 SUBCONTRACTORS

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

- 5.2.1 Change the first sentence of this Subparagraph to read as follows:

Contractor, with its first Application for Payment and as a condition to Owner's obligation to make payments to Contractor, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work.

- 5.2.3 Delete Section 5.2.3.

5.2.5 Add the following Article 5.2.5: Contractor's unauthorized substitution of any subcontractor, supplier, person or entity previously listed by Contractor shall entitle the Owner to reject the work, materials or products furnished and require removal and replacement at no additional cost to the Owner.

- 5.3.1 Add a Subparagraph 5.3.1 to read as follows:

The written agreement between Contractor and each Subcontractor shall (i) include a waiver of all rights the Contractor and Subcontractor may have against each other and against Owner for damages that are actually covered by their insurance, provided such waiver shall not apply to the extent it would invalidate or reduce such insurance, (ii) require that the Work under such subcontract be performed in accordance with the Contract Documents, (iii) require Subcontractor to submit to Contractor Applications for Payment and waivers of lien acceptable to Owner, (iv) waive all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner or the Indemnitees for damages caused by fire or other perils covered by the property insurance described in the Contract Documents or other property insurance maintained by the parties, and (v) be assignable to Owner on the terms set forth in Paragraph 5.4 below.

- 5.4.1 Add the following to appear at the end of this Subparagraph after "under the subcontract":

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, but Contractor shall remain solely liable for any debts due and owing the subject subcontractor at the time of the assignment. Contractor shall defend, indemnify and hold harmless Owner against any and all claims arising out of work performed by any such subcontractor prior to the effective date of the assignment.

- 5.4.2 Add the following to appear before the first sentence of this Subparagraph: “Owner shall only be responsible for compensating a Subcontractor for work done and materials supplied after the date Owner accepts such Subcontractor’s contract in accordance with 5.4.1.1; provided in no event shall such obligation increase the amount due such Subcontractor under its contract.”

Amend the existing sentence of Section 5.4.2 by adding the phrase “through no fault of the Contractor or Subcontractor” after the phrase “30 days”.

Article 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- 6.2.2 Replace “apparent” with “reasonably discoverable” in the last sentence of this Subparagraph.

6.2.3 Amend Section 6.2.3 by deleting the second sentence and replacing same with the following: Contractor shall be entitled to a time extension only for any delay, disruption or interference in Contractor’s work by the Owner, Owner’s Representative, Architect or Separate-Contractor. In no event shall Contractor be entitled to additional compensation or damages, cost or expense arising out of or related to any such delays, disruptions or interferences.

Add new Section 6.2.6 as follows:

Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces and to award separate Contracts either in connection with other portions of the Project or other construction or operation on the site. In such event, the Contractor shall coordinate its activities with those of the Owner and of other Contractors so as to facilitate the general progress of all work being performed by all parties. Cooperation will be required in the arrangement for the storage of materials, and in the detailed execution of the work. Contractor, including his subcontractors, shall keep informed of the progress and the detailed work of the Owner or other Contractors and shall immediately notify the Architect of lack of progress or delays by the Owner or other Contractors which are affecting Contractor’s Work. Failure of Contractor to keep informed of the progress of the work of the Owner or other Contractors and/or failure of Contractor to give notice of lack of progress or delays by the Owner or other Contractors shall be deemed to be acceptance by Contractor of the status of progress by other Contractors for the proper coordination and completion of Contractor’s Work. If, through acts or neglect on the part of the Contractor, the Owner or any other Contractor or subcontractor shall suffer loss or damage or assert any claims of whatever nature against the Owner, the Contractor shall defend, indemnify and hold harmless the Owner from any such claims or alleged damages, and the Contractor shall resolve such alleged damages or claims directly with the other Contractors or Subcontractors.

Article 7 CHANGES IN THE WORK

7.2 CHANGE ORDERS

- 7.1.1 Add the following to the end of this Subparagraph:

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When submitting its change proposal, the Contractor shall include and set forth in clear and precise detail breakdowns of labor and materials for all trades involved and the estimated impact on the Construction Schedule. Changes in the Work shall not be performed until a Change Order is fully executed or a Construction Change Directive has been issued with respect to the Work.

7.1.2 Change this Subparagraph to read as follows:

A Change Order shall be based upon agreement among the Owner and Contractor, in consultation with the Architect. A Construction Change Directive may be issued by the Owner, in consultation with the Architect, and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Add the following language to the end of this Subparagraph:

Except as permitted in Article 7.3, a change in the Contract Sum or the Contract Time shall only be accomplished by written change order. Therefore, the Contractor acknowledges that it is not entitled to a change in the Contract Sum or the Contract Time in the absence of a written Change Order signed by the Owner. Contractor is not entitled to any relief on the basis of the course of conduct or dealings between the parties, the Owner's express or implied acceptance of alterations or additions to the Work, that the Owner has allegedly been unjustly enriched by the Contractor's Work, or any other basis and Contractor agrees that any such extra or changed work was performed by it as a volunteer. Contractor agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon Owner unless and until such approval is ratified by execution of a written Change Order.

In the event of any changes to the scope of Work approved by the Owner or the occurrence of other events for which Contractor may be entitled to additional time pursuant to the Contract, it is understood and agreed that, depending on the circumstances for each such instance, no additional time for completion of the Work may be allowed by the Owner due to scheduling obligations associated with the Owner's use of the Project facilities. And in lieu of granting all or part of additional time requested by Contractor, the Owner shall have the option to account for all or part of such additional time through increased payments to Contractor, including any such payments that might be necessary for any acceleration or other impact, and that such compensation and accounting will be reflected by, and documented within, a Change Order. The Change Order will account for and reflect any time extensions or increased payments that may be necessary and approved by the Owner. The Owner expressly reserves its right to increase payments in lieu of granting any requested time extensions. To the extent Contractor demonstrates through documentation acceptable to the Owner that, despite Contractor's best efforts acceleration is not possible, then Contractor may be entitled to additional Contract Time.

7.2.1 Change this Subparagraph to read as follows:

A Change Order is a written instrument signed by the Owner and the Contractor stating their agreement upon all of the following:

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

7.2.2 Add a new Subparagraph as follows:

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The maximum allowance for overhead, taxes, fees, bonds, permits, insurance, and profit attributable to a change included in the total cost to the Owner shall be based on the following schedule. The overhead includes general home office, field office, field personnel, superintendents, labor burden and all costs attributable to field and office personnel. All Subcontractors shall acquiesce to the same requirements when participating in a Change Order.

- .1 For the Contractor, for work performed by the Contractor's own forces, 15 percent of the costs.
- .2 For the Contractor, for work performed by the Contractor's subcontractor, 15 percent of the amount due the subcontractor.
- .3 For each subcontractor or sub-subcontractor involved, for work performed by that subcontractor's or sub-subcontractor's own forces, 15 percent of the costs.
- .4 For each subcontractor, for work performed by the subcontractor's sub-subcontractor's, 15 percent of the amount due the sub-subcontractor.
- .5 Acceptable "costs" to which overhead and profit are to be applied shall be determined in accordance with section 7.3.4.

7.2.3 Add the following Article 7.2.3:

Contractor's execution of a change order constitutes a final settlement to the Contract Sum and construction schedule and the Contract Time for all matters relating to or arising out of the change in the Work that is the subject of the change order including, but not limited to, all direct and indirect costs associated with such change and the cost of the Work, Contractor's fee, overhead, profit, all extended direct job site and home office overhead costs, and any and all delay and impact cost for the change, whether alone or in combination with other changes, including any impact, ripple or cumulative effect resulting therefrom, if any. By signing such Change Order, Contractor agrees it is not reserving any rights to pursue subsequent claims related in any way to the Change Order.

7.2.4 Add the following Article 7.2.4:

In order to facilitate consideration of change order requests, all such requests, except those involving an amount less than \$500 must be accompanied by a complete itemization of costs, including labor, materials, equipment, subcontractor costs, and overhead and profit amounts, which shall likewise all be itemized. Changes for more than \$500 will not be considered or approved without such itemization.

7.2.5 Add the following Section 7.2.5:

With regard to any change order request of any kind, including all such changes addressed in Article 7, the Owner shall have not less than fourteen (14) days from the date of receipt of the change order request to make a decision or otherwise respond to the change order request. The timing of the Owner's response to a change order request shall not be cause for extension of any Schedule related to the Work and shall not constitute the basis for a claim for additional time or additional compensation.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 Revise the first sentence of this Subparagraph to read as follows:

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Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

7.3.4 In the first sentence, delete the words "a reasonable amount" and substitute "a reasonable allowance for the combined overhead and profit in accordance with Section 7.2.2." Delete Sections 7.3.4.4 and 7.3.4.5 entirely.

7.3.8 Delete the first sentence and insert the following:

The amount of credit to be given by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be the actual net cost plus ten percent (10%) for overhead and profit thereon as approved by the Architect and Owner.

7.3.9 Delete this Subparagraph in its entirety.

7.5 Add a new Subparagraph 7.5 to read as follows:

EXCLUSIVE RELIEF

Contractor's only relief for a change shall be through the submission of a change order request within 21 days of discovering any circumstances giving rise to the change. Contractor shall include and set forth within each change order request a clear and precise description of the changes, the breakdowns of labor and materials for all trades impacted or involved by the changes, the estimated impact on the Construction Schedule, and Contractor's efforts to mitigate the impact. To the extent Contractor does not timely submit such a change order request in compliance with this provision and Article 7, it is waiving its right to recover any additional Cost, any adjustment to the Contract Sum, and any adjustment to the Contract Time.

7.6 Add a new Subparagraph 7.6 to read as follows:

Force Majeure

7.6.1 Contractor shall not be deemed to be in breach of this Contract if critical path of performance by the Contractor (to include any of its Subcontractors or suppliers) in a timely manner, as confirmed by an updated critical path construction schedule acceptable to the Owner, is prevented or adversely affected by fire, flood, hurricane, tornado, unavoidable casualty, pestilence, earthquake, Acts of God, labor disputes, civil commotion, national emergency, war or warlike operations, terrorist attack, vandalism, or court order (collectively referred to as "Force Majeure"). Provided however, Contractor acknowledges that all float in the contract schedule belongs to the Owner and Contractor shall not be entitled to a time extension unless the Force Majeure event impacts the critical path of performance, as determined in good faith by the Owner's Representative.

7.6.2 In the event of a Force Majeure event, the Owner may issue a Change Order to the Contractor extending Contract Time commensurate with the delay to the critical path as confirmed by an updated CPM Schedule acceptable to the Owner which is attributable to the Force Majeure. Under no circumstance shall Contractor be entitled to an increase in the Contract Sum for any costs which arise from or relate to the Force Majeure.

Article 8 TIME

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8.1 DEFINITIONS

8.1.1 Change this Subparagraph to read as follows:

Unless otherwise provided, Contract Time is the period of time, including authorized written adjustments signed by the Owner, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 Change this Subparagraph to read as follows:

The date of commencement of the Work is the date established in the Notice to Proceed.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 Delete Section 8.3.1 and insert the following new Section 8.3.1:

If the Contractor is delayed at any time in the commencement or progress of the critical path of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by fire, natural disasters, unavoidable casualties beyond the Contractor's control; or by delay authorized by the Owner pending mediation and dispute resolution; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner's Representative may determine. Notwithstanding any other provision of the Contract Documents, the Contractor will in all instances endeavor to make up any lost time by working on Saturdays, Sundays, and holidays.

Except as otherwise permitted by a provision of the Contract Documents, or pursuant to a Change Order, neither Contractor nor any Subcontractor shall be entitled to any increase in the contract sum for any form of delay, regardless of cause, and whether or not the fault of the Owner or any entity for which the Owner is responsible.

If the critical path progress of Contractor's Work on the Project is interrupted, suspended or delayed due to any act or omission by the Owner or Owner's Representative, or anyone under their supervision or control, or due to any other factor beyond Contractor's control, then Contractor may assert a claim for an extension of the Contract Time to the extent of any such delays, subject to the terms of the General Conditions. Contractor shall not be entitled to an extension of the Contract Time for any interruption, suspension or delay to the extent caused in whole or in part by the Contractor or a Subcontractor or which does not impact the critical path of the Project. Time extensions shall be governed by the terms set out in the General and Supplementary Conditions.

Contractor agrees that, except as otherwise permitted by a provision of the Contract Documents, the sole and exclusive remedy for the Contractor and any Subcontractor as a result of any delay shall be an agreed upon extension of the Contract Time. It is understood and agreed that this clause, and the economic certainty it allows the Owner, is a material inducement in the Owner entering into the Agreement, and Contractor agrees this provision is enforceable regardless of the cause of delay, unless otherwise specifically agreed in writing by the Owner.

8.3.3 Delete Section 8.3.3 and insert the following new Section 8.3.3:

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No delay, 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: (1) the delay is without the fault and not the responsibility of the Contractor, its subcontractors, or supplier; (2) the delay, interference, hindrance or disruption is to the critical path of the Work (a delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying Final Completion of the Work beyond the Contract Time); (3) within 14 days of the date Contractor discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay is likely to have an impact on the critical path of the Project (even if Contractor has not yet been delayed when it discovers or reasonably should discover the critical path impact of the act, error, omission or unforeseen condition giving rise to the delay), the Contractor submits both a timely and complete Change Order Request that meets the requirements of the Contract Documents; (4) the delay is not caused by a concealed, unforeseen or unknown condition or event except for a materially differing site condition, and the delay is not caused by the financial inability, misconduct, or default of the Contractor, a Subcontractor or supplier, and it is not caused by the unavailability of materials, supplies, or parts.

Contractor shall be entitled to make a claim for an extension of time if the delay is caused by (a) a materially differing site condition; (b) an error or omission in the Contract Documents; (c) Owner's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Contractor; (d) Owner's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Contractor; or (e) failure of the Owner to perform any Contract obligation unless such failure is due to Contractor's default or misconduct; (f) an act or omission of the Owner, the Owner's separate contractors, or the Architect, or those for whose acts and omissions they are responsible; or (g) reasonably and objectively recognized force majeure, acts of government, acts of God, natural disaster, pandemic, fires, or floods; or (h) "adverse weather," but only for such days of adverse weather, or on-site conditions caused by adverse weather, that are in excess of the number of days for the Project location as set forth below in Section 8.3.6.

The Contractor expressly agrees that the Owner shall have the benefit of any float in the construction schedule and that delays to construction activities, which do not affect the overall completion of the Work, do not entitle the Contractor to any extension in the Contract Time. Unless otherwise allowed by another provision of the Contract Documents, the Contractor shall not be entitled to an increase in the Contract Sum by virtue of any delay.

8.3.4 Add the following Article 8.3.4:

Any claims by the Contractor for an increase in the Contract Time must follow the procedures set forth in Articles 15.1.2, 15.1.5 and 15.2, including the requirement that the Contractor give written notice of any claim within fourteen (14) days after occurrence of the event giving rise to such claim or within fourteen (14) days after the claimant first recognizes the condition giving rise to the claim, whichever is later.

8.3.5 Add the following Article 8.3.5:

If the Contractor submits a schedule indicating or otherwise expressing intent to complete the Work prior to the date of substantial completion, the Owner shall have no liability to the Contractor for any failure by the Contractor to complete the Work prior to the expiration of the Contract Time.

8.3.6 Add the following Article 8.3.6:

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Weather Delays: The Contractor agrees that normal weather occurrences and disruption to construction activities are included in the schedule. Weather occurrences or delays beyond normal are defined as days beyond the NOAA average for each month as published by NOAA – STATE UNIVERSITY, MS US (Station ID: GHCND:USC00228374). Impacted days may be determined by the occurrence of weather events (precipitation ≥ 0.10 inch) that occurred in excess of the average as indicated by NOAA.

The table below defines the monthly anticipated adverse weather days for the contract period and is based upon the NOAA Summary of Normals 2006-2020 for State University, MS US GHCND:USC00228374. Impacted days may be determined by the occurrence of weather events in excess of precipitation greater than or equal to 0.10 inch per day beyond the days for each month identified below.

8 January	7 April	7 July	5 October
8 February	7 May	6 August	5 November
8 March	7 June	4 September	7 December

The Contractor is responsible for providing monthly with the relevant Application for Payment all precipitation and weather data and documentation from the actual Project site, the relevant monthly five-year average NOAA data from State University, MS US (GHCND:USC00228374), along with all other information relevant to Contractor's request for a time extension based on an alleged weather delay, including but not limited to the observed deviation in excess of the average as defined by the table above. All requests for time extensions shall be made monthly in writing with the Application for Payment for the month in which the delay allegedly occurred.

All requests for time extensions shall be made monthly in writing with the Application for Payment. No monetary change, whether for increased general conditions costs or otherwise, in the contract value or Contract Sum is considered due to impacted days associated in any way with alleged delays due to weather, temperature, or precipitation. The Owner reserves the right to review any requests for consideration of value for extenuating circumstances by the Contractor in regard to schedule and value. The Owner is not obligated under this review for additional compensation as per Article 15.1.5.2.

If Contractor fails to submit all supporting documentation for its request for a time extension with the Application for Payment for the month in which the delay allegedly occurred, Contractor waives the ability to obtain the time extension or any relief whatsoever in connection with the alleged delay. In order for a day to be considered a day of adverse weather for the purpose of determining whether Contractor is entitled to an adjustment in Contract Time, the following conditions must be met: (i) the day must be a day in which, as a result of adverse weather, less than one half day of critical path work is performed by Contractor; (ii) the day must be identified in the Contract Schedule as a scheduled work day; (iii) in evaluation of the above, Saturdays will be considered make-up days for time lost during the normal work week due to weather, and Saturdays which are considered workable shall offset claims made by the Contractor for weather days, unless Contractor had previously submitted a schedule to the Owner that reflected a planned 6-day work week (Sundays will be considered the make-up days for lost time during the normal work week if Contractor's schedule reflects a planned 6-day work week); (iv) the weather experienced at the Project site during the time of the alleged delay must be found to be abnormally adverse or unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month; and (v) the abnormally adverse or unusually severe weather must actually cause a delay to the

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completion of the Project. The delay must be beyond the control and without the fault or negligence of Contractor.

Contractor acknowledges and agrees that the Owner will not consider requests for, and Contractor will not be granted, additional time or consideration for delays allegedly caused by, or incurred during, the need for the Project to “dry out” or “thaw out” after a significant weather event for which the Contractor has received an extension of time.

8.3.7 Add a new Section 8.3.7 to read as follows:

If and only if a delay meets all conditions prescribed above, including in Sections 8.3.3 and 8.3.6, then a time extension will be granted for each day that Final Completion of the Work is delayed beyond the Contract Time, subject to the following:

(1) When two or more delays (each of which meet all conditions prescribed to qualify for a delay) occur concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted, such concurrent critical delays shall be treated as a single delay for each such day.

(2) Contractor shall not be entitled to a time extension for a day of delay that meets all conditions prescribed to qualify for a delay, if the delay is concurrent with a delay that does not meet all such conditions.

8.3.8 Add a new Section 8.3.8 to read as follows:

To the maximum extent allowed by law, Contractor shall not be entitled to any adjustment of the Contract Sum as the result of delays. By signing the Agreement, the parties agree that the Owner is buying the right, at no increase in the Contract Sum, to delay the Work, including without limitation, delays resulting from the failure of the Owner or the Owner’s Representative to timely perform any Contract obligation and delays for Owner’s convenience.

8.3.9 Add a new Section 8.3.9 to read as follows:

Time is of the essence for all Work designated under this Contract, and any failure by Contractor to progress the Work as required herein shall constitute a material default of Contractor’s obligations under this Contract. The Work shall be performed diligently and continuously. If Contractor’s performance of the Work is delayed, altered, rescheduled, interfered, or in any way extended, whether the cause for such be due to acts or omissions of the Owner or any third party, and be they avoidable or unavoidable, it is hereby agreed that the Owner shall not be liable for any costs or damages so incurred by Contractor or by any Subcontractor. However, Contractor may, unless prohibited by other provisions of this Contract, be granted an appropriate time extension to perform the Work. Unless otherwise agreed by the Owner, Contractor’s sole remedy for any delay to the Work shall be an extension of the time to perform the Work, and Contractor shall in no event be entitled to any compensation for any delays under any provision of the Contract Documents. Contractor hereby expressly agrees that its sole and exclusive remedy for any delays encountered on this Project shall be the Owner’s granting of justifiable time extensions to complete the Work. Contractor acknowledges that its right to receive an extension of time pursuant to the provisions above shall be Contractor’s sole and exclusive remedy in regard to any delays, hindrance or interferences with the construction schedule and Contractor hereby waives any and all claims for

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monetary damages arising out of or related to any such delay, hindrance or interference. However, as allowed by other provisions of the Contract Documents, the Owner may choose to increase payment in lieu of granting time extensions.

8.3.10 Add a new Section 8.3.10 to read as follows:

Contractor acknowledges and agrees that the Owner will not consider requests for, and Contractor will not be granted, additional time or additional financial or monetary credit or consideration for delays allegedly caused by the unavailability of materials, supplies, or equipment needed for the Project or delays otherwise caused by or connected to the Contractor being unable to obtain materials, supplies, or equipment for any reason.

Article 9 PAYMENTS AND COMPLETION

9.2 SCHEDULES OF VALUES: Change this Paragraph to read as follows:

Where the Contract is based on a stipulated sum, the Contractor shall submit to the Architect, at least 10 days before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect or Owner shall be used as a basis for reviewing the Contractor's Application for Payment. Any changes to the schedule of values shall be submitted to the Architect and Owner and supported by such data to substantiate its accuracy as the Architect or Owner may require.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Add a new sentence to the end of this Subparagraph:

The form of Application for Payment will be AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, or a computer generated form containing similar data.

9.3.1.1 Delete Article 9.3.1.1 in its entirety.

9.3.1.3 Add a new Clause to Subparagraph 9.3.1 as follows:

The Owner will retain, until the Work is one hundred percent (100%) complete, five percent (5%) of the amount due the Contractor on account of progress payments. No reduction in retainage will be made until final payment is made except that when the initial Contract award is in an amount equal to or greater than \$750,000, then whenever such Work is fifty percent (50%) complete and on schedule and satisfactory, in the opinion of the Architect and the Owner, fifty percent (50%) of the retainage may be returned to the Contractor and two and one-half percent (2.5%) will be retained on all subsequent progress payments. The Owner may subsequently increase the retainage if the Contractor's manner of completion of the Work and/or its progress does not remain satisfactory to the Architect and/or Owner or if the Surety withholds its consent to payment for other good and sufficient reasons.

9.3.1.4 Add a new Clause to Subparagraph 9.3.1.4 as follows:

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The Contractor must submit each month with this Application for Payment a separate letter stating that he is requesting an extension of time or that he had no need for an extension for that period of time. No payment on a monthly application will be considered due and payable until the letter is received. Complete justification such as weather reports or other pertinent correspondence must be included for each day's request for extension. A Contractor's letter, or statement, will not be considered as adequate justification. The receipt of this request and data by the Owner will not be considered as Owner approval in any way. Contractor shall not be entitled to a time extension for adverse weather conditions unless such conditions impact the critical path of the Work as confirmed by an updated CPM Schedule to be provided by the Contractor in support of its claim and Contractor satisfies all requirements of Section 8.3.6.

9.3.2 Revise the second sentence in this Subparagraph to read as follows:

If approved in advance by the Owner, in writing, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing.

9.3.2.1 Add a new Clause to Subparagraph 9.3.2 as follows:

Payment on materials stored at some location other than the building site, may be approved by the Architect and the Owner after the Contractor has submitted the following items:

1. An acceptable Lease Agreement between the Contractor and the owner of the land, or building, where the materials are stored covering the specific area where the materials are located.
2. Consent of Surety, or other acceptable Bond, to cover the materials stored off-site.
3. All Perils Insurance coverage for the full value of the materials stored off-site.
4. A Bill of Sale from the manufacturer or supplier to the Contractor for the stored materials.
5. A complete list and inventory of materials manufactured, stored and delivered to the storage site and of materials removed from the storage site and delivered to the job site.
6. A review by the Architect of the materials stored off-site prior to release of payment.
7. Guarantee no storage costs, additional delivery fees, or subsequent costs to the Owner.
8. Proof of payment of stored materials verified by the supplier must be submitted to the Architect within thirty (30) days of the Application for Payment on which payment for said material was made. If proof of payment is not submitted within thirty (30) days, then payment for said materials will be deducted from the next application for payment and withheld until proof of payment is received.

9.3.3 Amend Section 9.3.3 by deleting the phrase “, to the best of the Contractor's knowledge, information and belief;”.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1.7 Delete the word “repeated”.

9.5.1.8 Add a new Section 9.5.1.8 as follows: “Any other reason the Architect or Owner's Representative determines is necessary to protect the Owner's interest.”

9.5.3 Delete this Subparagraph in its entirety.

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9.6 PROGRESS PAYMENTS

9.6.1 Delete Article 9.6.1 and insert the following:

Subject to the conditions of the Contract, the Owner shall make payment to the Contractor in the amount certified within forty-five (45) days after receipt of the Certificate for Payment from the Architect. Payment shall not be considered late until forty-five (45) days after Owner's receipt of the approved Certificate for Payment from the Architect.

9.6.2 Change the first sentence of this Subparagraph to read as follows:

The Contractor shall pay each Subcontractor, in accordance with Section 31-5-27 of the Mississippi Code 1972, Annotated, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work.

Amend Section 9.6.2 by adding the following at the end of that section: "The Contractor shall not invoice any amount for Subcontractor work if Contractor does not intend to make payment to said Subcontractor."

9.6.3 Delete this Subparagraph in its entirety.

9.6.7 Add the following to the end of Article 9.6.7:

The amount retained by the Contractor from each payment to each Subcontractor and material supplier shall not exceed the percentage retained by the Owner from the Contractor.

9.6.8 Amend Section 9.6.8 by deleting the phrase "Provided the Owner has fulfilled its payment obligations under the Contract Documents".

9.6.8.1 Add a new Clause to Subparagraph 9.6.8 as follows:

The Contractor shall submit monthly certification, in accordance with Section 31-5-25 of the Mississippi Code 1972, Annotated, on Owner's "Affidavit Certifying Payment to All Subcontractors" form, to the project engineer or architect indicating payments to subcontractors on prior payment request.

9.7 FAILURE OF PAYMENT

9.7 Amend Section 9.7 as follows: Delete the words "or awarded by binding dispute resolution". Change "seven days" to "fourteen days". In the last sentence, add the words "for any" after the word "appropriately" and then delete the phrases "and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of" and "plus interest as provided for in the Contract Documents." Add this sentence to the end of Section 9.7: The Contractor and the Owner shall be subject to the remedies as prescribed in Section 31-5-25 of the Mississippi Code 1972, Annotated.

9.7 Amend Section 9.7 as follows: Delete the words "or awarded by binding dispute resolution". Change "seven days" to "fourteen days". In the last sentence, add the words "for any" after the word "appropriately" and then delete the phrases "and the Contract Sum shall be

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increased by the amount of the Contractor's reasonable costs of" and "plus interest as provided for in the Contract Documents."

9.8 SUBSTANTIAL COMPLETION

9.8.1 Delete this subparagraph in its entirety and insert the following:

"Substantial Completion" means the stage in the progress of the Construction Work, as determined by Architect and agreed to by Owner's Representative, when the Work is complete and in accordance with the Contract Documents except only for completion of minor items which do not impair Owner's ability to occupy and fully utilize the Project for its intended purpose, the State Fire Marshall issues a Certificate of Compliance, and the Architect issues a Certificate of Substantial Completion. Substantial Completion for purposes of this Contract occurs only upon Contractor's compliance with the following conditions precedent: (a) the Contractor furnishes to the Architect all close-out documents required by the Contract Documents in a form satisfactory to the Architect and the Owner; (b) the Contractor furnishes the manufacturers' certifications required by the Contract Documents; (c) the Contractor furnishes the Guarantee of Work required by the Contract Documents; (d) the Architect certifies that the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended purpose; and (e) the Owner is in possession of sufficient funds as retainage that are necessary in the Owner's judgment to address any incomplete or defective items of Work.

More specifically, all commissioning requirements must be complete except for thermographs of electrical systems, trend log monitoring, seasonal testing, near-warranty end activities and verification of training sessions.

9.8.2 Replace Section 9.8.2 with the following:

Before contacting the Architect regarding Substantial Completion, Contractor shall have created its own punch-list of items remaining to be completed. Contractor shall vigorously pursue completion of the items on its own punch-list before contacting Architect or Owner's Representative regarding creation of separate punch lists in connection with Substantial Completion. When Contractor gives notice to the Architect that the Work is substantially complete, and that the items on Contractor's punch-list have been fully addressed, unless Architect or Owner's Representative determines that the Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, Architect will then inspect the Construction Work. At that time, the Architect will prepare a punch-list of items still remaining to be completed or corrected by Contractor. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Costs for additional inspections by Architect, other than those contemplated by this paragraph, shall be deducted from monies due and payable to Contractor by Owner.

9.8.2.1 Add the following Article 9.8.2.1:

Contractor shall be responsible for the costs of inspections made by the Architect including any and all other related expenses incurred by the Architect for providing services for the Project required by failure of the Contractor to achieve final acceptance / completion of the Project within 30 days after the first occurrence of the below described events:

- .1 Specified date of Substantial Completion; or
- .2 Actual date of Substantial Completion.

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The costs of the Architect's additional services shall be deducted by the Owner from the Contractor's final application for payment to pay the Architect for additional services required by the Contractor's failure to achieve final completion of the project within the 30 day period described above.

9.8.3 Revise this Subparagraph to read as follows:

Upon receipt of the Contractor's list, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's or Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect and Owner to determine Substantial Completion. The Contractor shall reimburse Owner for actual costs incurred by the Owner for any inspection required under this Section after the Owner's initial inspection.

9.8.4 Change the first sentence this Subparagraph to read as follows:

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

9.8.4 Delete the last sentence of Article 9.8.4 and insert the following: Warranties required by the Contract Documents shall commence on the date of final acceptance / completion unless otherwise provided in the Contract Documents.

9.8.5 Add the following to the end of Article 9.8.5:

Contractor's execution of the Certificate of Substantial Completion constitutes Contractor's representation that the items on the list accompanying the Certificate can and will be completed by Contractor and his subcontractors within thirty (30) days of Contractor's execution of the Certificate. Based upon this representation by Contractor and upon the acknowledgement of the Architect that the listed items remaining can be completed within thirty (30) days, the Owner agrees to execute the Certificate of Substantial Completion. If Contractor fails to complete the items on the list within thirty (30) days of Contractor's execution of the Certificate, then the Owner, at its option and without prejudice to any other rights or remedies it may have under this Contract or otherwise and without notice to Contractor, may proceed to have same completed and to deduct the reasonable costs thereof from the amounts then due or thereafter to become due to Contractor.

9.8.6 Add the following Article 9.8.6:

Upon the Owner's acceptance of the Work as substantially complete and upon Contractor's compliance with all conditions precedent to substantial completion as stated herein and in the Contract Documents and upon application by the Contractor, the Owner will pay to the Contractor all retainage held by the Owner less an amount equal to the greater of (a) two percent

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(2%) of the Contract sum, or (b) two hundred percent (200%) of the estimated cost of the Work remaining to be performed by the Contractor in accordance with the Architect's determination or in need of correction. Final payment, including all retainage, shall be made at the time and in the manner provided for final payment in accordance with the provisions of Article 9.10 and the additional conditions precedent to final acceptance / payment set forth herein and in the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Change this Subparagraph to read as follows:

When, in the opinion of the Contractor, the Work is ready for final inspection and acceptance by the Owner, the Contractor shall make such notice to the Architect in writing.

1. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance by the Owner, the Architect will promptly inspect the Work and compile a list of deficiencies. If, in the Architect's judgment, the Work is not ready for inspection, another inspection will be scheduled. The cost of any additional inspections of the Work by the Architect to verify Final Completion shall be paid by Contractor
2. Once the Architect has made inspection and all deficiencies listed by the Architect have been corrected and the Architect determines the Work is ready for final inspection, the Architect will call for final inspection of the Project with the Owner for the purpose of determining whether the Work is acceptable under the Contract Documents.
3. The final inspection shall be conducted in the presence of the Owner and a list of defects or discrepancies, if any, will be compiled into a punch list furnished to all parties.
4. Once corrections of all punch list items have been confirmed by the Architect, the Architect will provide a letter recommending final acceptance of the Work to the Owner.

9.10.2 Change this Subparagraph to read as follows:

Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) final application for payment, (2) consent of surety to final payment, (3) power of attorney, (4) Contractor's affidavit of release of liens, (5) Contractor's affidavit of payment of debts and claims, (6) Contractor's guarantee of work, (7) Project Record Documents, (8) certificates, warranties, guarantees, bonds or documents called for in the individual sections of the Project Manual including any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (9) all close-out documents in a form satisfactory to Architect and Owner, and (9) as-built drawings. To be clear, Contractor acknowledges and agrees that it is not entitled to final payment or to payment of any retainage amounts until Contractor provides to Owner all close-out documents (contract close outs, as built documents, project record documents, manuals, and any other documentation requested or required by Owner) in a form and substance satisfactory to the Owner.

Section 9.10.4 - Delete this Section in its entirety.

9.11 LIQUIDATED DAMAGES

9.11.1 Add a new Paragraph as follows:

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Time being of the essence and a matter of material consideration thereof, a reasonable estimate in advance is established to cover losses incurred by the Owner if the project is not substantially complete on the date set forth in the Contract Documents. The Contractor and his Surety will be liable for and will pay the Owner the sums stipulated in Paragraph 2.2 of the Standard Form of Agreement Between the Owner and the Contractor as fixed and agreed as liquidated damages for each calendar day of delay until the work is substantially complete unless circumstances dictate otherwise in the discretion of the Owner. The Contractor and his Surety acknowledge that the Owner's losses caused by the Contractor's delay are not readily ascertainable and that the amount estimated per day for liquidated damages is reasonable and is not a penalty. However, in the event of a significant delay by Contractor for which liquidated damages are not sufficient, in Owner's discretion, to account for the delay and to compensate Owner for the damages caused by Owner's delay, Owner shall calculate its actual damages caused by Contractor's delay and Contractor shall be liable to Owner for such actual damages, if they are greater than the liquidated damages figure yielded by the same delay. Contractor shall be liable to Owner for the greater of the liquidated damages or actual damages, as calculated and determined by Owner.

Article 10 PROTECTION OF PERSONS AND PROPERTY

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.2 Add the following to the end of this Subsection:

The Contractor shall indemnify and hold harmless the Owner for damages, penalties, fines, or other expenses, including but not limited to, reasonable attorneys' fees, the Owner incurs from a governing body with authority over the Project as a result of the Contractor's failure to comply with all applicable governing laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

10.2.5 Change this Subparagraph to read as follows:

The Contractor shall, within 24 hours of the occurrence, notify the Owner of any damage, injury, or loss occurring to persons or property in connection with the Work. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible for Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

§ 10.2.9 DEMOLITION

Add a new Subsection to read as follows:

10.2.9.1 Prior to commencing any demolition, the Contractor shall cause all utilities to be disconnected and capped. The Contractor shall remove from any other property at the Project Site or adjacent thereto all dust, dirt and debris caused by any demolition or other performance of the Work.

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10.3 HAZARDOUS MATERIALS

10.3.2 Delete this Subparagraph in its entirety.

10.3.3 Delete this Subparagraph in its entirety.

10.3.4 Delete this Subparagraph in its entirety.

10.3.6 Delete this Subparagraph in its entirety.

Article 11 INSURANCE AND BONDS

Delete Article 11 in its entirety and replace with the following:

11.1 Contractor's Insurance and Bonds

The Contractor shall purchase and maintain at the Contractor's expense without interruption for the duration of the Work performed under the Contract and for the duration required herein insurance against claims for injuries or death to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, its agents, representatives, employees or subcontractors. Failure to maintain the required insurance shall be a material breach and shall entitle the Owner to all remedies provided for in the Contract or by operation of law.

11.2 Minimum Scope And Limits Of Insurance And Bonds

The minimum insurance requirements described herein in no way limit the Contractor's financial responsibilities as outlined in the Contract's indemnification requirements, reduce the limits of the coverage provided by the Contractor's policies of insurance, and as otherwise provided by law. By requiring such minimum insurance, Owner shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance coverages stated below do not replace any surety bonds as required by the Contract. Therefore, the Contractor may opt to have broader coverage and limits to satisfy its financial obligations.

11.2.1 Worker's Compensation and Employer's Liability

The Contractor shall purchase and maintain Workers' Compensation insurance as required by applicable law (statutory). Employer's Liability shall be included with a minimum limit of \$1,000,000 per accident/per disease/per employee.

11.2.2 Commercial General Liability

The Contractor shall purchase and maintain Commercial General Liability Insurance, including Premises and Operations, Personal and Advertising Injury Liability, Products and Completed Operations Liability, and Liability Assumed under an Insured Contract, shall have a minimum limit per occurrence based on the contract value as stated below. The Insurance Services Office (ISO)

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Commercial General Liability occurrence coverage form CG 00 01 1207 edition date or prior, or equivalent, is to be used. Claims made form is unacceptable.

The aggregate loss limit must apply to each project. ISO form CG 2503, or equivalent, shall be submitted. The project number and project name shall be included on this endorsement.

The Contractor’s limits of liability insurance shall be written for not less than the following limits:

	Contract Sum up to \$1,000,000	Contract Sum over \$1,000,000 up to \$10,000,000	Contract Sum over \$10,000,000 up to \$25,000,000	Contract Sum over \$25,000,000
Each Occurrence Minimum Limit	\$1,000,000	\$2,000,000	\$5,000,000	\$10,000,000
Per Project Aggregate This Contract Only	\$2,000,000	\$4,000,000	\$10,000,000	\$10,000,000

11.2.3 Automobile Liability

Contractor shall purchase and maintain Automobile Liability Insurance which shall have a minimum combined single limit per occurrence of \$1,000,000. This insurance shall include third-party bodily injury and property damage liability for owned, leased, hired, non-owned, and employee non-owned vehicles.

11.2.4 Excess Umbrella

Excess or Umbrella Liability Insurance written on an occurrence basis in excess of the underlying insurance may be purchased and maintained to meet the limit requirements for liability insurance, which is at least as broad as underlying policies. The Excess or Umbrella liability policies shall be written on a “drop-down” and “following form” basis, with only such exceptions as the Owner shall expressly approve in writing.

11.2.5 Builder's Risk

Unless otherwise provided, the Contractor shall purchase and maintain Builders’ Risk insurance in the amount of the initial contract amount plus values of subsequent modifications, change orders, and cost of materials supplied or installed by others comprising the value of the entire project at the site on a replacement cost basis. The policy must include coverage for the Owner, Contractor, and any subcontractors as their interests may appear.

The builders’ risk coverage shall be written on an “All Risk” Cause of Loss Special Form to include coverage for but not limited to fire, theft; vandalism; malicious mischief; collapse; false work; temporary buildings; transit; debris removal, including demolition; increased cost of construction; architect’s fees and expenses; soft costs; flood; water damage; wind; hail; earthquake; and, if applicable, all below and above ground structures; piping; foundations, including underground water and sewer mains; piling, including the ground on which the structure rests; and excavation, backfilling, filling, and grading.

The builders’ risk shall also include Permission to Occupy or a Beneficial Occupancy Endorsement. The policy shall specifically permit occupancy of the building during construction. The Contractor shall take reasonable steps to obtain the consent of the insurance company and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builders’ Risk Policy. The

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builders' risk policy shall remain in force until acceptance of the project by the Owner. Contractors engaged in modifications of existing structures are required to secure a Beneficial Occupancy Endorsement, which enables the Owner to occupy the facility during construction.

Insured property shall include portions of the work located away from the site but intended for use at the site and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition, as may be made legally necessary by the operation of any law, ordinance, or regulation.

If the Owner is damaged by the failure or neglect of the Contractor to purchase or maintain insurance as described above without so notifying the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto.

Coverages shall be written for 100% of the completed value (replacement cost basis) of the work being performed.

When applicable, the Contractor may provide an Installation Floater policy in lieu of a Builder's Risk policy, with similar coverage as the Builder's Risk policy in an amount equal to the amount of the contract, including any amendments.

The Owner reserves the right to furnish the Builder's Risk policy or waive the requirement herein. If the Owner chooses to exercise this option, the Contractor must remove costs associated with Builder's Risk insurance from its Contract.

11.2.6 Pollution Liability

When asbestos or other hazardous material use or abatement is included in the Work, the Contractor shall purchase and maintain Pollution Liability insurance. Such insurance shall include gradual release as well as sudden and accidental and shall have a minimum limit of not less than \$1,000,000 per claim for projects less than \$10,000,000. All other projects shall have a minimum limit of not less than \$5,000,000. A claims-made form will be acceptable. A policy period inception date of no later than the first day of anticipated Work under this contract and an expiration date of no earlier than 30 days after anticipated completion of all work under the contract. There shall be an extended reporting period of at least 24 months, with full reinstatement of limits, from the expiration date of the policy if the policy is not renewed.

This coverage can be obtained through the Contractor's commercial general liability policy by including the Limited Pollution Liability Extension ISO endorsement CG 24 15 or its equivalent.

If the contractor is responsible for the transport of any hazardous waste, the Contractor can extend the pollution liability policy to cover this exposure, or the Contractor can add to the Commercial Automobile Policy by adding ISO endorsement CA 99 48 and MCS-90.

11.2.7 Professional Liability (including Design Build Errors and Omissions)

When Work under the contract involves any type of design work, the Contractor shall purchase and maintain professional liability insurance covering wrongful acts, errors, or omissions of the Contractor. Such insurance shall have a minimum limit of not less than \$1,000,000 per claim for projects less than \$10,000,000. All other projects shall have a minimum limit of not less than \$2,000,000. In the event that any professional liability insurance required by this contract is

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written on a claims-made basis, the Contractor warrants that any retroactive date under the policy shall precede the effective date of this contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this contract is completed.

11.2.8 Surety Bonds

The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

11.3 Other Insurance Clauses

All insurance policies are to contain, or be endorsed to contain, the following provisions:

- 11.3.1 Mississippi State University (“Owner”), any affiliated entity(ies) of the Owner, the Board of Trustees of State Institutions of Higher Learning (“IHL”), and of their trustees, directors, officers, staff, agents, representatives, employees, and volunteers (“Additional Insureds”) shall be named as additional insured on all liability policies required in section 11.2 (CGL policy must include both ongoing and completed operations (must use an endorsement at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37) and a loss payee on the builder's risk policy required by 11.2.
- 11.3.2 Contractor insurance shall be primary with respects to the Additional Insureds and shall contain no special limitations on the scope of protection afforded to such. Any insurance or self-insurance maintained by the Additional Insureds shall be excess and noncontributory of the Contractor’s insurance.
- 11.3.3 Insurance policies required herein shall not be canceled, suspended, voided, or reduced in coverage or in limits by either the Contractor or the insurer except upon thirty (30) days advance notice to the Owner, except when cancellation is for non-payment of premium; then ten (10) days’ prior notice may be given. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the Owner of any cancellation, suspension, or non-renewal of any insurance within three (3) days of receipt of the insurers’ notification to that effect.
- 11.3.4 Neither the acceptance of the completed Work nor the payment thereof shall release the Contractor from the obligations of the Contract’s insurance requirements or indemnification agreement.
- 11.3.5 The insurance companies issuing the Contractor’s insurance policies shall have no recourse against the Owner for payment of premiums or for assessments under any form of the policies.
- 11.3.6 All required insurance shall be provided by a company or companies lawfully authorized to do business in the State of Mississippi. Insurance shall be placed with insurers with an A.M. Best's rating of A VIII or better. This rating requirement may be waived upon request in writing at the discretion of the Owner with appropriate justification.

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- 11.3.7 Contractor's insurers shall agree to waive all rights of subrogation and recovery against the Additional Insureds for claims or losses arising from or related to Work performed by the Contractor.
- 11.3.8 The Contractor shall include all subcontractors under its policies OR shall be responsible for verifying and maintaining the certificates of insurance provided by each subcontractor. Subcontractors shall be subject to all insurance requirements stated herein. The Owner reserves the right to request copies of any subcontractors' certificates at any time.

11.4 Verification Of Coverage

The Contractor shall furnish one (1) copy of the Standard Construction Contract Certificate of Insurance Form for each copy of the Standard Form of Agreement Between Owner and Contractor, along with applicable copies of any endorsements that are subsequently issued amending limits or coverage, specifically setting forth evidence of all minimum limits and coverage required herein. All Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received by the Owner before work commences and upon any renewal thereafter.

The Owner reserves the right to request copies of any endorsement or complete certified copies of all required insurance policies at any time. Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, this contract, at the election of the Owner, may be suspended, discontinued, or terminated.

11.5 Adjustment and Settlement of Insured Losses

The Owner as fiduciary shall have power to adjust and settle a loss with Insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss.

Article 12 UNCOVERING AND CORRECTION OF WORK

12.2.2.1 Delete the third sentence. Also add the following to the end of Subparagraph 12.2.2.1:

Prior to the end of the one-year period, the Architect may schedule a warranty inspection, which shall be attended by the Architect, the Owner, the Contractor and all major subcontractors. During this inspection, the parties shall identify all defective and/or nonconforming items and fix a time within which all defective and/or nonconforming items shall be repaired and/or replaced.

12.2.6 Add a new Subparagraph as follows:

Within the one-year period, if repairs or replacement are requested by Owner in connection with guaranteed Work which, in the opinion of the Owner, are rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the Contract Documents, the Contractor and/or its Surety shall promptly, upon receipt of notice from and without expense to the Owner, place in satisfactory condition in every particular, all such guaranteed Work, correct all defects therein and make good all damages to the building, site, equipment or contents thereof which, in the opinion of the Owner, are the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the

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terms of the Contract Documents; and make good any work or materials or the equipment and contents of said buildings or site disturbed in fulfilling any such guaranty. If, after notice or within the time agreed upon by the parties at the warranty inspection, the Contractor and/or its Surety fail to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected in accordance with Article 2.4 and the Contractor and his Surety shall be liable for all expenses incurred. All special guarantees applicable to definite parts of the Work stipulated in the Contract Documents shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

Article 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW: Change this Title and Paragraph to read as follows:

GOVERNING LAW AND VENUE

The Contract shall be governed by the laws of the State of Mississippi. The courts of Oktibbeha County, Mississippi shall be the sole and exclusive jurisdiction and venue for any civil action related to this Agreement.

13.4 TESTS AND INSPECTIONS

13.4.1 Change this Subparagraph by adding “*and Commissioning Authority Professional*” after each instance of the word “*Architect*”.

13.4.3 Change this Subparagraph by inserting “*and the Commissioning Authority Professional’s*” after the word “*Architect*”.

13.4.5 Change this Subparagraph by adding “*and/or the Commissioning Authority Professional*” after each instance of the word “*Architect*”.

13.5 Delete this Article in its entirety and insert the following:

Payments due and unpaid under the Contract Documents shall bear interest as provided by Mississippi Code, Section 87-7-3.

Article 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1.1 Amend Section 14.1.1 by changing “30” to “60”.

14.1.1.4 Delete Section 14.1.1.4 entirely.

14.1.3 Revise this Subparagraph to read as follows:

If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen days’ notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed in accordance with the Contract Documents, as well as reasonable, direct, unavoidable out-of-pocket costs incurred by Contractor solely by reason of such termination

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(but shall, in all cases, exclude consequential, special or incidental damages). Said compensation is the sole and exclusive remedy of Contractor for a termination of the Contract by Contractor. In no event shall Contractor be entitled to any payment for work not executed or for overhead and profit on any work not executed.

14.1.4 Amend Section 14.1.4 as follows: Change “seven days” to “fourteen days”.

14.2.1.1 Delete the word “repeatedly” from Section 14.2.1.1.

14.2.1.3 Delete the word “repeatedly” from Section 14.2.1.3.

14.2.1.5 Add the following Section 14.2.1.5 and 14.2.1.6:

- .5 fails to maintain the schedule for the Project, fails to achieve any milestone dates, or fails to achieve substantial completion of the Project as described by the Contract Documents and within the time stated therein;
- .6 fails to meet any deadline required by the Contract. Contractor acknowledges that time is of the essence for this Contract and that all deadlines required by the Contract are critical to timely completion of the Contract. Therefore, Contractor agrees that its failure to meet any deadline constitutes a substantial and material breach of this Contract, entitling the Owner to terminate the Contract

14.2.5 Add the following Article 14.2.5:

If the Owner terminates the Contract for cause, and it is determined for any reason that the Contractor was not actually in default under the Contract at the time of termination, the Contractor shall be entitled to recover from the Owner the same amount as the Contractor would be entitled to receive under a termination for convenience as provided by Article 14.4. The foregoing shall constitute the Contractor’s sole and exclusive remedy for termination of the Contract. In no event, whether in connection with termination, alleged breach of contract, or otherwise, shall the Contractor be entitled to special, consequential, or exemplary damages, nor shall the Contractor be entitled to anticipated profits resulting from termination or alleged breach of this Contract.

14.4 Delete Articles 14.4.1, 14.4.2, and 14.4.3 entirely and insert the following:

14.4.1 The Owner may, without cause or fault of either the Contractor or the Owner, terminate the Contract in whole or in part if the Owner, in its sole discretion, determines it to be in the Owner’s best interest.

14.4.2 Upon the Owner’s termination for convenience, the Contractor shall only be entitled to payment as provided in Subparagraph 14.1.3.

14.4.3 In case of such termination for the Owner’s convenience, the Contractor shall be entitled to receive payment for reasonable profit and overhead on work performed. In no event shall Contractor be entitled to receive any payment for work not executed or for overhead or profit on work not performed.

Article 15 CLAIMS AND DISPUTES

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15.1.2 Revise this subsection by deleting everything in the first sentence after the phrase “specified by applicable law” and by deleting the word “Owner and” from the second sentence. Add the following to the end of the subparagraph: “Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim.”

15.1.2.1 Add a new Section 15.1.2.1 to read as follows:

COMMENCEMENT OF STATUTORY LIMITATION PERIOD

As between the Owner and Contractor:

1. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
2. Between Substantial Completion and Final Acceptance. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to the date of Final Acceptance, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Acceptance; and
3. After the date of Final Acceptance. As to acts or failures to act occurring after the relevant date of Final Acceptance, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

15.1.6 Delete in its entirety.

15.2 INITIAL DECISION

15.2.1 Change this Subparagraph to read as follows:

Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker. An initial decision by the Initial Decision Maker shall be required as a condition precedent to litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered by the Initial Decision Maker. The Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

15.2.5 Change the last sentence of this Subparagraph to read as follows:

The initial decision shall be final and binding on the parties but subject to litigation.

15.2.6 Delete this Subparagraph in its entirety.

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15.2.6.1 Delete this Clause in its entirety

15.3 MEDIATION

15.3.1 Delete this Subparagraph in its entirety.

15.3.2 Delete this Subparagraph in its entirety.

15.3.3 Delete this Subparagraph in its entirety.

15.3 Replace Section 15.3 with the following section entitled “Attorney’s Fees” and state as follows:

In the event of litigation, and if the Owner is the prevailing party in that proceeding, then the Owner shall be entitled to recover from the non-prevailing Contractor all reasonable attorneys’ fees, costs, and expenses of such proceeding as incurred by Owner. The phrase “prevailing party” shall have the meaning ascribed to it by the judge based on their reasonable interpretation of the relevant facts.

15.4 ARBITRATION

15.4.1 Delete this Subparagraph in its entirety.

15.4.1.1 Delete this Clause in its entirety.

15.4.1.2 Delete this Clause in its entirety.

15.4.2 Delete this Subparagraph in its entirety.

15.4.3 Delete this Subparagraph in its entirety.

15.4.4 Delete this Subparagraph in its entirety.

Replace Section 15.4 with the following section entitled “Owner’s Representative” and state as follows:

The intent of the Contract Documents is to provide the Owner, through its Representative, with the same notices and information as is provided to the Architect. Accordingly, amend the following sections by adding the phrase “and Owner’s Representative” after the word “Architect”:
3.2.2, 3.2.3, 3.3.1, 3.5.1, 3.7.4, 3.7.5, 3.9.2, 3.10.1, 3.10.2, 3.10.3, 3.11, 3.12.5, 3.12.6, 3.12.7, 3.12.8, 3.12.9, 3.12.10.2, 3.16; 3.18.1; 4.2.5, 4.2.6, 4.2.8, 4.2.9, 4.2.11, 4.2.13, 5.2.1, 5.3, 6.3, 7.1.2, 7.2.1, 7.3.1, 7.3.4, 7.3.5, 7.3.6, 7.3.8, 7.3.9, 7.3.10, 7.4, 8.1.3, 8.3.1, 9.2, 9.3.1, 9.3.1.1, 9.4.1, 9.4.2, 9.5.1, 9.5.2, 9.5.4, 9.6.1, 9.6.3, 9.6.4, 9.7, 9.8.2, 9.8.3, 9.8.4, 9.9.1, 9.10.1, 9.10.2, 9.10.3, 12.1.1, 12.1.2, 12.2.1, 12.2.2.1, 13.3.2, 13.4.1, 13.4.2, 13.4.3, 13.4.4, 13.4.5, 14.1.3, 14.2.2, 14.2.4, 15.1.3.1, and 15.1.4.2.

15.5 Add a paragraph titled “Cash Flow Projections” which reads as follows: “Contractor is required to submit to the Owner with each Application for Payment such cash flow projections and related information as may be requested by Owner.”

***** End of Section *****