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SECTION A -- DEFINITIONS

CLAUSE A1 DEFINITIONS

- (a) The "Contract" means the written contract between the Contractor and Princeton University, comprised of the written contract itself and all documents defined as Contract Documents therein.
- (b) "Contract Documents" means the documents that comprise the Contract, as more fully set forth in the Contract.
- (c) "Contract Price" means:
- (1) Under a Fixed Price Contract, the fixed Contract Price, as it may be adjusted by Change Order.
 - (2) Under a Time-and-Materials (T&M) Contract, the Not-to-Exceed Price, as it may be adjusted by Change Order.
 - (3) Under a Guaranteed Maximum Price (GMP) Contract, the Guaranteed Maximum Price, as it may be adjusted by Change Order.
 - (4) Under a Cost Plus Fixed Fee (CPFF) Contract, the Target Price, as it may be adjusted by Change Order.
- (d) "Contract Time" means the period of time established in the Contract within which the Work must be Substantially Completed. The Contract Time can be adjusted only by Change Order.
- (e) "Contractor" means a person or entity who or which performs or supplies work, labor, services, materials or equipment in connection with the Work at Princeton University. If the General Terms and Conditions are attached to a Contract or referred to in a Contract, "Contractor" specifically includes the party to that Contract who or which, pursuant to that Contract, performs or supplies work, labor, service, materials or equipment in connection with the Work at Princeton University.
- (f) "Guaranteed Maximum Price" means the maximum amount payable to the Contractor for the performance of the Work under a GMP Contract.
- (g) "Legal Requirements" means any and all requirements of law, code, permit, regulation, rule, order, judgment, decree, ordinance, or provision of any federal, state, or local government agency, authority, or court pertaining to (i) the Contract, or (ii) the Work undertaken by the Contractor pursuant to the Contract.
- (h) "Not-to-Exceed Price" means the maximum amount payable to the Contractor for the performance of the Work under a Time-and-Materials (T&M) Contract.
- (i) "Owner," "Princeton University," "Princeton," and the "University" mean The Trustees of Princeton University.
- (j) "Site" means the geographical location of the Project as more fully described in the Contract Documents.
- (k) "Subcontractor" means a person or entity who or which performs and/or supplies a portion of the Work pursuant to a contract or subcontract with Contractor or any Subcontractor., e.g., the term refers to a subcontractor of any tier.
- (l) "Substantial Completion" of the Work, or of a designated portion, means that the Work is sufficiently complete in accordance with the Contract Documents so that Princeton University may occupy, operate, or use the Work, or designated portion, for the purpose for which it is intended as more fully defined in Clause E9, Substantial Completion.
- (m) "Substantial Completion Date" means the required date for Substantial Completion of the Project. The Substantial Completion Date can be adjusted only by written Change Order.
- (n) "Target Price" means the estimated amount payable to the Contractor for the performance of the Work under a Cost Plus Fixed Fee (CPFF) Contract.
- (o) The "Work" is the performance and supply of all work, labor, services, materials, supplies, equipment, supervision, and all things necessary to do what is required pursuant to the Contract.
- (1) "Materials" means collectively the supplies, apparatus, appliances, equipment, fixtures, tools, implements, and other materials required for and in connection with the Work.
 - (2) "Services" means collectively the labor, supervision, transportation, utilities, storage, and all other services required for and in connection with the Work.
- (p) The term "or" means and/or.

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(q) Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, partnership, trust, unincorporated association, government and governmental agency or subdivision, as the context shall require.

(r) Unless the context clearly intends to the contrary, terms used in this Contract that are not specifically defined herein shall have the same meaning as their common usage in the construction industry.

SECTION B -- CONTRACTOR'S ADMINISTRATION AND SUPERVISION OF THE WORK

CLAUSE B1 CONTRACTOR'S PERFORMANCE GENERALLY

(a) In performing its obligations under this Contract, Contractor shall be deemed an independent contractor and not an agent or employee of Princeton University. Contractor is solely and exclusively responsible for the manner and means of doing the Work. The University shall rely upon the organization, management, skill, cooperation, and efficiency of the Contractor to supervise, direct, control, coordinate, and manage the Work, the Site, and the work of the Subcontractors, suppliers, and other contractors (if any).

(b) Contractor shall perform its obligations under this Contract in a diligent and expeditious manner and that such performance shall include all actions necessary and required to complete the Work properly within the duration established. Performance by the Contractor shall be required to the extent set forth in the Contract Documents or reasonably inferable from the Contract Documents as being necessary to produce the intended results.

(c) Contractor shall furnish all labor, materials, equipment, tools, supervision and other goods and services unless expressly stated otherwise in the Contract. The Contractor shall not use tools or equipment belonging to Princeton University without prior approval. All such tools and equipment shall be returned to Princeton University in satisfactory condition prior to final payment.

(d) All Work when completed by the Contractor shall be delivered to Princeton University in a complete, undamaged state for use and/or occupancy by Princeton University.

CLAUSE B2 SUPERINTENDENCE BY THE CONTRACTOR

(a) At all times during performance of this Contract and until the Work is completed and accepted, the Contractor shall directly superintend the Work or assign and have on the Site a competent superintendent who is satisfactory to Princeton University and has authority to act for the Contractor.

(b) The Contractor shall ensure that only those persons having authorized business in connection with the Contractor are allowed on the Site. The Contractor shall require unauthorized personnel to leave the Site immediately and shall notify Princeton University's Technical Representative and, if necessary, Public Safety. All visitors to the Site, other than Princeton University personnel, shall be escorted by a representative of the Contractor and shall not be left unattended at any time while on the Site. The Contractor shall restrict access to the Site during non-working hours or anytime the Site is unoccupied for any reason. The Contractor shall ensure that those areas "off-limits" to both construction and non-construction personnel are clearly and appropriately posted.

CLAUSE B3 KEY PERSONNEL

(a) The Key Personnel specified in this Contract, if any, are considered to be essential to the Work being performed hereunder.

(b) If any of the Key Personnel become unavailable to perform services in connection with this Contract, as a result of death, incapacity, promotion, resignation, termination of employment or similar reasons, then the Contractor, subject to the approval of Princeton University, shall promptly appoint a replacement. Princeton University shall be entitled to sufficient information on each such replacement, including a current resume, to make a determination whether such replacement is qualified. Princeton University shall have the right to require that the Contractor replace any of the Key Personnel for good cause.

(c) Except as provided in subparagraph (b) above, no reassignment of any of the Key Personnel shall be made by the Contractor without the written consent of Princeton University, which consent may be given or withheld by Princeton University as Princeton University shall in its sole discretion determine. This Contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

CLAUSE B4 OTHER CONTRACTS

(a) Princeton University may undertake or award other contracts for additional work at or near the Site of the Work under this Contract. The Contractor shall fully cooperate with the other contractors and with Princeton University employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by Princeton University. The Contractor acknowledges that it is the Contractor's specific obligation under the Contract to complete the work in a timely fashion and in accordance with the Project Schedule so as to permit other contractors to perform their work in a timely fashion. The Contractor shall not unreasonably impede, hinder, or delay Princeton University or any other contractor in the performance of their work.

(b) Contractor shall at all times conduct himself in the best interest of Princeton University and shall coordinate and fit its Work with the work of Princeton University's own forces and separate contractors. Princeton University's own forces and separate contractors shall operate in a like fashion and shall be responsible for their own clean up and trash removal. Contractor shall coordinate its storage, staging, and work areas (and those of its subcontractors) with such similar areas of Princeton University's own forces and separate contractors. Contractor shall give Princeton University's own forces and separate contractors every reasonable opportunity to perform their work, store their materials and equipment, and fit their work to its Work but without disrupting or delaying Contractor's progress. Contractor shall furnish promptly to Princeton University's own forces and separate contractors all information regarding its Work which Princeton University's own forces and separate contractors request in order to coordinate their work with its and to connect and fit their work to his. Contractor shall make its Work ready, in accordance with the Project Schedule, to receive the work of Princeton University's own forces and separate contractors and shall fit its Work to that of the other workmen and separate contractors at the times required for the orderly prosecution of the Work, or as may be directed by the Architect-Engineer. Contractor shall be responsible for the proper fitting of its Work and for coordination of its operations for all trades, subcontractors, or suppliers engaged upon its Work.

(c) If any part of Contractor's Work depends, for proper execution or results, upon the work of Princeton University's own forces or separate contractor, then Contractor shall, prior to proceeding with any Work or work sequence that immediately follows or is required to fit or connect with the work of Princeton University's own forces or separate contractors, promptly report to Princeton University and the Architect-Engineer any apparent discrepancies, defects, lack of progress or defective workmanship in such other work that (i) render it unsuitable for Contractor to properly execute or connect succeeding work, or (ii) will interfere with Contractor's own operations. Failure to so notify Princeton University shall constitute the Contractor's acceptance of such work as suitable. Contractor shall keep informed of the progress and workmanship of Princeton University's own forces or separate contractors and report in a timely manner any apparent discrepancy, defects, or lack of progress in the work performed by Princeton University's own forces or separate contractors as timely, fit, and proper.

(d) It is the Contractor's duty under the Contract to communicate, after notice to Princeton University, with any contractor who will be performing work which may connect, complement, or interfere with Contractor's Work and to resolve any disputes or coordination problems with such contractor.

(e) The Contractor agrees that he will be directly responsible to any other contractor performing work related to the Project for any loss, injury, damage or delay caused by the Contractor. In accordance with the provisions of Clause G2 hereof, the Contractor shall indemnify and hold harmless Princeton University and the Architect-Engineer from and against any claim brought against any of them by another contractor as a result of the Contractor's alleged acts or omissions.

(f) Princeton University agrees to include the provisions of this Clause B4 in all separate contracts entered into by Princeton University so that each separate contractor is bound to Princeton University and Contractor to the same extent that Contractor is bound to Princeton University and its separate contractors hereunder. If a written claim has been asserted by the Contractor against any of Princeton University's separate contractors, or by any of Princeton University's separate contractors against the Contractor, Princeton University shall be entitled to withhold amounts as determined by Princeton University to be reasonable from the separate contractor or from the Contractor, pending the final resolution of the corresponding claims.

(g) In the event that any other contractor performing work should hinder, delay, or damage the Contractor's Work, Princeton University's liability to the Contractor shall be limited to any amount that Princeton University actually recovers from such other contractor as hereinafter set forth. The Contractor shall not make any claim for adjustment of the Contract Price or the Contract Time, against Princeton University based on the foregoing; provided, however, that after the Contractor has used its best efforts to resolve a claim or dispute with another contractor, the Contractor may request that Princeton University present any claim by the Contractor (the cost and expense of obtaining any such recovery shall be paid by the Contractor) and, in addition, the Contractor may, if it is determined that the Contractor was in fact injured, hindered, or delayed by any other contractor, request an extension of Contract Time pursuant to Clause E5 hereof. Contractor agrees that any recovery obtained by Princeton University and any extension of Contract Time granted pursuant to Clause E5 shall be Contractor's sole remedy against Princeton University based on the foregoing.

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CLAUSE B5 PROJECT SITE SIGNAGE

Contractor's Project Site signage shall be limited to one (1) identifying sign for delivery purposes. This sign shall be no larger than six (6) square feet and shall be based on a format/template provided by Princeton University that includes the following information: Architect-Engineer's name; Contractor's name; Project and/or Project site name; and, 24-hour emergency telephone number. Any deviations require Princeton University prior approval. No Subcontractor signage is permitted.

CLAUSE B6 ADVERTISEMENT

Contractor shall not display, issue or permit to be issued any professional award application, advertisement, press release, or literature of any kind that refers, directly or indirectly, to Princeton University or the services performed in connection with the Contract unless it first obtains the written approval of Princeton University. Contractor shall provide not less than ten (10) days prior written notice of any such requested review and approval. Contractor's failure to strictly comply with the terms of this Clause B6 shall be a material breach of this Contract.

CLAUSE B7 PROGRESS MEETINGS

(a) The Contractor shall arrange and conduct progress meetings at least every two (2) weeks or otherwise as requested by Princeton University. The Contractor is responsible for notifying the appropriate design professionals, construction forces and Subcontractors represented at these meetings by individuals with authority to make commitments and to act for the concerns represented. The purpose of these meetings shall be primarily to review the progress and eliminate construction and material problems. The Contractor shall assume full responsibility to act for and commit any Subcontractor.

(b) The Contractor shall be prepared to indicate the proposed Work schedule for the period immediately following the meeting date, and to indicate anticipated difficulties for resolution by the group as a whole.

(c) The representatives of the Contractor and its Subcontractors shall bring complete, current information to each meeting relative to future job progress, as affected by equipment, material; delivery, shop drawings, inspections or other factors. Any questions not resolved during the meetings will be acted upon expeditiously by the individuals concerned.

(d) Any conclusions reached in the discussion at the meeting will be expressly for clarification and coordination of the Work and will in no way modify, alter, or otherwise affect the terms of the Contract.

(e) The Contractor shall promptly prepare and distribute in a format acceptable to Princeton University: (1) an agenda at least two (2) business days in advance of all meetings, and (2) written meeting minutes within three (3) business days after all meetings.

CLAUSE B8 MATERIAL AND WORKMANSHIP

(a) All equipment, material, and articles incorporated into the Work covered by this Contract shall be new and of the grade specified, unless otherwise expressly provided for in this Contract.

(b) Materials specified by reference to a specific standard, such as a commercial standard, ASTM specification, NEMA or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the applicable governmental approval or permit except as limited to type, class or grade, or modified in such references.

(c) The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Princeton University and shall at once report to Princeton University errors, inconsistencies or omissions discovered. The Contractor shall not be liable to Princeton University for damage resulting from its failure to make such report of errors, inconsistencies or omissions in the Contract Documents unless the Contractor reasonably should have recognized such error, inconsistency, or omission. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to Princeton University, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

(d) Princeton University or its representatives reserve the right to reject items incorporated into the Work that fails to meet the specified minimum requirements of the standard specifications. Princeton University further reserves the right to accept non-complying items subject to an adjustment in the Contract Price.

(e) The Contractor shall obtain Princeton University's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, the Contractor shall furnish to Princeton University the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature and rating of the machinery and mechanical and other equipment. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the

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Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(f) All Work under this Contract shall be performed in a skillful and workmanlike manner. Princeton University may require, in writing, that the Contractor remove any employee from the Project whom Princeton University deems incompetent, careless, or otherwise objectionable.

CLAUSE B9 SUBSTITUTIONS

(a) The Contractor may propose alternate equipment, materials, articles, or processes ("Substitutions") only when such Substitutions will benefit Princeton University including but not limited to areas that affect the cost, quality, or schedule of the Project. Princeton University, in consultation with the Architect-Engineer, shall be the judge of the quality and suitability of proposed Substitutions. Princeton University reserves the right to reject the request for any reason and Princeton University's decision not to approve a proposed Substitution shall not give rise to a claim by Contractor for additional compensation. Approval by Princeton University shall not relieve the Contractor of its duty to use only equipment, materials, articles, or processes that conform to the Contract Documents in the Work.

(b) The Contractor bears the burden of proving the quality and suitability of any proposed Substitution. Such request shall be made in ample time to permit approval without delaying the Work.

(c) When a Substitution is proposed by the Contractor, the Contractor shall submit to Princeton University and the Architect-Engineer the following information: (1) a description of the difference between the specified equipment, material, article or process and the proposed Substitution and an explanation of any difference in performance; (2) an explanation of any other equipment, material, article or process which would be affected or changed if the proposed Substitution were approved; (3) a cost estimate showing all increases and decreases in the Contract Price for both the proposed Substitution and any equipment, material, article or process affected by the proposed Substitution; (4) a description and estimate of other costs, including operating and maintenance costs that would be affected if the proposed Substitution is approved; and (5) a statement of the affect on the time required for construction of the Project if the proposed Substitution is accepted.

(d) Any additional cost arising from the use of a Substitution proposed by the Contractor shall be borne by the Contractor including redesign of, or changes to, the Construction Documents and, without limitation, changes to other parts of the Work. The cost and time required to perform such redesign or change will be considered in evaluating the suitability of the alternative material.

(e) Where classification, rating, or other certification by a body such as, but not limited to, UL, NEMA, or AREA, is a part of the specification for any equipment, material, article or process, proposed Substitutions shall be accompanied by reports from the listed body, or equivalent independent testing laboratory, indicating compliance with applicable specification requirements.

CLAUSE B10 INSPECTION AND TEST

(a) All Work conducted by the Contractor is subject to the inspection and test required by Princeton University, or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction, at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract. Unless otherwise provided, Princeton University shall contract for such tests, inspections and approvals with an independent testing laboratory or entity, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall make arrangements for all of the tests and inspections and shall give the testing agency, the Architect-Engineer and Princeton University timely notice of when and where tests and inspections are to be made.

(b) Such inspections and tests are for the sole benefit of Princeton University and do not:

- (1) relieve the Contractor of responsibility for providing adequate quality control measures;
- (2) relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (3) constitute or imply acceptance; or
- (4) affect the continuing rights of Princeton University after acceptance of the completed Work.

(c) The presence or absence of any inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Princeton University's written authorization.

(d) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed in order to enable the inspection and testing as may be required by Princeton University. Princeton University may charge to the Contractor any additional cost of inspection or test when Work is not ready at the time specified by the Contractor for

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inspection or test, or when prior rejection makes re-inspection or retest necessary. The tests shall be performed in a manner that will not unnecessarily delay the Work.

(e) The Contractor shall, without charge, replace or correct Work found by Princeton University not to conform to Contract requirements, unless Princeton University consents to accept the Work with an appropriate adjustment in Contract Price. The Contractor shall promptly segregate and remove rejected material from the premises.

(f) If the Contractor does not promptly replace or correct nonconforming Work, Princeton University may, at its option, either (1) replace or correct the Work and charge the cost to the Contractor by withholding payment or otherwise, or (2) accept the nonconforming Work, in which case the Contract price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

(g) The Contractor shall assume all costs of retesting materials that fail to meet Contract requirements. The Contractor shall also assume all costs of testing materials offered in substitution for those found deficient or for those specified.

(h) If, before acceptance of the Work, Princeton University decides to examine completed Work by selective demolition, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its Subcontractors, the Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet Contract requirements, Princeton University shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time, subject to the provisions and limitations of Clause B4 hereof.

CLAUSE B11 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

(a) By executing the Contract, the Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its costs, and has included provision for all such conditions in the Contract Price, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, or similar physical conditions at the Site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during performance of the Work. The Contractor also represents that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by Princeton University, as well as from the drawings and specifications made a part of this Contract. Failure by the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Princeton University.

(b) Princeton University assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by Princeton University, nor does Princeton University assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

CLAUSE B12 DIFFERING SITE CONDITIONS

(a) The Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), give a written notice to Princeton University of (1) subsurface or latent physical conditions at the Site which differ materially from those indicated in this Contract or that were foreseeable at the commencement of the Work or (2) previously unknown physical conditions at the Site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract; provided that such conditions in either case could not have been ascertained by a reasonable site investigation pursuant to Clause B11 hereof.

(b) Princeton University or its representatives shall investigate the site conditions promptly after receiving the notice. If conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Clause B12 and the Contract modified in writing accordingly; subject to the following provisions and limitations:

- (1) No request by the Contractor for an equitable adjustment to the Contract under this Clause B12 shall be allowed unless the Contractor has strictly complied with the notice requirements; and

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- (2) If Princeton University is not given written notice prior to the conditions being disturbed, the Contractor shall be deemed to have waived its right to assert a claim for additional time and/or compensation as a result of such changed conditions; and
- (3) The parties acknowledge and agree that any increase in the Contractor's compensation as the result of such conditions shall be limited to the actual increased cost of the additional work, without fee or markup for overhead or profit.

CLAUSE B13 SAFETY PRECAUTIONS AND PROGRAMS

(a) The Contractor shall take all reasonable and necessary precautions in the performance of the Work under this Contract to protect the safety and health of employees and members of the public. All Work shall comply with Occupational Safety and Health Standards and the Safety and Health Regulations for Construction as promulgated by the Department of Labor, and all applicable environmental, safety and health laws, directives, regulations and requirements (including reporting requirements) of Princeton University, and other cognizant federal, state and local agencies. A copy of the latest version of Princeton University's Contractor Safety Advisory may be obtained from Princeton University Administrative Representative upon request.

(b) Contractor shall retain onsite a written safety program in full compliance with the requirements of this Clause B13 and which is consistent with applicable federal, state, and local codes, laws, regulations, rules, regulations or orders.

(c) Without limiting the generality of paragraph (b) above, the Contractor shall include a hazardous communication standard policy in its written safety program retained on Site pursuant to paragraph (b) above. The policy shall conform to the criteria set forth in OSHA Standard 1926.59, as it may be revised throughout the life of the Project. The Contractor shall maintain an up-to-date master file of all Material Data Safety Sheets ("MSDS") submitted by it and its Subcontractors of any tier for all materials for which an MSDS is required prior to bringing such materials onto the Site, which file shall be available for inspection at the Site. The Contractor shall retain on site a Hazardous Substance Survey Form ("HSSF") listing any and all of the hazardous materials that the Contractor may use or bring within or near the Site.

(d) This Clause B13 shall be construed in its broadest sense for the protection of persons and property by the Contractor and no action or omission by Princeton University or the Architect-Engineer shall relieve the Contractor of its responsibility for the safety of persons and property and compliance with all latest codes, laws, statutes, ordinances, rules, regulations and/or orders of any public authority (federal, state or local) applicable to the conduct of the Work, or of any of its obligations and duties hereunder.

(e) Contractor and each Subcontractor shall assign an individual responsible for its safety program and first aid, and shall administer its own first aid for minor injuries and provide for medical treatment of any injured employee of the Contractor. If the Contractor has a full-time safety officer in its employ, such safety officer shall regularly visit the Site to inspect and verify the Contractor's compliance with applicable safety requirements. If the Contractor does not have a full time safety officer in its employ, Contractor shall arrange for a qualified third party safety consultant to regularly visit the Site to inspect and verify the Contractor's compliance with applicable safety requirements.

(f) The Contractor shall be solely responsible for the safety, efficiency, and adequacy of its plant, appliances, equipment, and methods and for any damage that may result from their failure or their improper construction, maintenance or operation.

(g) In accordance with the provisions of Clause G2 hereof, the Contractor shall indemnify and hold harmless Princeton University, the Architect-Engineer, and any of their respective members, officers, employees, agents, consultants and representatives from any liability, claim, loss, or expense (including any civil or criminal fines or penalties as well as any attorney's fees resulting therefrom) arising out of or in connection with the failure or neglect of the Contractor to comply with the requirements of this Clause B13 as well as the failure to comply with the requirements of any applicable law, rule or regulation. The indemnification of the Architect-Engineer and any of its respective members, officers, employees, agents, consultants, and representatives shall not be construed to extend to design of the Work, the preparation of drawings, specifications or reports, or the performance or failure to perform professional services.

(h) In the event that the Contractor fails to comply with said regulations or requirements, Princeton University has the right, but not the obligation, without prejudice to any of Princeton University's other legal or contractual rights, to issue an order stopping all or any part of the Work; thereafter, a start order for resumption of the Work may be issued at the discretion of Princeton University. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in conjunction with, such work stoppage.

(i) Work in laboratories and animal care facilities present unique concerns and risks that require special care and advance planning of activities. The Contractor shall communicate daily with laboratory personnel and receive prior approval

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before the commencement of any Work. The Contractor is responsible for regularly communicating about the location and nature of the Work to be performed, as well as for ascertaining and complying with any specific safety and security policies.

CLAUSE B14 PROTECTION OF THE WORK AND ADJACENT PROPERTY DURING CONSTRUCTION OPERATIONS

(a) The Contractor shall protect any existing building areas, materials, supplies, and equipment of every description, all new materials and apparatus being installed hereunder and the work, materials, or apparatus employed or provided by others, including Princeton University. All requests to enclose or specially protect such property shall be strictly complied with. If, as determined by Princeton University, building areas, material, equipment, supplies, and work performed are not adequately protected by the Contractor, such property may be protected by Princeton University and the cost thereof may be charged to the Contractor or deducted from payments due.

(b) The Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by Princeton University.

- (1) Materials shall be stored so as to insure the preservation of their quality and fitness for the Work and shall be located so as to facilitate prompt inspection. When considered necessary, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground, and when directed, shall be placed in weatherproof buildings.
- (2) Stored materials, even though approved before storage, shall be inspected prior to their use in the Work and shall meet the requirements of the specifications at the time it is proposed to use them.
- (3) As portions of the Project are completed and occupied, Contractor shall insure that continuing construction activity will not unreasonably interfere with the use, occupancy, and quiet enjoyment of the completed portions. Contractor will permit other contractors who are performing other work in the Project access to the Project so long as the work by such other contractors does not unreasonably interfere with the performance of the Work under this Contract.

(c) The Contractor shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the Site which do not unreasonably interfere with the construction as may be determined by Princeton University. The Contractor shall be liable, by withholding of payment or otherwise, for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials or tracking of grass areas by equipment.

(d) The Contractor shall, under regulations prescribed by Princeton University, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by Princeton University. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

CLAUSE B15 EMERGENCIES ENDANGERING PERSONS OR PROPERTY

In the event of an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorization from Princeton University, is authorized to act at its discretion to prevent such threatened loss or injury. Contractor shall likewise act if instructed to do so by Princeton University. Any compensation claimed by the Contractor on account of such emergency work will be determined by Princeton University as provided in the "changes" clause in the Contract Documents.

CLAUSE B16 HAZARDOUS MATERIALS DISCOVERED ON THE SITE

In the event the Contractor encounters on the Site material reasonably believed to constitute an environmental hazard, including but not limited to asbestos, mold, lead, soil contamination, construction debris (e.g., non-native soils), the Contractor shall immediately stop work in the affected area and report the conditions to Princeton University and the Architect-Engineer in writing. Princeton University will be responsible for testing, abatement and/or mitigation as required by current state and federal regulations. The Work in the affected area shall be resumed only after the Contractor has received written notice from Princeton University that the environmental hazard has been removed, abated, and/or resolved using the applicable current state and federal regulatory standards.

CLAUSE B17 SPILLS OR DISCHARGE OF CONTAMINANTS BY CONTRACTOR

(a) The Contractor is solely responsible for any and all spills or discharges of contaminants into the environment during the performance of this Contract that occur as a result of, or are contributed to, by the actions of its agents, employees, or Subcontractors. The Contractor is responsible for the immediate notification to the NJDEP Spill Hotline (1-877-927-6337), the US EPA or any other required agency and Princeton University of a discharge to the environment of any contaminant in the event of such a discharge, the Contractor shall be responsible for thorough remediation of the discharge to the satisfaction of

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Princeton University and in a manner that complies with the applicable federal, state, and local laws and regulations. The clean up and all relevant written reports to applicable regulatory agencies shall be at no cost to Princeton University.

(b) The Contractor shall submit a written follow-up report to Princeton University Technical Representative not later than 24 hours after the initial notification. The written report shall be in narrative form and, at a minimum, shall include the following:

- (1) Description of the item spilled (including identity, quantity, manifest number (if applicable), etc.).
- (2) Whether the amount spilled is required to be reported to the US EPA, NJDEP or other federal, state or local agency and if so, whether it was reported (and a summary of the communication and any applicable case numbers assigned).
- (3) Exact time and location of the spill including a description of the area involved.
- (4) Containment procedure initiated.
- (5) Description of clean up procedures employed, or to be employed, at the Site including the location of the spill residues which shall be located by standard GPS methods for future reference.
- (6) All formal reports and documentation to the relevant regulatory agency.

(c) In all cases in which a spill or discharge of contaminants into the environment is required to be reported to Princeton University pursuant to paragraph (a) of this Clause B17, Princeton University reserves the option and right to take over and complete the cleanup of the spill or discharge without the assistance of the Contractor. This right may be exercised at the sole discretion of Princeton University. All reasonable costs incurred by Princeton University in the cleanup of such spills or discharges will be offset against amounts owed or payable to the Contractor under this and other contracts with Princeton University. If such amounts are not sufficient to cover all reasonable costs of the spill cleanup, the Contractor shall promptly pay any deficiency amount to Princeton University upon demand.

CLAUSE B18 SOIL MANAGEMENT PROCEDURES

(a) Prior to delivering to the Work site any imported soils used during construction for any purpose, the Contractor shall provide the following for Princeton University's review and written approval:

- (1) Documentation stating that the soil is certified clean by current NJDEP standards under the most stringent cleanup standards applicable, including the analytical testing used to certify cleanliness.
- (2) Place of origin, type of origin site (industrial, residential, etc.).
- (3) The names, addresses, and appropriate licenses associated with soil management for the Contractor and all relevant Subcontractors.

(b) Prior to exporting any soil from the Work site, the Contractor shall provide written notification to Princeton University, allowing sufficient time for testing by Princeton University and the receipt of analytical results. The Contractor shall also provide written confirmation of the final disposal site along with any required supporting documentation.

(c) In the event that the Contractor encounters any material it should reasonably understand to be non-natural soils, the Contractor shall immediately stop work in the affected area and report the conditions to Princeton University and the Architect-Engineer in writing. Princeton University will be responsible for testing any non-natural soils or materials. The Work in the affected area shall be resumed only after the Contractor and Princeton University have agreed on a written plan for removing and/or remediating the affected soil to the applicable current state and federal standards.

CLAUSE B19 BUILDING COMMISSIONING PROCESS

When building commissioning (construction phase) requirements are specified in the Contract Documents, the Contractor shall (1) comply with such requirements and (2) ensure that Subcontractors comply with such requirements.

SECTION C -- CONSTRUCTION PRACTICES AT THE SITE

CLAUSE C1 FIGHTING, VANDALISM, INAPPROPRIATE BEHAVIOR, NO HARASSMENT

(a) Fighting, destruction of property, vandalism, graffiti, littering, horseplay of any kind, inappropriate behavior or language, or any action, act, or conduct deemed by Princeton University to be detrimental to the dignity and decorum of Princeton University are strictly prohibited.

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(b) Contractor shall take all necessary steps to ensure that none of its employees or Subcontractors' employees engage in harassment, intimidation, coercion, or verbal abuse relating to personal belief or characteristics of anyone on Princeton University's premises, including, but not limited to the personal beliefs and characteristics specified in Clause HI(c).

(c) If such conduct occurs, Contractor will take all necessary steps to stop it and prevent its future occurrence, including, but not limited to, the immediate dismissal or transfer of personnel. This policy will be strictly enforced.

CLAUSE C2 NO WEAPONS, ALCOHOL, DRUGS, SMOKING

(a) The use, possession, distribution, or sale of any weapon, alcohol, or illegal drug or controlled substance while on Princeton University property or while engaged in performing services for Princeton University is strictly prohibited. Offenders shall be immediately removed from Princeton University property.

(b) Smoking and/or carrying a lighted cigarette, cigar, or pipe is prohibited inside any existing or new (under construction) building, structure, or facility on Princeton University property. The Contractor shall enforce this policy on the Site at all times.

CLAUSE C3 DISPOSAL AND SALVAGE

(a) Materials and items designated by Princeton University to be salvaged, whether or not such materials and items are specified or indicated on drawings to be salvaged, shall be delivered to Princeton University at a location as directed.

(b) Items designated for reuse shall be salvaged, refurbished, and suitably stored until reuse.

(c) All debris and products of demolition not designated for reuse, salvage and/or delivery to Princeton University shall be removed from the premises and disposed by the Contractor at the Contractor's expense.

(d) The Contractor shall not use Princeton University dumpsters.

CLAUSE C4 CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the Work, the Contractor shall remove from the Work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Princeton University. Upon completing the Work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to Princeton University. If the Contractor fails to clean up as provided in the Contract, Princeton University may after 24 hours' prior written notice, do so and the cost thereof shall be paid by the Contractor or deducted from amounts otherwise payable to the Contractor.

CLAUSE C5 JOB CONDITIONS - TEMPORARY FACILITIES AND SERVICES

(a) **Electric Power, Steam and Water.** Electric power, steam, and water, in quantities sufficient for the Contractor's requirements for performing the Work, will be furnished by Princeton University without charge. The Contractor shall provide, install, and maintain all equipment connections and temporary lines necessary to tie into Princeton University services in a manner designated by Princeton University, and to convert the services in a manner that makes it useful for construction operations. The Contractor shall give advance written notice before interrupting essential services in accordance with Clause C7. No temporary lines shall be disconnected or removed until approved by Princeton University.

(1) Electric power so furnished will be 120 or 208 3-phase at a location designated by Princeton University.

(2) Potable water so furnished will be from a location designated by Princeton University within a reasonable distance from the Work.

(3) Steam will be made available for use by the Contractor, if requested, and if steam lines are within close proximity of the Work.

(b) **Telephone/Internet.** Princeton University will act as the Contractor's ISP. Princeton University will provide the Contractor an external customer network as described on Princeton University's web site at <http://www.net.princeton.edu/external-customer-networks.html>. The Contractor will be given a range of IP addresses that can be used for this purpose. The Contractor shall provide all devices and IT expertise to install and maintain service for it and its subcontractors. The Contractor shall also comply with Princeton University and industry best practices regarding IT security so as to prevent malicious/viral content residing on the Contractor's/Subcontractor's devices from entering Princeton University's domain.

(c) **Transportation of Equipment and Materials.** Unless otherwise specified, it shall be the Contractor's responsibility to transport to, load and unload at the Site all equipment and materials used by the Contractor.

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(d) **Temporary buildings (storage sheds, shops, offices, etc.).** Temporary buildings may be erected by the Contractor only with the approval of Princeton University and shall be built with labor and materials furnished by the Contractor. The Contractor is responsible for all permits associated with temporary buildings. Such temporary building and/or utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the Work.

(e) **Temporary Heating.** When necessary, and subject to the prior approval of Princeton University, the Contractor shall provide temporary heating to protect all the Work and materials against dampness and cold, to dry out work and to facilitate the completion of the Work. The Contractor shall maintain any critical installation temperatures called for in the specifications for the various branches of the Work in those spaces where such work is being performed. The maintenance of proper heat and ventilation is the responsibility of the Contractor. Any Work damaged by inadequate heat and/or ventilation shall be replaced to the satisfaction of Princeton University and at the expense of the Contractor.

- (1) Prior to using the permanent heating system specified under the Contract for temporary heating purposes, the Contractor shall prepare and submit to Princeton University for approval a plan which describes the protection, maintenance and cleaning of the system during and at the conclusion of construction. The permanent heating equipment used for temporary heat, when no longer required for such purposes, shall be thoroughly checked, reconditioned and repaired as necessary to bring it to the standards required by the specification at no cost to Princeton University. Additionally, use of the permanent heating system for temporary heat during construction does not relieve the Contractor of its responsibility for any required flushing, cleaning, testing, or commissioning in accordance with a pre-approved commissioning plan. If the permanent heating system is used, the Contractor shall have all air filtration equipment in place before operating the system, and shall provide a new, clean set of filters prior to Substantial Completion. These filters shall not be the spares supplied with the system.
- (2) Temporary electrical power for construction purposes shall not be used as fuel for electrical resistance heaters except when such units are built into the structures and/or their use is approved by Princeton University.
- (3) All installations required for temporary heating and/or ventilation shall be removed by the Contractor when no longer required.

(f) **Temporary Lighting.** The Contractor shall install and maintain temporary lighting throughout the performance of the Work to enable all trades to adequately perform their work and conform to safety and security requirements, including those of Princeton University.

(g) **Sanitary Facilities.** The Contractor shall furnish, install, and maintain ample sanitary facilities for the workers. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the federal Department of Labor "Safety and Health Regulations for Construction" and the Princeton University approved site logistics plan (when a site logistics plan is required). Drinking water shall also be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single source containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished and maintained in strict accordance with existing and governing health/sanitary regulations. Use of existing Princeton University facilities is not permitted unless specifically authorized in writing in advance by Princeton University. All temporary sanitary facilities provided by the Contractor shall be removed at the time of Substantial Completion.

(h) **Temporary Fire Watch and Security.** The Contractor shall be responsible for submitting a plan to Princeton University, where appropriate, for a temporary fire and/or security watch. Such plan shall be implemented by the Contractor following approval by Princeton University.

CLAUSE C6 USE OF FACILITIES/SITE

All Princeton University facilities (e.g., lavatories, gymnasium, cafeteria, parking areas, etc.) are off limits to all Contractor and Subcontractor employees at any tier, unless otherwise approved in advanced by Princeton University. The Contractor shall confine all operations (including storage of materials) on Princeton University premises to areas authorized or approved by Princeton University.

CLAUSE C7 UTILITY SHUTDOWNS

Seven (7) days prior to any required utility shutdown, the Contractor shall submit written notification to Princeton University requesting the shutdown. The Contractor shall arrange its work so the number of shutdowns and the period of each shutdown will have minimum impact on Princeton University. The Contractor is responsible for coordinating with local municipalities to determine any other notification and/or permit requirements.

CLAUSE C8 ALTERATION WORK

- (a) No cutting or alteration work shall be initiated until schedule of operation is approved by Princeton University. Proper protection shall be provided around all areas in which demolition or alteration work is to be carried on so as to prevent dirt or dust from entering active portions of the Project.
- (b) The alteration work shall consist of all modifications necessary to existing facilities to accommodate the new construction and alterations as shown or specified, including all work as is reasonably inferable from the specific work shown or specified in order to produce a complete job ready for Princeton University's operations.
- (c) Mechanical and electrical Subcontractors shall make all necessary arrangements with the Contractor for performance of temporary protection and patching work including painting for which they are responsible.
- (d) Equipment, fixtures or apparatus not to be reused shall be delivered to Princeton University at a location on the premises designated by Princeton University, unless Princeton University specifically states that it does not want the equipment, fixtures or apparatus, in which case the Contractor shall remove them from the premises.
- (e) Where equipment, fixtures or apparatus are removed from back of finished surfaces, the existing piping, conduit or ductwork shall be capped or sealed so as to permit patching and refinishing of these surfaces. Where required, cover plates shall be installed to identify these locations. Where existing electrical equipment, fixtures, or apparatus are removed, the existing wiring, conduit, etc., shall be removed back to the nearest junction box where leads shall be properly insulated and terminated in an approved manner.
- (f) Where piping, valves, conduit, ductwork, etc. are required to be removed, altered, or tapped for new connections or extensions; disconnecting and removal work shall be done in such a manner as to prevent damage to the remaining work, the buildings, or its contents. Wherever remaining work, equipment, materials or finishes are damaged in making such removals, the Contractor shall be responsible for the full resulting cost. No existing piping, fittings, or valves, conduit, wire, switches, and other related work, once removed, shall be permitted to be reused unless specifically so provided in the Contract. Where parts of existing systems are altered, the remaining systems shall be balanced as required for proper operation. Wherever existing pipe or duct covering or insulation is removed on existing work which is required to remain, such covering or insulation shall be replaced with new covering of a kind similar to that existing.
- (g) The Contractor shall do all cutting and patching which may be necessary to complete the Work, except that no structural members shall be cut or notched so as to interfere with the structural integrity of the structure without specific approval of the Architect-Engineer or Princeton University.
- (h) All patching and refinishing shall be done with materials and in such manner as to match adjoining work. Patching shall be assigned to, and done by, the appropriate trade. Refer to additional requirements relating to cutting and patching elsewhere in the specifications.

CLAUSE C9 INGRESS, EGRESS, AND CIRCULATION

- (a) Contractor shall be responsible for performing construction activities in such manner to maintain essential ingress and egress for visitors and occupants of Princeton University-occupied areas including freight traffic, and to continuously maintain all required emergency exits from and circulation between existing facilities. Passageways for emergency exits shall be kept continuously free from debris, construction equipment, tools, stockpiles of materials, and other hazards to allow speedy evacuation. The Contractor shall provide all necessary temporary work, including overhead protection, barricades, walks, lighting, heating, handrails, crosswalks, directional signs and other temporary safety measures as prudence and good practice may dictate and in accordance with public law, to obtain and maintain all such ingress, egress and circulation requirements. All temporary work shall be removed when no longer required and the affected property, including interior and exterior work, finishes, paving, and landscaping shall be restored.
- (b) At all times, the Project shall be maintained clean and free of all snowfall so as to allow the Work and inspection of the Work to proceed.

CLAUSE C10 SHORING AND BRACING

- (a) It shall be the responsibility of the Contractor to design, provide, and maintain sufficient and adequate shoring and bracing of any existing structure or earth bank during the performance of Work under this Contract. Shoring and bracing shall comply with all applicable codes, regulations and construction requirements, including OSHA requirements, and shall be constructed in such a manner as will prevent all deflection, settlement, and movement of any existing structure or earth bank, and will permit the Work to be performed without damaging any existing structure.

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(b) The Contractor shall provide all permanent and temporary bracing, shoring, anchoring, and needling that the nature of the Work may require, in order to make any new construction stable, secure, and safe, even where such items are not specifically called for.

(c) Barricades and lights shall be furnished by the Contractor as necessary, to meet safety requirements.

CLAUSE C11 WEATHER CONDITIONS/WORK IN FREEZING WEATHER

(a) In the event of temporary suspension of the Work, or during inclement weather, or whenever Princeton University shall direct, the Contractor will, and will cause Subcontractors to protect carefully the Work and Materials against damage or injury from the weather. If, in the opinion of Princeton University, any Work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any Subcontractors so to protect the Work, such materials shall be removed and replaced at the expense of the Contractor.

(b) Unless written permission is given, Work liable to be affected by frost shall be suspended during freezing weather. When Work proceeds under such a condition, the Contractor shall provide approved facilities for heating the materials and for protecting the finished Work.

CLAUSE C12 PUMPING AND DRAINAGE

The Contractor shall provide all pumping and drainage of water from within the areas of the Work until acceptance of the Work. Discharge shall be into existing storm drains unless otherwise approved by Princeton University. The Contractor shall keep all areas dry as required for the installation of all Work and shall prevent damage to the Work already installed including adjacent property.

CLAUSE C13 EXPLOSIVES

The use of explosives will not be permitted without Princeton University approval.

CLAUSE C14 LAYOUT OF WORK

The Contractor shall lay out its Work from base lines and benchmarks indicated on the drawings, and shall be responsible for verification of all measurements in connection with the layout. The Contractor shall furnish all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by Princeton University until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, Princeton University may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

CLAUSE C15 NOISE

(a) Contractor shall not create excessively loud noise during construction operations that will cause discomfort to the surrounding building occupants and community. Operations that create excessively loud noise, as determined by Princeton University, will be reviewed with, and have prior approval from, Princeton University.

(b) Measures to lessen construction/demolition noise will be reviewed with Princeton University, with agreed upon measures to be implemented by the Contractor at no cost to Princeton University.

(c) Contractor shall take whatever actions necessary to limit other types of non-construction noise by vehicles, Contractor and Subcontractor employees (including worker's voices), material deliveries, and power hand tools. Radios (entertainment type) are not to be played on the Site.

(d) **Noise Restriction Periods.** The start of construction and related noise is prohibited during the following time periods:

- (1) At no time on Sunday.
- (2) Before 9:00 a.m. and after 6:00 p.m. on Saturdays.
- (3) Before 8:00 a.m. and after 6:00 p.m. on weekdays. Where conditions permit and noise will not impact residential programs, Princeton University may authorize start times as early as 7:00 a.m.

A variance permit from the municipality having jurisdiction and/or prior approval from Princeton University is required for all construction Work outside of these time periods. Where a conflict exists between local ordinances and Princeton University policy, the more stringent restriction shall apply.

(e) Princeton University may, at its discretion, prohibit or restrict Work from being performed during certain events (e.g., "Reunions", "Commencement", "P-Rade", etc.) when noise, traffic and security concerns dictate.

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CLAUSE C16 NOT USED

CLAUSE C17 PARKING

Employees of the Contractor and all Subcontractors shall park at a Princeton University location off-campus. With special exception and prior Princeton University approval, on-site parking may be provided for shuttle vehicles. The Contractor is responsible for managing the transportation of workers to and from the site.

CLAUSE C18 EXISTING BUILDING SECURITY AND FIRE ALARM SYSTEMS

(a) Existing Building Security System.

- (1) Contractor shall comply with Princeton University Office of Life Safety and Security Systems and Public Safety Department protocols and approval processes before disarming, altering, rendering inoperable or otherwise performing any work on existing building security systems.
- (2) If any existing building security system is disturbed, altered, or relocated during the course of the Work, the entire security system shall be tested by the Contractor and approved by Princeton University's Alarm Shop prior to acceptance of the Work.
- (3) The Contractor shall not prop open doors and/or windows normally locked without prior approval of Princeton University's Department of Public Safety and notification to Princeton University's Alarm Shop and building occupants.
- (4) Contractor shall be responsible for the sign out, distribution, safe use, and return of all keys and/or access cards for the existing building. The Contractor shall be responsible for all costs associated with failure to return these items (e.g., the cost to re-key/re-implement the system, etc.).
- (5) Contractor shall coordinate with Princeton University personnel to commission all new CACS/security systems. All new security installations and/or systems shall be tested by the Contractor and approved by Princeton University's Alarm Shop prior to acceptance of the Work.

(b) Existing Building Fire Alarm System.

- (1) Contractor shall not disarm, alter, render inoperable or perform any work on fire alarm systems, or commence on-site work that may cause smoke or dust in the vicinity of existing fire alarm system detection heads, without prior approval of Princeton University's Facilities Customer Service. Contractor shall request a fire alarm shutdown prior to engaging in such activities. For shutdowns during normal business hours (e.g., 7:30 a.m. through 5:00 p.m., Monday through Friday), the Contractor shall notify Facilities Customer Service no later than 3:00 p.m. on the business day before the work is scheduled to take place by calling (609) 258-8000 or sending an e-mail message to service@princeton.edu. For Monday shutdowns, Contractor shall submit the request by 3:00 p.m. the previous Friday. For shutdowns after normal business hours, the Contractor shall provide a minimum of three (3) business days advance notice.
- (2) If any existing fire alarm system is disturbed, altered, or relocated during the course of the Work, the entire fire alarm system shall be tested by the Contractor and approved by Princeton University's Alarm Shop prior to acceptance of the Work.
- (3) All new fire alarm installations and/or systems shall be tested by the Contractor and approved by Princeton University's Alarm Shop prior to acceptance of the Work.

CLAUSE C19 CONSTRUCTION FENCE

(a) Contractor shall furnish, install, and maintain all required temporary construction fencing as may be required by Princeton University. Construction fence height shall be in accordance with local ordinances and shall not have any barbed or razor wire. Fence shall be installed with driven posts (not metal shoes), unless otherwise approved by Princeton University. Fence shall include a vision obscuring screening material of the heaviest weight available installed on the outside of the fence. The fence and vision obscuring screening material shall be maintained to the satisfaction of Princeton University. The fence shall not have any openings or gaps where unauthorized entry could be made.

(b) Princeton University will provide Contractor padlocks with orange construction core and keys for use on Site construction fence gate(s). Lock(s) and keys shall be returned to Princeton University when the Work is completed. Non-Princeton University locks shall not be used without prior Princeton University approval.

CLAUSE C20 UTILITY MARK OUT

Pursuant to New Jersey state law, Contractor shall notify the New Jersey One Call System (1-800-272-1000) a minimum of three (3) working days prior to any digging on or near the Site. This includes, but is not limited to, digging associated with installing tents, removing or planting trees, installing fences and signs, excavation, and blasting. New Jersey One-Call System will notify the mark-out services firm Princeton University has under contract, who will in turn inspect the area and mark out any underground utilities.

SECTION D -- RESPONSIBILITIES

CLAUSE D1 RESPONSIBILITIES OF THE ARCHITECT-ENGINEER

(a) If an Architect-Engineer has been retained by Princeton University under a separate contract with Princeton University, such Architect-Engineer shall be a representative of Princeton University in the administration of the Contract. Pertinent excerpts from this separate contract will be provided upon request. If no Architect-Engineer has been retained by Princeton University, then these responsibilities shall be performed by Princeton University.

(b) The Architect-Engineer has no authority, without written authorization of Princeton University, to modify this Contract in any respect, to issue change orders hereunder, to order extra work not required by the Contractor, to authorize extra compensation to the Contractor, or to waive the performance by the Contractor of any requirements of the Contract.

(c) Whenever the Construction Documents are ambiguous or silent as to what is permissible, the Architect-Engineer shall provide the controlling interpretation of what satisfies the particular requirements of the Construction Documents, which the Architect-Engineer shall make, in the absence of any agreed time limit, within a reasonably prompt time. Either party to the Contract may make written request to the Architect-Engineer for such interpretations.

(d) Disputes and other matters in question between Contractor and Princeton University relating to the interpretation of the Construction Documents shall be referred to Architect-Engineer for an initial interpretation, subject to the remaining provisions of the Contract.

(e) All interpretations and decisions of Architect-Engineer shall be consistent with the intent of the Construction Documents. Such interpretations and decisions will be in writing or in the form of drawings and shall be made promptly so as not to delay the progress of the Work.

(f) Architect-Engineer will be the judge of whether the Work is in conformity with the Construction Documents and shall recommend that Princeton University reject Work that does not conform to the Construction Documents. Whenever, in its opinion, Architect-Engineer or Princeton University considers it necessary or advisable for the implementation of the intent of the Construction Documents, Princeton University shall have the authority, or the Architect-Engineer, after Princeton University's approval, shall have authority, to slow or stop the Work whenever any stoppage may be necessary to assure proper execution of the Construction Documents. However, neither Architect-Engineer's authority to act under this Clause D1, nor any decision made in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of Architect-Engineer to Contractor or any other person performing any of the Work.

(g) All interpretations or decisions of the Architect-Engineer interpreting the Construction Documents or relating to the execution and progress of the Work shall be final as to the implementation of the Drawings and Specifications and the performance of the Work unless otherwise ordered by Princeton University. Princeton University and Contractor, as the case may be, shall each notify the other and Architect-Engineer promptly of any exception taken to such decision or interpretation of the Architect-Engineer. Any such notice given by the Contractor shall indicate whether Contractor intends to assert a claim for additional cost or an extension of time because of such interpretation. Contractor shall present such claim to Princeton University in accordance with the provisions of Clause H3. Any request for extension of time shall be submitted in accordance with the requirements of Clause B4.

(h) Architect-Engineer will not be responsible to Contractor for and will not have control or charge of Contractor's construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and he will not be responsible for Contractor's failure to carry out the Work in accordance with the Construction Documents. However, the Architect-Engineer shall observe, review and report to Princeton University with regard to construction methods that may impact the intent of the Construction Documents. Architect-Engineer will not be responsible to Contractor for or have control or charge over the acts or omissions of Contractor, subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

(i) Architect-Engineer will observe the Work to ascertain if the Work is being performed in accordance with the Drawings and Specifications and the intent of the Construction Documents.

CLAUSE D2 SUBCONTRACTS

- (a) The Contractor may subcontract any work at the Site, subject to the prior written approval of Princeton University. The Contractor shall select Subcontractors (including suppliers) on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of the Contract. The Contractor shall not engage in auctioning, bid leveling, bid transference, or any other practice that, in the judgment of Princeton University, lacks sound business principles or integrity.
- (b) Contractor shall be responsible to Princeton University for the acts and omissions of its employees, agents, Subcontractors and their agents and employees, and other persons, performing any of the Work under any agreement with Contractor or its agents and Subcontractors, or otherwise.
- (c) The Contractor shall include provisions identical to these general terms and conditions in all subcontracts and the Subcontractors shall have the same obligations to the Contractor that the Contractor has to Princeton University under the Contract.
- (d) Each subcontract shall include an express provision that Princeton University is an express third party beneficiary of the subcontract with the right to enforce the subcontract for the benefit of Princeton University.
- (e) The Contractor shall, upon request, provide to Princeton University complete and correct copies of Contractor's subcontract with each Subcontractor, including changes thereto, for Princeton University's information and records but not for approval. Princeton University makes no representation that Princeton University is reviewing the subcontract's substance or approving the subcontract in any way.
- (f) If this is a Guaranteed Maximum Price (GMP) contract, refer to Clause L1 for additional duties and requirements. If this is a Cost plus Fixed Fee (CPFF) type contract, refer to Clause M1 for additional duties and requirements.

CLAUSE D3 PRINCETON COLLABORATIVE SYSTEM – PCS

- (a) **System Overview.** Princeton University requires all Contractors and Architect-Engineers to participate in a web-based project management application (currently Centric Project). The application is hosted on Princeton University servers that are maintained by Princeton University staff. The web application is customized by Princeton University and provides for a unique web page for any project. It is the intent for all documentation, correspondence, and construction information that would normally be exchanged between members of the Project team to be maintained in an electronic format and posted on the project web site.
- (b) **Minimum System Requirements.** The following summarizes the minimum office system requirements for all Contractor's and Architect-Engineer's to possess in order to participate. It is the responsibility of all Contractors and Architect-Engineers to possess these minimum requirements at no additional cost to Princeton University.
- (1) Hardware/Software Requirements:
 - 233 MHz Pentium II or better (800Mhz Pentium III or better recommended)
 - Microsoft Windows 2000 SP3, 2000 SP4, XP, or XP SP1
 - Minimum 65 MB free hard disk space for User Tools and ActiveX controls
 - Minimum 130 MB of temporary free space used during installation of User Tools and ActiveX controls
 - Windows 2000 and XP: 128 MB RAM (512 MB recommended)
 - Video card and display capable of True Color (24-bit) and a minimum of 32 MB of video memory (OpenGL driver recommended)
 - Microsoft Internet Explorer 6.0 or 6.0 SP1
 - MDAC 2.8
 - Broadband Internet connection.
 - (2) The downloadable tools are available at no cost on Princeton University's server. Users will be required to make relatively modest adjustments to their office web browser and e-mail settings. Self service IT support may be required.
 - (3) Training sessions will be provided on campus by Princeton University at no cost. Users should allow approximately 3 hours of training per person.
- (c) **Responsible Users / Project Team Members.** All users who are responsible for, or wish to retain individual ownership rights to, project specific documentation, correspondence, drawings, or other information will be considered an individual entity on the project team, and will be required to attend training.

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(d) **Roles and Responsibilities.** The following demonstrates the required level of involvement and contribution to the PCS process:

- (1) All Team Members. All team members will be required to perform the following tasks on a daily basis: convert all correspondence to electronic format and post them to web site; generate 'e-mail', schedule meetings and assign tasks through the PCS tool. (PCS synchronizes with MS Outlook calendar, task, and e-mail functions.)
- (2) Contractor. Typical construction documentation will be exchanged, and workflows conducted, electronically in the PCS. These required functions include, for example, submittals, RFI's, changes to work, commissioning, punchlist, as-builts, and closeout documentation. If the Contractor chooses to maintain parallel tracking in another project management software, a certain level of copy/paste duplicate entry will be required. PCS offers customizable logs and reports for these applications. Princeton University will offer initial technical support to develop basic reports with the Contractor's input.
- (3) Architect-Engineers. During the course of the Project, the Architect-Engineer shall post all drawings to the PCS site in DWG, DWF or PDF format. Princeton University requires adherence to CAD standards and specific formats for certain drawing elements (e.g., equipment, finish, and door schedules). Design reviews will be tracked in the PCS and the Architect-Engineer shall respond to and acknowledge comments as they occur. With the exception of physical samples, the Architect-Engineer shall post an electronic version of all submittals. At Project completion, the Architect-Engineer shall post a final set of drawings in DWG format that are compliant with Article XIV, Archive Drawings and Specifications.

SECTION E -- CONTRACT TIME: SCHEDULES, DELAYS, AND EXTENSIONS OF TIME

CLAUSE E1 PROJECT SCHEDULE

(a) **Initial Submission.** Unless the Project Schedule has been prepared by the Contractor, approved by Princeton University, and made part of the Contract at the time of execution, the Contractor shall, within ten (10) days of the effective date of the Contract, or such longer period of time approved by Princeton University, prepare and submit to Princeton University for approval a proposed Project Schedule showing the order in which the Contractor proposes to perform the Work. If the Contractor fails to submit a proposed Project Schedule within the time prescribed, Princeton University may withhold payment until the Contractor submits the required proposed Project Schedule. Princeton University's approval of the Contractor's proposed Project Schedule shall be in writing and such approval shall not be construed as an assumption by Princeton University of any responsibility for the Project Schedule or for any error or inconsistency, which shall be corrected by the Contractor at no additional expenses to Princeton University.

(b) **Project Schedule.** The Project Schedule shall be a critical path method (CPM) schedule using Primavera software in .XER format (P6). The Project Schedule shall be properly constructed following established best practices in the construction industry. The Project Schedule shall have properly developed and coordinated logic, shall not be unnecessarily or excessively constrained, and shall indicate early start potential and float for all activities. Princeton University, at its discretion, may provide the Contractor with an electronic (.XER) template schedule containing Princeton University activities, academic calendar dates, activity codes, and a work breakdown structure (WBS). A copy of the template schedule is available upon request. If a template schedule is provided, it will be within this template schedule that the Contractor must coordinate Princeton University activities and develop a detailed construction schedule.

(c) **Schedule Milestones.** The Contractor shall, in conjunction with Princeton University, create and track a group of milestone activities that shall be tied to the Project Schedule. Schedule Milestones ("Schedule Milestones") shall include "Contractual Start" (defined by contract execution), "Substantial Completion," "Certificate of Occupancy", followed by Princeton University's "Move-In" process, and an early completion date if one is proposed. Schedule Milestones shall also specify start date, end date, and duration for main building system elements of the Work, should be grouped by building area and should include, as a minimum, "Site Mobilization", "Demolition", "Foundation/Excavation", "Substructure", "Superstructure" (frame/bearing walls), "Building Enclosure" (building skin, temporary enclosure, windows, doors, roof), "MEP Systems" (temporary systems and rough inspections), "Conveying Devices", "Interior Construction", "Finishes", "Final Inspections", "Punch List", "Move-In", "Occupancy", and "Close Out".

(d) **Coding Requirements.** The Contractor shall utilize existing activity codes and apply codes to all new activities added by the Contractor. The coding and organization of the schedule must be in a format that is acceptable to Princeton University.

(e) **Report Format.** The Project Schedule shall be presented primarily in a bar-chart format, as well as additional tabular or matrix reports that may be requested.

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- (1) **Bar (Gantt) Charts.** In column area show: activity ID, description, duration, early/actual start and finish dates and float. In bar chart area show: early bars from “DD-1 Month” to “FD+I Month.” Use relationship lines to show critical path. Only critical path (longest path) activities are to be shown in red.
- (2) **Columnar.** This data includes columnar data presented without Gantt bar chart.
- (3) **Types of Reports.** The Contractor shall provide at least the following reports at each monthly update interval and any other reports that Princeton University may reasonably request:
 - (i) Summary Report (Gantt). All activities, grouped by Contractor’s activity codes, sorted by “Early Start.”
 - (ii) Critical Path Report (Columnar). Date of Substantial Completion must be set as a “Complete on or Before” constraint in accordance with the dates set forth in the Contract. Fields must include Activity ID, Description, Early Start, Early Finish, and Total Float. Activities should be ungrouped, and sorted by Total Float (ascending) and Early Start.
 - (iii) Variance Report (Gantt and Columnar). This summary report should be graphic and columnar data comparing two consecutive update schedules, often showing current month against prior month as the “Baseline.” Group and sort this report similar to Summary Report, with fields to include: Activity ID, Description, Total Float, BL Early Start, Start, Start Deviation, BL Finish, Finish, Finish Variance.
 - (iv) Level of Detail. The Project Schedule shall be of sufficient detail to identify a clear critical path and major sub-critical paths from the data date to the end of the Project. No activity shall have duration of more than 20 calendar days except perhaps for procurement on a case-by-case basis. The Project Schedule shall identify each entity responsible for performing each activity and task on the critical path and the major sub-critical paths, and shall clarify the relationships among the trades or subtrades.

CLAUSE E2 UPDATED PROJECT SCHEDULES AND PROGRESS REPORTS

- (a) **Updated Project Schedule.** After approval of the proposed Project Schedule, the Contractor shall prepare on a monthly basis, or as Princeton University may require, an Updated Project Schedule that shall document the current schedule status of the Project and incorporate changes based on new or more reliable information. Updated Project Schedule(s) shall be subject to Princeton University’s written approval, shall not change the previously established Scheduled Completion Date or the Schedule Milestones, and shall not be binding upon Princeton University until Princeton University has approved such Updated Project Schedule. Any change to the Scheduled Completion Date or Schedule Milestones must be pursuant to Change Order.
- (b) **Monthly Progress Reports.** In addition to the Updated Project Schedule, and any other reports required under Clause E1, Contractor shall provide monthly progress reports (in narrative form) that analyze and comment on issues in the Updated Project Schedule. The monthly progress report shall include the following sections: executive summary, schedule progress last month, planned activities next month, analysis of critical path progress/slippage, general progress of the Work (earned value), variance reporting/exception analysis, action items and areas of concern, and upcoming Princeton University decisions required.
- (c) **Submission Cycles.** The data date for each monthly update shall be the last working day of the month. The analysis report shall be submitted within 5 working days. The submission shall be in paper in sufficient number of copies as required by Princeton University, in Adobe Acrobat (*.pdf) format, and in electronic format. The Contractor shall furnish to Princeton University, for the review of Princeton University, such reports and information as may be requested by Princeton University, including without limitation, the electronic version of the data on which the reports are based, and the electronic version of the reports themselves. Each Updated Project Schedule shall be sequentially numbered and dated for identification, and Contractor shall separately maintain and archive electronically throughout the term of the Contract (e.g., no Updated Project Schedule shall “over-write” the prior version or versions of the Project Schedule or Updated Project Schedule).

CLAUSE E3 PROGRESS AND COMPLETION

- (a) Time is of the essence for all provisions of the Contract.
- (b) Contractor shall achieve Schedule Milestone dates and the Substantial Completion Date in accordance with the (Updated) Project Schedule. Contractor shall be deemed to have achieved the Substantial Completion Date only if the criteria set forth in Clause E9 hereof have been met on or before the Substantial Completion Date.

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(c) The Contractor must identify the existence of and/or reasonable opportunities for increasing the float in the schedule. The Contractor and Princeton University agree that schedule float, if any, shall not be sequestered, consumed, or permitted to alter the timing of the Schedule Milestones without written approval of Princeton University. In no event shall the Contractor be entitled to an extension of the Substantial Completion Date or additional compensation for delays with respect to non-critical-path activities.

(d) The Contractor further acknowledges and agrees that additional compensation in the event of compensable delay, if any, determined in accordance with, and subject to the limitations of, Clause E5 shall not accrue for schedule delays prior to the Substantial Completion Date, regardless of whether or not the Contractor could have completed the Work prior to the Substantial Completion Date and regardless of whether or not the Contractor has submitted a schedule showing that the Work could be completed prior to the Substantial Completion Date.

CLAUSE E4 ACCELERATION OF THE WORK

(a) **Time Recovery Plan, Acceleration at Contractor's Expense.** If Contractor fails to achieve any Schedule Milestone dates, or if any (Updated) Project Schedule indicates that any Schedule Milestone date or the Scheduled Completion Date will not be achieved, and such delays are not subject to extension of time as set forth in Clause E5, then Princeton University may require that the Contractor develop, submit and execute a time recovery plan (including but not limited to more personnel, overtime and/or double shifts) at Contractor's expense to reasonably assure completion of the Work in accordance with the remaining Schedule Milestone dates and the Scheduled Completion Date. In the event that Contractor disputes any determination by Princeton University that Contractor is obligated to accelerate the Work at Contractor's expense, provided that Princeton University has issued a Disputed Change Order pursuant to the applicable Changes clause hereof, Contractor shall proceed with such acceleration.

(b) **Acceleration at Princeton University's Expense.** Princeton University may request the Contractor to accelerate (including more personnel, overtime, and/or double shifts) the completion of the Work or a portion of the Work, at a time when the Contractor is not behind schedule in the performance of the Work. The Contractor agrees to accelerate the Work, and the Contractor shall be reimbursed only for the Contractor's extra labor cost over the amount for regular time during the period of such acceleration, including additional fringe benefit costs, insurance and taxes incurred by it with respect thereto and only those other actual costs of the Contractor directly related to the acceleration, which have been approved in advance by Princeton University in a written Change Order. Time slips covering said overtime must be correlated to the accelerated/overtime schedule activities and submitted to Princeton University for checking and approval. No commission or fee is to be charged by or allowed to Contractor on account of acceleration or costs related thereto, nor shall Contractor be compensated for any lost efficiency or production alleged to have resulted from said overtime work, except as expressly agreed in advance by Princeton University.

CLAUSE E5 EXCUSABLE DELAYS; EXTENSION OF TIME

Contractor acknowledges that a delay in any one portion of the Project or in any work sequence or any other aspect of the Work, does not necessarily entitle Contractor to a delay in, or a delay of equal duration in, completion of the entire Project, or a delay that materially and adversely affects the Scheduled Completion Date. If, however, Contractor is delayed in the critical path shown by the current (Updated) Project Schedule for the performance of the Work either (i) through the fault of Princeton University or its agents or representatives; (ii) by changes or suspensions ordered by Princeton University in the Work; (iii) by strikes (other than strikes precipitated by an act or omission of Contractor or any Subcontractor or by a default by Contractor or any Subcontractor under any collective bargaining agreement); (iv) by embargoes; (v) by fire; (vi) by unavoidable casualties; (vii) by national emergencies; (viii) by bomb threats; or (ix) by unusually severe weather conditions that could not have been anticipated for Work during the time frame shown on the original Project Schedule; then, Contractor shall be entitled to a day for day extension of the Scheduled Completion Date for the delayed work subject to the following provisions and limitations:

- (1) Within five (5) days after Contractor learns of any such delay, Contractor shall deliver to Princeton University a notice of the delay and Contractor's Change Order Request for extension of time on account of such delay. Such Contractor's Change Order Request shall be subject to review and approval by Princeton University. If Contractor fails to timely file its Change Order Request, then any claim for extension of time on account of such delay to the extent occurring prior to five (5) days before notice is actually given shall be deemed waived by Contractor. In case of a continuing cause of delay of a particular nature, Contractor shall be required to file only one initial notice with respect thereto, prior to the termination of the condition caused by the delay.
- (2) Only the actual delay necessarily resulting from the causes set forth above shall be grounds for extension of time. In case the Contractor is delayed at any time or for any period by two or more of the causes specified above, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension will be granted for the delay.

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- (3) If the Contractor is delayed in the performance of the Work from one or more of the causes set forth above, the extension of time to be granted to the Contractor shall be only for such portion(s) of the Work so delayed, and the Contractor shall nevertheless proceed continuously and diligently with the prosecution of the remainder of the Work.
- (4) Delays caused by Princeton University, its agents or its own contractors, even if such delays are the result of an alleged breach of this Contract or an alleged willful interference by Princeton University with Contractor's performance of the Work, shall not be grounds for an extension of the Scheduled Completion Date or claim for damages or an increase in the Contract Price if, and to the extent, (i) such delays are concurrent with any other causes of delay for which Princeton University is not responsible, and/or (ii) such delays would not have caused an extension to the Scheduled Completion Date but for the occurrence of prior delays for which Princeton University is not responsible, including but not limited to Contractor's delays with respect to non-critical path activities; provided, however, that nothing in this paragraph shall be construed to supersede or negate a prior written approval, if any, by Princeton University of Contractor's use of float pursuant to Clause E3(c) above.
- (5) If requested by Princeton University, Contractor shall endeavor to provide for and implement a time recovery plan to minimize the effects of any such delay upon the then-current approved (Updated) Project Schedule.
- (6) Except to the extent that delay is caused solely by Princeton University, an extension of the Scheduled Completion Date shall be the Contractor's sole remedy for such delay. With respect to delays caused solely by Princeton University, the parties agree that Contractor's damages shall be computed in accordance with Clause E6 hereof.

CLAUSE E6 DETERMINATION OF CONTRACTOR'S DELAY DAMAGES

(a) The Contractor and Princeton University expressly agree that Contractor's full compensation for delay caused solely by Princeton University, subject to the limitations of Clause E5 hereof, shall be the sum of the following components:

- (1) The actual additional cost to the Contractor for materials, if any, including sales tax and delivery, directly attributable to the delay.
- (2) The actual additional cost to the Contractor for labor (including normal fringe benefits) directly attributable to the delay.
- (3) The actual additional cost to the Contractor for construction equipment for the time that such construction equipment was actively used as a direct result of the delay at a rate not to exceed 75% of the applicable equipment rates based on the most recent edition of the National Equipment Distributors' "Compilation of Nationally Averaged Rental Rates". In addition, the Contractor shall be allowed move-in and move-out charges on heavy construction equipment.
- (4) The actual additional General Conditions costs incurred by Contractor that are directly attributable to the delay.
- (5) The actual additional cost to the Contractor of (i) Work performed by Subcontractors or (ii) materials or construction equipment furnished or supplied for the Work through suppliers or materialmen which are directly attributable to the delay. Such costs shall be determined based on provisions included in every subcontract or purchase order entered into by the Contractor that are identical to the provisions contained in this Clause E6.

(b) As full compensation for any other cost resulting from the delay, including but not limited to profit, loss of profit, cost of idle equipment, home office overhead, and consequential damages, Contractor shall be granted additional compensation computed at a rate agreed to by both parties for items (1), (2), (3), and (4) as provided herein. Contractor shall not be entitled to such additional compensation on item (5), above.

CLAUSE E7 DETERMINATION OF PRINCETON UNIVERSITY'S DELAY DAMAGES

(a) **Actual Damages for Delayed Substantial or Final Completion.** If the Contractor fails to achieve Substantial Completion of the entire Project on or before the Scheduled Completion Date for the Project for reasons attributable to the Contractor, or if the Contractor fails to achieve final completion of the Project within sixty (60) days after Substantial Completion, damage will be sustained by Princeton University. Therefore, in the event that the Contractor fails to achieve Substantial Completion of the entire Project on or before the Scheduled Completion Date, or if the Contractor fails to achieve

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final completion of the Project within sixty (60) days after Substantial Completion, the Contractor shall be liable to Princeton University for any actual damages incurred by Princeton University as a result.

(b) Actual damages provided for herein shall be Princeton University's exclusive damage remedy for Contractor's failure to Substantially Complete the Work on or before the Scheduled Completion Date, or achieve the date for final completion of the Project within sixty (60) days after Substantial Completion, but such damages shall in no way limit Princeton University's entitlement to damages for any other injury, damage or loss for which Contractor may be responsible pursuant to the terms of the Contract or applicable law.

CLAUSE E8 SUSPENSION OF WORK

(a) Princeton University may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work of this Contract for the period of time that Princeton University determines appropriate for the convenience of Princeton University.

(c) If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of Princeton University in the administration of this Contract or (2) by Princeton University's failure to act within the time specified in this Contract (or within a reasonable time if not specified), then an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit or fee) caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this Clause E8 for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by another cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

CLAUSE E9 SUBSTANTIAL COMPLETION

(a) The phrase "occupy, operate or use the Work, or designated portion, for the purpose for which it is intended" means the following have been completed:

- (1) Certificate of Occupancy. A Certificate of Occupancy (temporary, final or other) is in place that allows legal occupancy by Princeton University.
- (2) Initial Punch List. Except for those items on the consolidated list of incomplete or uncorrected items included with the certificate of Substantial Completion, the initial punch list containing comments from, but not limited to, the Architect-Engineer, the Contractor, Princeton University and other consultants approved by Princeton University has been established, posted to the Princeton Collaborative System, completed, and accepted as complete by Princeton University.
- (3) Operational Building Systems. Systems are fully operational except for those identified on the list of incomplete or uncorrected items included with the certificate of Substantial Completion.
- (4) Commissioning. Functional testing and certification is complete. Forms and documentation which record the certification and performance of building systems, utility systems and equipment are fully executed and posted to the Princeton Collaborative System.
- (5) Training. All training required by the Contract Documents is complete unless exempted by Princeton University.
- (6) As-Built Drawings. All Work that deviates from, or otherwise supersedes, the latest version of the design documents must be annotated on the latest version of design documents and posted to the Princeton Collaborative System. Annotations shall include any Work that deviates from approved shop drawings and other submittals, as well as an updating of drawing schedules to reflect approved, as-built equipment, product data, etc.
- (7) Operation and Maintenance Manuals. Operation and maintenance manuals are complete, posted to the Princeton Collaborative System, and printed copies have been delivered to Princeton University.
- (8) Site and Landscaping Work. Work is complete except for items included on the punch list.
- (9) Warranties. Warranties are executed, approved by Princeton University, and posted to the Princeton Collaborative System.
- (10) Project Card Access & Campus Security (CACS). Work is complete, fully operational and has been electronically approved through the Princeton University ATP commissioning. Security systems and/or exterior CACS doors labels are installed.

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(11) Cleaning. The Project is clean. The interior and exterior of building (including windows) and site are free of dirt, dust, and debris. Princeton University has accepted the Project as clean and agrees to commence housekeeping activities on a mutually agreeable date.

(b) The Contractor shall notify Princeton University and, if directed, the Architect-Engineer when it considers Substantial Completion of the Work or a designated portion to have been achieved. Princeton University, with the assistance of the Architect-Engineer, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended purpose by Princeton University without excessive interference in completing any remaining unfinished Work by the Contractor. If Princeton University determines that the Work or designated portion has not reached Substantial Completion, Princeton University, with assistance from the Architect-Engineer, shall promptly compile a list of items to be completed or corrected so Princeton University may occupy or utilize the Work or designated portion for its intended purpose. The Contractor shall promptly complete all items on the list.

(c) When Substantial Completion of the Work or designated portion is achieved, the Architect-Engineer shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; continuing responsibilities of the Contractor, if any; the time within which the Contractor shall finish all items on the list accompanying the Certificate of Substantial Completion; and such other matters as may be required by Princeton University. Unless otherwise agreed, all items on the list accompanying the Certificate of Substantial Completion shall be completed or corrected within sixty (60) days after Substantial Completion.

(d) Warranties required by the Contract shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise agreed to by the Contractor, Princeton University, and the Architect-Engineer.

CLAUSE E10 USE AND POSSESSION PRIOR TO COMPLETION

(a) Princeton University shall have the right to take possession of or use any completed or partially completed part of the Work. Princeton University's possession or use shall not be deemed an acceptance of any Work under the Contract.

(b) While Princeton University has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Princeton University's possession or use. This does not relieve the Contractor from fulfilling its obligations under Clause E11. If prior possession or use by Princeton University delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract Price or the time of completion, and the Contract shall be modified in writing accordingly.

CLAUSE E11 ACCEPTANCE AND FINAL PAYMENT

(a) As soon after the completion of the Work required hereunder as is reasonably practical, a thorough examination of the Work will be made by or at the direction of Princeton University. If such Work is found by Princeton University to fully comply with the requirements of this Contract, a statement will be made by Princeton University to the effect that such Work is accepted by Princeton University. By accepting the work, Princeton University does not waive any rights, claims, or remedies, including without limitation claims for latent defects, fraud, or such gross mistakes, as are tantamount to fraud, and warranty or guarantee provisions of this Contract. The final payment will then be made in accordance with the payment provisions of this Contract.

(b) Other than as specifically provided in this Contract, neither payment to the Contractor, utilization of the Work for any purpose by Princeton University, nor any other act or omission by Princeton University shall be interpreted or construed as an acceptance of any Work not strictly in compliance with this Contract.

(c) Acceptance by the Contractor of final payment shall constitute a release of Princeton University from any and all claims that were made or could have been made by the Contractor against Princeton University arising out of or relating to this Contract as of the date of acceptance of that final payment.

SECTION F -- SUBMITTALS

CLAUSE F1 SHOP DRAWINGS, PRODUCT DATA, SAMPLES, CERTIFIED TEST REPORTS, AND CERTIFICATES OF COMPLIANCE

(a) Definitions:

(1) "Shop Drawings" are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or a Subcontractor at any tier, manufacturer, supplier, or distributor to illustrate some portion of the Work.

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- (2) "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (3) "Samples" are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
- (4) A "Certified Test Report" is a document containing a list of the dimensional, chemical, metallurgical, electrical, and physical results obtained from an actual test of the materials involved, and shall certify that the materials meet the requirements of the Contract.
- (5) A "Certificate of Compliance" is a document certifying that the materials, components and equipment covered by the previously submitted Certified Test Report and Product Data have been installed in the Work and that they conform to all the requirements of the Contract.

(b) If the Contract requires Shop Drawings, Product Data, Samples, Certified Tests Report, or Certificates of Compliance, the Contractor shall coordinate and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate approval thereon as evidence of such coordination and review. Shop Drawings, Product Data, Samples, Certified Tests Reports, or Certificates of Compliance submitted to Princeton University or its representatives without evidence of the Contractor's approval may be returned for resubmission. Princeton University or its representatives will indicate its approval or disapproval of the Shop Drawings, Product Data, Samples, Certified Tests Reports, or Certificates of Compliance and if not approved as submitted shall indicate its reasons therefore. Any work done prior to such approval shall be at the Contractor's risk. Approval by Princeton University or its representatives shall not relieve the Contractor from responsibility for any errors or omissions, nor from responsibility for complying with the requirements of this Contract, including all Contract Documents, except with respect to variations described and approved in accordance with paragraph (c) below.

(c) If Shop Drawings, Product Data, Samples, Certified Tests Reports, or Certificates of Compliance show variations from the Contract requirements, the Contractor shall clearly and fully describe such variations, in writing, at the time of submission. If Princeton University approves any such variation(s), an appropriate Contract modification will be issued by Princeton University, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

CLAUSE F2 AS-BUILT DRAWINGS

(a) During the construction phase, the Architect-Engineer may, when authorized by Princeton University, revise the issued-for-construction drawings and issue revised drawings to the Contractor. For plans, and other drawings wherever possible, these revisions will be made to the electronic files with paper copies issued to the Contractor. When field revisions occur, the Contractor shall mark up the appropriate document to indicate the nature and extent of such revisions. The Contractor shall also indicate the precise routing of concealed piping, ductwork, and conduit where the routing deviates from the approved Shop Drawings. The Contractor shall mark up both revisions and deviations as these events occur. Failure by the Contractor to comply with the foregoing shall constitute cause for denial of applicable progress payment.

(b) Within thirty (30) days of the date of Substantial Completion, the Contractor shall furnish the original marked-up field documents and, if available, the corresponding electronic files to the Architect-Engineer. Refer to the Princeton Collaborative System (PCS) for submittal and formatting requirements. The Architect-Engineer will review these documents for accuracy prior to submission to Princeton University.

(c) Failure on the part of the Contractor or a Subcontractor at any tier to fulfill its obligations under subparagraph (b) above shall be just cause for Princeton University to withhold final payment from the Contractor until compliance with the complete requirements of this section is demonstrated to the satisfaction of Princeton University.

CLAUSE F3 OPERATING AND MAINTENANCE MANUALS

(a) If the technical and performance specifications do not require otherwise, the Contractor shall furnish a minimum of three (3) copies of manufacturer's catalogues, maintenance and operating instructions, as well as cuts, diagrams, spare parts list, manufacturer's standard printed installation recommendations, instructions, and start-up procedures of all equipment and machinery provided under this Contract. The manuals shall be bound, divided into systems, indexed by section tabs, and numerically indexed in the front of each binder. Sufficient information shall be furnished in order to describe completely the design basis and operation and maintenance procedures for each complete system including all operating parts. Include small-scale base floor plans for each trade indicating locations of major equipment for each discipline. Each document shall be marked with the Project name as appears in the specifications.

(b) One completed sample binder, assembled and containing all information, shall be submitted to the Architect-Engineer for review and approval prior to preparation and submission to Princeton University of the remainder of the manuals.

CLAUSE F4 WARRANTIES AND GUARANTEES

(a) **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract, the Contractor upon request of Princeton University shall promptly correct all failures or defects in its scope of the Work for a period of one (1) year after the actual date of Substantial Completion, or the date of acceptance of Princeton University, whichever is later. Warranties and guarantees for equipment accepted prior to the date of Substantial Completion shall be in effect for one (1) year after the date of Substantial Completion. Should the Contractor fail to promptly correct any failure or defect, Princeton University may take whatever actions it deems necessary to remedy the failure or defect and the Contractor shall promptly reimburse Princeton University for any expenses or damages it incurs as a result of the Contractor's failure to correct the failure or defect.

(b) The warranties and guarantees set forth in this Clause F4 shall be in addition to all other warranties, express, implied, or statutory. Nothing in this Clause F4 shall be construed to establish a period of limitations with respect to Princeton University's right to bring a claim for defective work under applicable law. In addition, the warranty obligations set forth in this Clause F4 shall survive termination of the Contract, and shall not limit, but shall be in addition to Princeton University's other remedies for defective work.

(c) The Contractor will collect all warranties and submit same to the Architect-Engineer for review and approval. The Contractor shall endeavor in procurement to obtain warranties from Subcontractors and suppliers that run directly for the benefit of Princeton University.

(d) **Warranty Inspection.** The Contractor shall provide services in conjunction with an inspection, approximately 10 months from date of Substantial Completion. Visual inspection shall be made with Princeton University and the Architect-Engineer to determine whether correction of Work is required in accordance with provisions of the Contract Documents.

CLAUSE F5 CONSTRUCTION AND WASTE MANAGEMENT PLAN

Princeton University's goal for the recycling of all eligible materials (post-abatement) is 95%. Accordingly, the Contractor shall submit a Construction & Demolition Waste Management Plan for approval by Princeton University at the beginning of the submittal and review period (or earlier when applicable). This plan shall include, but is not limited to, the following:

- (1) Analysis of the proposed Work site waste to be generated, including the types of recyclable and waste materials generated (by volume or weight);
- (2) A list of each material proposed to be salvaged, reused, or recycled during the Project;
- (3) A list of proposed recycling facilities to be used in the project;
- (4) An outline of proposed project waste management meetings (at a minimum, waste management goals and issues shall be discussed at the pre-construction meeting and regular jobsite meetings);
- (5) Materials handling procedures for removal, separation, storage, and transportation;
- (6) A communication plan for informing subcontractors and crews about the Waste Management Plan, establishing job-site instruction, notification and signage procedures for waste management and providing a methodology for documenting and reporting quantities and types of materials reused, salvaged, recycled, and disposed; and,
- (7) Proof of distribution times, weights, etc from trucks removing debris from the project site.

CLAUSE F6 ATTIC STOCK AND SPARE PARTS

When building attic stock and/or spare parts requirements are specified in the Contract Documents, the Contractor shall (1) comply with such requirements and (2) ensure that Subcontractors comply with such requirements.

SECTION G -- INSURANCE AND INDEMNITY

CLAUSE G1 INSURANCE

(a) Insurance requirements and coverage to be provided at Contractor's expense:

- (1) Prior to beginning any of the Work on the Project or at the time of execution of this Contract, whichever occurs first, the shall establish, maintain and keep in force policies for minimum insurance coverage as set forth below:

Workers Compensation (WC)..... Statutory Minimum*
Employer's Liability (EL) \$500,000 Minimum*

*WC and EL are not required if Contractor is a solo independent contractor.

General Liability (GL): Commercial General Liability including Contractual, Premises Operations, Products and Completed Operations, Independent Contractors/Vendors and Personal Injury, Bodily Injury and Property Damage.

Each Occurrence Minimum coverage limits as specified in the Agreement
Aggregate Minimum coverage limits as specified in the Agreement

Automobile Liability (AL): Automobile Liability insurance is required when use of a vehicle is integral to the performance of the contract or project.

Bodily Injury and Property Damage \$1,000,000 Minimum

Excess Liability (EL): If the dollar value of this Contract exceeds \$500,000, the Contractor will maintain, deliver, and keep in force, at the Contractor's expense, the following excess liability insurance coverage during the performance under the Contract

General Aggregate \$5,000,000 Over Underlying Limits

By requiring such minimum insurance, Princeton University shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor for this Project or under this Contract. The Contractor shall assess its own risks and if deemed to be appropriate and/or prudent, should maintain higher limits and/or broader coverage than that stipulated above. 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.

- (2) All certificates and policies required in this Clause G1 shall evidence insurance written by a carrier authorized to do business in New Jersey and rated at least "A" in Best's Key Rating Guide. In addition to insurance certificates, upon request, the Contractor shall promptly provide to Princeton University a complete copy of all insurance policies providing the coverage required by this Contract.

- (3) The Contractor agrees to comply with the following additional policy requirements –

- (i) "The Trustees of Princeton University, its officers, employees and agents" shall be named as an additional insured in the General Liability and Excess Liability policies specified in subparagraph (a), with respect to any liability resulting from or in any way connected with any activity provided for under this Contract, and said insurance coverage shall be primary as to any other valid and collectible insurance.

- (ii) The Contractor will require all insurance policies that it secures or maintains and that are in any way related to the Work to include clauses stating each insurance carrier will waive all rights of recovery, under subrogation or otherwise, against The Trustees of Princeton University, its officers, employees and agents.

- (iii) To the extent that it is commercially available, and at no additional cost, the Contractor will provide a general aggregate per project endorsement to the general liability and excess liability policies.

- (4) The certificate for Contractor's General Liability insurance shall certify that any policy restrictions or exclusions in the property damage section, except for (i) exclusions included in the standard 1986 ISO policy form and (ii) standard industry accepted pollution and asbestos have been deleted from the policy and that no similar restrictive clauses or exclusions curtailing coverage (as appropriate for the protection of

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Princeton University's interests in the Project) have been included. Any change in coverage described in this subparagraph shall be deemed material, and Contractor shall abide by the notice provision of subparagraph a(6) in connection with such change.

- (5) Certificates evidencing compliance with all requirements of the insurance coverage as indicated above and that include statements thereon that the *"Trustees of Princeton University, its officers, employees, and agents are additional insureds"* and *"Said insurance coverage shall be primary as to any other valid and collectible insurance"* shall be filed with Princeton University's Administrative Representative before the Contractor's Work begins and upon renewal or replacement of the insurance policies until Contractor's Work is completed. To the extent commercially available to the Contractor from its current insurance carrier, insurance policies required under this Clause G1 shall contain a provision that the insurance carrier or its designee must give Princeton University written notice transmitted in paper or electronic format (i) 30 days before coverage is non-renewed by the insurance carrier and (ii) within 10 business days after cancellation of coverage by the insurance carrier. In addition, if any insurance policy required under this Clause G1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Contractor shall give Princeton University prompt written notice upon actual or constructive knowledge of such condition.
- (6) The Contractor shall not enter upon or continue the performance of the Work unless the Contractor is and remains insured in accordance with the above requirements unless waived by mutual agreement by Princeton University and Contractor. In accordance with the provisions of Clause G2 hereof, the Contractor shall indemnify Princeton University for any loss suffered by Princeton University for failure of the Contractor to be so insured.
- (7) Contractor shall not permit any Subcontractor to enter upon or continue the performance of the Work unless such Subcontractor is and remains insured in accordance with the above requirements and submits a certificate of insurance in accordance with paragraph (a)(6) above to the Contractor unless waived by mutual agreement by Princeton University and Contractor. In accordance with the provisions of Clause G2 hereof, Contractor shall indemnify Princeton University for any loss suffered by Princeton University for the failure of any such Subcontractor to be so insured.
- (8) Losses or expenses not compensated by the foregoing insurance, which are due to the negligence or fault of the Contractor, or its Subcontractors, agents or employees shall be payable solely by the Contractor.
- (9) Princeton University shall not be liable to Contractor or its agents, employees or assigns for any loss or damage covered by the insurance policies described above.
- (10) If Princeton University requires insurance coverage or limits in excess of those shown above, the Contractor will arrange for such additional insurance to the extent that it is reasonably available on normal commercial terms.

(b) All Risk Coverage.

- (1) **All Risk Coverage to be Provided by Princeton University.** Unless otherwise indicated in the Agreement, Princeton University shall provide and maintain All Risk Insurance coverage for the Project in accordance with the following:
 - (i) Princeton University will maintain and keep in full force and effect at Princeton University's expense, property insurance for the full replacement cost of the Project against all risks normally insurable covering the interests of Princeton University, the Contractor, and all subcontractors, as their respective interests may appear on the building, structure, materials and equipment entering into or used in the performance of the Work, while in transit, stored on-site, or stored off-site to the full insurable value thereof. This insurance shall include "all risk" insurance for physical loss or damage, including flood, earthquake, theft, vandalism and malicious mischief and all applicable soft costs. The deductible shall not be greater than \$10,000.
 - (ii) The Contractor shall pay all deductible amounts and shall indemnify Princeton University, in accordance with the provisions of Clause G2 hereof, against claims for payment of a policy deductible made in the event of any occurrence giving rise to a claim on the insurance policy except where such occurrence is or was caused by the sole negligence of Princeton University, in which case the University shall be responsible for the deductible amount.

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- (iii) Tools, supplies, materials, and equipment owned and used by the Contractor or Subcontractors that are not intended to be a permanent part of the building are specifically excluded. The Contractor will maintain and keep in force, and not as a Cost of Work, insurance covering the interest of the Contractor and subcontractor for tools, supplies, materials, and equipment not intended as permanent structures of the Project.
 - (iv) Princeton University will provide evidence of such insurance before the commencement of Work if requested by the Contractor. Princeton University will endeavor to give 30 days prior written notice to the Contractor if the policy is cancelled or allowed to expire or if there are any material changes in the policy related to the project.
- (2) **All Risk Coverage to be provided by the Contractor.** If the Agreement indicates that the Contractor is responsible for providing All Risk insurance coverage for the Project, this subparagraph shall supersede subparagraph (b)(1) above and the Contractor shall then –
- (i) Purchase, maintain and keep in force, property insurance for the full replacement costs of the Project against all risks normally insurable covering the interest of the University, the Contractor, subcontractors, as their respective interests may appear on the building, structures, materials and equipment entering into or used in the performance of the Work, while in transit, stored on-site, or stored off-site to the full insurable value thereof. This insurance shall include “all risk” insurance for physical loss or damage including flood, earthquake, theft, vandalism, and malicious mischief. All applicable soft costs and coverage for resultant damage from design errors and faulty workmanship shall be included—the coverage to be in force until the final certificate of occupancy or acceptance by Princeton University with 30 days prior written notice if the policy is cancelled or allowed to expire or if there are any material changes in the policy related to the project.
 - (ii) The Contractor shall be responsible for all insurable losses within the policy's deductible.
 - (iii) Evidence of this coverage shall detail any “non-standard exclusions” as well as the deductible per loss, and shall be filed with Princeton University's Facilities Procurement Office.

CLAUSE G2 INDEMNIFICATION AND DEFENSE

(a) **Indemnification and Defense.** To the fullest extent permitted by law, Contractor shall indemnify and defend (with counsel satisfactory to the parties indemnified) Princeton University, its trustees, officers,, employees and agent (collectively the “Covered Parties”) from and against all claims, damages, losses and expenses arising out of (i) the performance or nonperformance of the Work by the Contractor, any Subcontractor, or anyone for whose acts they are liable, or (ii) the Contractor’s performance or nonperformance of its obligations under the Contract, including but not limited to claims, damages, losses or expenses that (a) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, and (b) regardless of whether such claims are caused in part by the negligence or other fault of the Covered Parties or any of them,; provided, however that this indemnification shall not apply if such claims arise from or are caused by the sole negligence or other fault of the Covered Parties. The terms “damages,” “losses” and “expenses” shall include all costs and expenses of whatever nature or type, including judgments, arbitration awards, settlements, court costs, litigation expenses, and attorneys’ fees in connection therewith. The parties acknowledge and agree that the foregoing indemnification obligation shall not be limited by applicable workers compensation laws. Limits of liability provided in any applicable insurance coverage provided by the Contractor pursuant to the Contract, or otherwise, shall not diminish or limit the Contractor’s indemnification obligations.

(b) **Employee Claims.** Without limiting in any way the breadth of this Clause G2, Contractor specifically acknowledges its obligation to indemnify and defend the Covered Parties from and against any claim which may be asserted by or on behalf of any employee of Contractor, Subcontractors and suppliers alleging bodily injury, sickness, disease or death, or injury to or destruction of tangible property sustained by said employee in connection with the Work, unless caused by the sole negligence of the Covered Parties.

(c) **Dispute as to Defense Obligation.** Unless Princeton University and the Contractor agree otherwise, they shall apply the dispute resolution provisions of this Contract to any dispute between them relating to whether the Contractor is obligated to provide a defense pursuant to this Clause G2, and they shall not presume that a resolution of this issue should be decided concurrent with or await a final adjudication or settlement of the underlying claim. On the contrary, all reasonable efforts shall be made to resolve such issue as soon as possible after it arises.

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(d) **Notice.** Princeton University shall give Contractor prompt notice of any claim asserted against any Covered Party which Princeton University believes falls within this Clause G2, and shall, at all times, provide reasonable cooperation in the defense and resolution of any such claim.

(e) **Application of Clause.** The parties acknowledge and agree that this Clause G2 applies to and governs all of the Contractor's indemnification obligations under this Contract, including without limitation the indemnification obligations set forth in Clause B4(e), Clause B13(g), Clauses G1(a)(7) and (8), Clause G1(b)(1), and H8(d).

(f) **Survival.** All of Contractor's indemnity and defense obligations under this Contract, including but not limited to its obligations under this Clause G2, shall survive termination of this Contract.

CLAUSE G3 BONDS

Performance and Payment Bonds are not required under this Contract. Unless otherwise approved in advance by Princeton University, the Contractor shall not obtain bonds, nor shall the Contractor cause a Subcontractor at any tier to obtain bonds.

SECTION H -- LEGAL REQUIREMENTS

CLAUSE H1 COMPLIANCE WITH LAWS

(a) Contractor shall control the manner and means of the Work so as to perform the Work in a reasonably safe manner and comply fully with all applicable building and safety codes, regulations and construction requirements imposed or enforced by any federal, state or local governmental agencies, including all applicable Occupational Safety and Health Administration (OSHA) requirements. No acts or statements by Princeton University during the performance of the Work shall limit the Contractor's sole responsibility for complying with all legal requirements, including all applicable building and safety codes, regulations and construction requirements imposed or enforced by any federal, state, or local governmental agencies.

(b) Contractor shall immediately advise Princeton University of any violation notice issued to them by any authority having jurisdiction and shall provide Princeton University a copy of said violation notice. Contractor shall appear at hearings, proceedings or in court with respect to such compliance or with respect to violations or claimed violations of legal requirements, and pay all legal fees, fines and penalties incurred by or imposed upon Princeton University relating to Contractor's noncompliance, violations or claimed violations.

CLAUSE H2 APPLICABLE LAW

All disputes regarding the construction, interpretation and the parties' obligations under this Contract shall be governed by the laws of the State of New Jersey, notwithstanding any of that state's laws to the contrary. The venue and jurisdiction for the resolution of any such disputes shall be Mercer County, New Jersey.

CLAUSE H3 CLAIMS, CLAIM PROCEDURES

(a) In order to provide Princeton University with the information necessary to evaluate the Contractor's entitlement to a claim and the quantum of the claim, and to provide Princeton University with the opportunity to take action to avoid or mitigate additional costs or delays if Contractor would otherwise be entitled to an increase in the Contract Price or an extension to the Contract Time, the Contractor shall give prompt written notice to Princeton University of any circumstances that give rise or may give rise to any claim by the Contractor, including without limitation, the following:

- (1) an increase in the Contract Price;
- (2) an extension in the Contract Time to perform;
- (3) breach of contract by Princeton University;
- (4) delay or suspension of the Work, subject to the provisions of Clause E8;
- (5) compensation for the value of authorized Work performed outside the scope of the Contract Documents; and,
- (6) a Disputed Change Order.

(b) **Contractor's Notice of Claim.** The Contractor's notice of claim shall set forth: (i) the reasons for which the Contractor believes additional compensation will or may be due or additional time should be granted; (ii) the nature of the costs involved; (iii) Contractor's plan for mitigating such costs; and (iv) if ascertainable, the amount of the potential claim. The Contractor shall give such notice promptly, and in any event as specified in this Contract, so as to provide Princeton University an opportunity to remedy any breach or to remove any cause for cost escalation or delay.

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(c) **Waiver of Claim.** The Contractor shall have no claim for damages against Princeton University or the Project, and shall be conclusively deemed to have waived any such claim, unless notice of such claim has been given in accordance with this Clause H3 within five (5) business days after the date on which the Contractor has knowledge, or should reasonably have knowledge, of the circumstances giving rise to such claim. Any claims shall be made pursuant to the procedures established by this Clause H3.

CLAUSE H4 DISPUTE RESOLUTION

(a) Princeton University and Contractor desire that this Contract operate between them fairly and reasonably. If a claim, controversy or dispute arises between Princeton University and Contractor, or one party perceives the other as acting unfairly or unreasonably, then Princeton University's Representative and Contractor's Representative shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of the issue.

(b) If such Representatives are unable to resolve any such claim, controversy, or dispute, and either party desires to proceed with its claim, then that party shall give written notice to the other party that the process set forth below is being invoked. Such notice shall identify with reasonable particularity the nature of the claim, controversy, or dispute. Neither Princeton University or the Contractor may pursue any claim, controversy or dispute except as set forth below in this Clause H4.

(c) If the claim, controversy or dispute is not resolved within fifteen (15) business days after the date of such written notice under subparagraph (b) above (or such longer time agreed to by both parties), the matter shall be referred for possible resolution to senior officers of each party (or their designees).

(d) If such officers or designees are unable to resolve the claim, controversy or dispute within fifteen (15) business days after it is referred to them (or such longer time agreed to by both parties), they shall, upon demand by either party, within ten (10) business days thereafter (or such longer time agreed to by both parties), agree upon and retain (with expenses to be borne equally by the parties) a neutral individual to act as a mediator. (If the parties cannot agree upon a mediator within the time period, the selection shall be made by the American Arbitration Association upon the request of either party, with the administrative costs for such selection to be borne equally by the parties.) The mediation shall be conducted within sixty (60) days of the appointment of the mediator (unless the parties agree to a later date), and shall be conducted confidentially in an effort to settle the claim, controversy or dispute...

(e) If the claim, controversy or dispute is not settled within ten (10) business days after the first day of mediation (or such longer time agreed to by both parties), either party may initiate litigation in the United States District Court for the District of New Jersey that covers Mercer County, or in the Superior Court of the State of New Jersey for Mercer County, and Contractor may not initiate litigation in any other forum; however, neither party may initiate litigation against the other without first utilizing the process set forth in this Clause H4 except for seeking a temporary restraining order and/or a preliminary injunction. To the extent permitted by law, the parties agree that any statute of limitations applicable to any claim, controversy, or dispute shall be tolled from the date that such notice is sent under subparagraph (b) above until the first day upon which the parties are permitted to initiate litigation, as set forth in subparagraph (f) below.

(f) Princeton University and Contractor agree that this Clause H4 shall apply to all claims, controversies, and disputes arising between them, including those involving other parties that have entered into contracts with Princeton University or the Contractor containing provisions substantially similar to this paragraph. In the event of such a claim, controversy or dispute involving third parties bound by such provisions, the procedure set forth above shall be interpreted and applied so as to encompass all such parties to the dispute. (For example, notice must be given to all parties, all parties must agree to extensions of time, and all parties must share proportionately the costs of the mediator referred to above.)

CLAUSE H5 WORK TO CONTINUE DURING DISPUTES

(a) Pending final resolution of a claim, controversy or dispute, the Contractor shall proceed diligently with performance of the Contract and Princeton University shall continue to make payments in accordance with the Contract, subject to subparagraphs (b) to (d) below.

(b) If Princeton University and the Contractor are unable to agree as to whether or not a change has occurred that would entitle the Contractor to an adjustment to the Contract Price and/or to the Contract Time (hereinafter "Disputed Work"), then the Contractor shall proceed expeditiously to perform the Disputed Work upon receipt of a written directive from Princeton University to do so. The Contractor shall then maintain a separate record of all of its actual costs incurred to perform the Disputed Work on a daily basis, and the Contractor may submit a claim under Clause H3 above.

(c) If the Princeton University and the Contractor agree that a change has occurred, but are unable to agree as to the adjustment to the Contract Price or the Contract Time resulting from the change (the "Changed Work"), then the Contractor shall proceed expeditiously to perform the Changed Work upon receipt of a written directive from Princeton University to do

so. The Contractor shall then maintain a separate record of all of its actual costs incurred to perform the Changed Work on a daily basis, and the Contractor may submit a claim under Clause H3 above.

(d) In order to avoid delays to the Project, the Contractor shall continue in all instances to perform all of the Work, including without limitation all Disputed Work and all Changed Work, and shall not delay, slow down or refuse to perform any of the Work pending the resolution of any or all claims and disputes; subject, however, to a reservation of rights by the Contractor and Princeton University against each other with regard to all such claims and disputes provided that timely written notice thereof was provided by each party to the other in each instance in accordance with the Contract.

(e) The records required to be maintained under subparagraphs (c) and (d) above are for the sole purpose of documenting the performance of the work and shall not be determinative of the amount of such change, if a change occurred, unless and until the parties agree that a change has occurred and that the work is to be performed on a time and material basis.

CLAUSE H6 RIGHTS AND REMEDIES

Except as otherwise provided in this Contract (including without limitation Clause H4 above), the duties and obligations imposed upon Contractor and Princeton University, and the rights and remedies available to Contractor and Princeton University, as set forth in this Contract shall be in addition to and not a limitation upon any other duties and obligations imposed upon the parties by law and any other rights and remedies available to the parties at law or in equity. The rights and remedies of Princeton University set forth in this Contract shall not give rise to any duty on the part of Princeton University to exercise any such rights or remedies for the benefit of Contractor or any other person or entity, including a surety, if any.

CLAUSE H7 NO WAIVER

No consent or waiver, express or implied, by either party to this Contract with respect to any breach by the other of any obligations hereunder shall be deemed or construed to be a consent or waiver with respect to any other breach by such party hereunder. Failure on the part of either party to complain of any act or failure to act on the part of the other party or to declare the other party in breach hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

CLAUSE H8 STATUTE OF LIMITATIONS

The Contractor and the Contractor's surety, if any, agree that for purposes of any statute of limitations which may govern Princeton University's right to assert a claim or bring suit against the Contractor or the Contractor's surety for anything arising out of this Contract, such statute shall not begin to run until at least sixty (60) days after Substantial Completion of the Project or until the date on which Princeton University knew the basis for the claim against the Contractor, whichever is later.

CLAUSE H9 INVOICES

The Contractor's request for payment shall consist of an invoice and all documents supporting the request for payment. Refer to the appropriate payment clause for the actual requirements:

- Clause J2, Payments Under Fixed-Price Construction Contracts
- Clause K2, Payments Under Time-and-Materials Contracts
- Clause L6, Payments Under GMP Contracts
- Clause M6, Payments Under CPFF Contracts

CLAUSE H10 RELEASE/LIENS

(a) **Partial Waiver and Release of Liens.** Contractor hereby agrees and acknowledges that its rights to file a construction lien pursuant to the Construction Lien Law (PL 1993, c. 318, section 37) for work, services, material or equipment and its rights under any construction lien which may be filed, and any amendments thereto, are hereby waived and released in consideration for and to the extent of all payments received by Contractor hereunder.

(b) **Inclusion of Lien Provision in Subcontract.** Contractor agrees that it will cause all contracts with and among (i) Subcontractors, (ii) suppliers to Contractor and Subcontractors, and (iii) equipment lessors to Contractor and Subcontractors to contain a waiver and release of liens clause consistent with paragraph (a) above, so that all (i) Subcontractors, (ii) suppliers to Contractor and Subcontractors, and (iii) equipment lessors to Contractor and Subcontractors acknowledge that their rights to file a construction lien pursuant to the Construction Lien Law (PL 1993, c. 318, section 37) for work, services, material or equipment, and their rights under any construction lien which may be filed, and any amendments thereto, are waived and released in consideration for and to the extent of all payments received by them.

(c) **Delivery of Releases and/or Affidavits.** Upon the request of Princeton University, or as required by the applicable "Payments" clause, Contractor agrees to deliver, within five (5) business days of the request, written waivers and releases of liens in form and substance satisfactory to Princeton University executed by Contractor and by all (i) Subcontractors, (ii)

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suppliers to Contractor and Subcontractors, and (iii) equipment lessors to Contractor and Subcontractors stating the amounts of all payments received by them and confirming the waivers and releases referenced in paragraphs (a) and (b) above. If such releases and/or affidavits are requested, no payment under this Contract shall become due and payable until Princeton University has received them in complete and proper form. Such releases shall be in the forms set forth in the Exhibits attached to the end of this Section, as follows:

Exhibit A	Contractor's Partial Release and Certificate of Partial Payment
Exhibit B	Subcontractor's Partial Release and Certificate of Partial Payment
Exhibit C	Contractor's Final Release and Certificate of Final Payment
Exhibit D	Subcontractor's Final Release and Certificate of Final Payment

(d) **Discharge, Indemnification and Withholding of Payment.** Provided that Princeton University has made payments to the Contractor in accordance with the provisions of this Contract, including permitted deductions and withholding, Contractor shall, upon request by Princeton University, at Contractor's own expense, secure the prompt discharge of any lien filed in connection with the Work (by posting a suitable bond pursuant to N.J.S.A. 2A:44A-31 or otherwise). Furthermore, Contractor agrees to indemnify Princeton University, in accordance with the provisions of Clause G2 hereof and as further set forth herein, for all costs, expenses and payments incurred as a result of the filing of a lien in connection with the Work, unless the filing was occasioned by a material breach by Princeton University of its obligations under this Contract. Upon the filing of a lien, Princeton University may withhold from Contractor all moneys that Princeton University reasonably may be compelled to pay in discharging such lien, including all costs and reasonable attorneys fees. The provisions of this paragraph (d) shall survive the completion of the Work, its final acceptance, and the making of final payment to the Contractor.

CLAUSE H11 TAXES

Princeton University is a non-profit educational institution exempt from paying certain federal, state, and local taxes, including New Jersey Sales Taxes (Exemption No. EO-210-634-501) and New Jersey Excise Taxes (Exemption No. A-110839). Pursuant to N.J.S.A. 54:32B-8.22 this exemption applies to all purchases by contractors or repairmen of materials, supplies or services for the exclusive use in erecting structures or building on, or otherwise improving, altering or repairing its real property. Contractor shall utilize the exemption to the fullest extent possible. Contractor shall not be reimbursed for any taxes subject to the aforementioned exemptions regardless of whether Contractor has paid such taxes.

CLAUSE H12 ASSIGNMENT

(a) Except as otherwise provided herein, neither party to this Contract shall assign this Contract or sublet it as a whole without the written consent of the other; nor shall Contractor assign any moneys due or to become due to it hereunder, without the previous written consent of Princeton University. Princeton University may, however, assign this Contract to any other party or entity, provided Princeton University continues to be responsible for the performance by said assignee of all undertakings of Princeton University in this Contract. Subject to the foregoing, this Contract shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

(b) Contractor hereby assigns to Princeton University (and its assigns) all its interest in any subcontract and purchase orders now existing or hereinafter entered into by Contractor for performance of any part of the Work, which assignment will be effective only upon acceptance by Princeton University in writing and only as to those subcontract and purchase orders which Princeton University designates in said writing. It is agreed and understood that Princeton University may accept assignment at any time during the course of construction prior to final completion, including but not limited to the time of a termination for convenience or a termination for default of the Contractor. It is further agreed that all subcontract and purchase orders shall provide that they are freely assignable by Contractor to Princeton University and assigns. It is further agreed and understood that such assignment is part of the consideration to Princeton University for entering into this Contract with Contractor and may not be withdrawn prior to final completion. In the event that Princeton University accepts the assignment of any such subcontracts or purchase orders as set forth above, Contractor shall remain liable to such subcontractors and suppliers (i) for any pre-assignment breaches by Contractor of its obligations to such subcontractors or suppliers and (ii) for any monies due by Contractor to any such subcontractors or suppliers for which Princeton University is not otherwise responsible to Contractor; and further provided that any acceptance of an assignment of a subcontract or purchase order by Princeton University shall not include or constitute an acceptance of liability to any such subcontractor or supplier for such pre-assignment breaches or monies due by Contractor.

CLAUSE H13 PERMITS

(a) Princeton University is responsible to obtain the building permit and for making application and paying for the Temporary Certificate of Occupancy (TCO) and/or the Certificate of Occupancy (C of O) only.

(b) The Contractor is responsible for all sub code permits and all other permit and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

CLAUSE H14 TERMINATION

(a) If Contractor shall:

- (1) fail to commence the Work in accordance with the provisions of this Contract or fail to perform the Work to completion in a diligent, efficient, timely, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents (including the Scheduled Milestone Dates and/or the Scheduled Completion Date);
- (2) fail to use an adequate amount or quality of personnel or equipment to complete the Work without undue delay;
- (3) fail to perform any of its obligations under the Contract Documents; or
- (4) fail to make proper payment to a Subcontractor, supplier, or laborer; then

Princeton University shall have the right, if Contractor shall not cure any such default within three (3) business days of receipt of written notice by the Contractor, to:

- (1) Terminate the Contractor's right to proceed under this Contract;
- (2) Take possession of and use all of or any part of Contractor's equipment, materials, supplies and other property of any kind used by Contractor in the performance of the Work, and to use such property in the completion of the Work; or
- (3) Complete the Work in any manner it deems desirable, including engaging the services of other parties therefore. Any such act by Princeton University shall not be deemed a waiver of any other right or remedy of Princeton University. If after exercising any such remedy, the cost to Princeton University of the performance of the balance of the Work is in excess of that part of the Contract Price which has not been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse Princeton University for such excess amount.

(b) No action taken by Princeton University hereunder shall affect any of the rights and remedies of Princeton University granted by this Contract or by law, or relieve Contractor from any consequences or liabilities arising from its acts or omissions.

(c) It is recognized that if Contractor files for bankruptcy, or is adjudged a bankrupt, or makes a general assignment for the benefit of its creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Contract. Accordingly, upon the occurrence of any such event, Princeton University shall be entitled to request from Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Princeton University to terminate this Contract and to invoke the accompanying right set forth above in paragraph (a). Pending receipt of adequate assurance of performance and actual performance in accordance therewith, Princeton University shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back charged against Contractor.

(d) Princeton University hereby reserves the right to terminate this Contract for convenience at any time and for any reason upon written notice to Contractor, effective immediately, unless otherwise provided in said notice. Within thirty (30) calendar days of any such termination, Princeton University shall pay as the sole amount due to Contractor in connection with this Project:

- (1) sums due for Work performed to date including allowable profit and overhead; and
- (2) reasonable costs of termination.

(e) In the event of a termination for convenience by Princeton University, Contractor shall remain liable to Princeton University for (i) defective work performed prior to the termination (whether discovered before or after termination), (ii) late completion damages to the extent of the delays to the critical path of the Project for which Contractor was responsible as of the date of the termination, and (iii) any other damages that survive a termination for convenience.

(f) Upon the determination by a court that termination of Contractor or its successor in interest pursuant to paragraphs (a) or (c) was wrongful, such termination will be deemed converted to a termination for convenience such that Contractor's remedy for wrongful termination shall be limited to the recovery of the payment permitted for termination for convenience as set forth in paragraph (d) and Contractor's remaining obligations shall be as set forth in paragraph (e).

CLAUSE H10 – EXHIBITS

EXHIBIT A - CONTRACTOR'S PARTIAL RELEASE AND CERTIFICATE OF PARTIAL PAYMENT

With reference to Application for Payment No. _____ dated _____ in the amount of \$ _____ submitted under Contract No. _____ as amended by and between The Trustees of Princeton University ("Princeton University") and _____ ("Contractor") for the construction of _____ (the "Project"), Contractor hereby certifies and represents that it has received full payment for, and that it has made full payment to all of its subcontractors and materialmen for all costs, charges and expenses incurred by it or by them on its behalf, for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with the Work under said Contract through and including the effective date of Contractor's last application for payment (excluding retainage).

In consideration of, and conditioned upon the payment to Contractor of the sum of \$ _____ under the aforementioned Application for Payment, Contractor hereby unconditionally releases and forever discharges Princeton University and its respective officers, directors, agents, and representatives, and Princeton University's premises and property, from all claims for payment, liens and obligations of every nature, whether choate or inchoate and including without limitation all mechanics' and materialmen's liens and other liens and claims now, or which in the future may be owned, claimed or asserted by Contractor against the aforesaid land and improvements (including personal property related thereto) arising out of or in connection with the performance of the said Contract and all amendments thereto up to the date hereof (other than retainage).

Executed this date: _____ by _____ /Form signed and dated by Contractor/

EXHIBIT B - SUBCONTRACTOR'S PARTIAL RELEASE AND CERTIFICATE OF PARTIAL PAYMENT

With reference to Subcontractor Application for Payment No. _____ dated _____ in the amount of \$ _____ submitted under Subcontract No. _____ by and between _____ ("Subcontractor") and _____ ("Contractor") for _____ work for the construction of _____ (the "Project"), the undersigned Subcontractor hereby certifies and represents that it has received full payment for, and that it has made full payment to all of its subcontractors and materialmen for all costs, charges and expenses incurred by it or by them on its behalf, for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with the Work under said Subcontract through and including the effective date of Subcontractor's last application for payment (excluding retainage).

Subcontractor further certifies that to its best knowledge and belief, each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work labor, services materials and equipment supplied to the foregoing premises and/or used by them in connection with the Subcontractor's work under said Subcontract, up to the effective date of Subcontractor's last application for payment (excluding retainage). Prior to the date of this Release, the Undersigned further certifies that it has received payments from the Contractor that total \$ _____.

In consideration of, and conditioned upon the payment to Subcontractor of, the payment of the sum of \$ _____ under Subcontractor Application for Payment No. ____, the Subcontractor hereby unconditionally releases and forever discharges the Princeton University and the Contractor and their affiliates and their respective officers, directors, agents, and representatives and Princeton University's premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of the said Subcontract and all amendments thereto on account of materials and/or labor furnished up to the date hereof (other than retainage).

Executed this date: _____ by _____ /Form signed and dated by Subcontractor/

EXHIBIT C - CONTRACTOR'S FINAL RELEASE AND CERTIFICATE OF FINAL PAYMENT

With reference to Contract No. _____ as amended, by and between The Trustees of Princeton University ("Princeton University") and _____ ("Contractor") for construction of _____ (the "Project"); Contractor hereby certifies and represents that, conditioned upon payment of the sum of \$ _____ pursuant to its Application for Final Payment dated _____, it has received full payment of all costs, charges and expenses incurred by it or on its

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behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with its Work under said Contract.

In consideration of and conditioned upon the payment of the final payment as set forth above, Contractor hereby unconditionally releases and forever discharges Princeton University and its officers, directors, agents and representatives, and Princeton University's premises and property, from all claims and causes of action, and all mechanics' and materialmen's liens and other liens, that now or that in the future may be owned, claimed or asserted by Contractor against Princeton University, or the aforesaid land and improvements (including personal property related thereto), arising out of or in connection with the performance of the said Contract and all amendments thereto.

As additional consideration for the final payment, Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless Princeton University from and against all costs, losses, damages, claims, causes of action, judgments and expenses, including attorney's fees, arising out of or in connection with any claims or causes of action for payment or any liens asserted against Princeton University, or the aforesaid land and improvements (including personal property related thereto), which arise out of the performance of the work under the Contract and which may be asserted by the Contractor or any of its subcontractors, sub-subcontractors or materialmen of any tier thereof. As additional consideration for the final payment aforementioned, Contractor hereby unconditionally releases and forever discharges Princeton University from all claims for payment and all other claims and causes of action of every nature, known or unknown, arising out of or in connection with the performance of the said Contract.

This release and discharge shall not apply to claims that Contractor may have against Princeton University for contribution or indemnity (if any) based upon third party claims asserted against Contractor for personal injury or damage to property asserted after the date hereof. Contractor further declares that it has made proper payment of all monies due to all of its employees, subcontractors and suppliers of labor, materials, and/or equipment, and agrees to indemnify and hold Princeton University harmless from any claim or demand it might suffer by reason of failure of this certification.

The foregoing shall not relieve Contractor of its obligations under the provisions of said Contract, as amended, which by nature survive completion of the Work including without limitation, warranties, guarantees, and indemnities.

Given under our hand and seal this date: _____ by _____/Form signed and dated by Contractor/

EXHIBIT D - SUBCONTRACTOR'S FINAL RELEASE AND CERTIFICATE OF FINAL PAYMENT

With reference to Subcontract No. _____ as amended, by and between _____ ("Subcontractor") and _____ ("Contractor") for _____ work for the construction of _____ (the "Project"), the undersigned Subcontractor hereby certifies and represents that conditioned upon full payments of the sum of \$ _____ (the "final payment") pursuant to Subcontractor Application for Payment No. _____ dated _____ in the amount of \$ _____ it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with its work under said Subcontract.

The undersigned Subcontractor further certifies that to its best knowledge and belief, each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with the Subcontractor's work under said Subcontract. Prior to the date of this Release, the Undersigned further certifies that it has received payments from the Contractor which total \$ _____.

In consideration for the payment of the final payment as set forth above, the Subcontractor hereby unconditionally releases and forever discharges Princeton University and the Contractor and their affiliates and their respective officers, directors, agents, and representatives and Princeton University's premises and property from all claims, causes of action, liens and obligations of every nature arising out of or in connection with the performance of the said Subcontract and all amendments thereto. This release and discharge shall not apply to claims that Subcontractor may have against Princeton University or Contractor for contribution or indemnity (if any) based upon third party claims asserted against Subcontractor for personal injury or damage to property asserted after the date hereof.

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As additional consideration for the final payment, the Subcontractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless Princeton University and Contractor from and against all costs, losses damages, claims, causes of action, judgments and expenses, including attorney's fees arising out of or in connection with claims against Princeton University or Contractor which claims arise out of the performance of the work under the Subcontract and which may be asserted by the Subcontractor or any of its suppliers, subcontractors of any tier or any of their representatives, officers, agents or employees.

The foregoing shall not relieve the Subcontractor of its obligations under the provisions of said Subcontract, as amended, which by nature survive completion of the Work including without limitation, warranties, guarantees, and indemnities.

Executed this date: _____ by /Form signed and dated by Subcontractor/

SECTION I -- MISCELLANEOUS PROVISIONS

CLAUSE I1 NOTICES

All notices to be given hereunder shall be in writing, and may be sent or delivered by (1) depositing the same in any international overnight delivery system addressed to the party to be notified,, (2) commercial messenger service, (3) facsimile, (4) hand delivery to such party or (5) US mail. Notice deposited in the mail in accordance with the provisions hereof shall be effective and deemed to have been given (unless otherwise extended in such notice) on the third regular business day following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties hereto shall be sent to the Princeton University or Contractor Administrative Representative identified in the Agreement. The parties hereto shall have the right to change their respective addresses for receipt of notices hereunder by written notice to the others specifying the new address.

CLAUSE I2 CAPTIONS AND HEADINGS

The captions and headings contained in the Contract Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit, or cast light upon the interpretation of the provisions to which they refer.

CLAUSE I3 NO THIRD PARTY BENEFICIARIES

Nothing contained in this Contract shall create any contractual obligation running from Princeton University to any Subcontractor of Contractor. Nothing contained in this Contract is intended to create third party beneficiary rights in any third party; provided, however, that the parties acknowledge and agree that Princeton University is an intended third party beneficiary of Contractor's subcontracts with Subcontractors as more fully set forth in Clause D2 above.

CLAUSE I4 OWNERSHIP AND USE OF DOCUMENTS

All documents, including without limitation, all documents, work product and records in any medium (including tape recordings) prepared by or on behalf of the Contractor in the performance of its services under the Contract shall become the property of Princeton University, and Princeton University shall be entitled to use them in any way it desires in connection with the Project. The Contractor shall also have the right to use such documents but only in connection with this Project. To the extent that the documents and work product prepared by or on behalf of the Contractor incorporate any confidential or proprietary information of Princeton University (as designated pursuant to Clause I7), the Contractor shall not disclose such information to any third party without Princeton University's prior written consent. At any time upon demand by Princeton University, the Contractor shall furnish, or collect and make available, to Princeton University (or its designees, agents or representatives) a complete set of all documents and work product prepared or obtained by Contractor as of the date of such demand. Princeton University (or its designees, agents or representatives) shall at its own expense be entitled to inspect, review, and copy any such documents on the Site. In the event of Contractor's failure to comply with Princeton University's demand hereunder, the parties hereby agree that any remedy at law would be inadequate and Princeton University shall be entitled to appropriate injunctive and other equitable relief, including without limitation the remedy of specific performance.

CLAUSE I5 RETENTION OF DOCUMENTS ON SITE

Contractor shall maintain at the Site, on a current basis, all documents (whether hardcopy or electronic) and samples which arise out of this Contract or the Work, including all design documents, shop drawings, samples, purchase orders, subcontracts, documents identifying materials, equipment, applicable handbooks, and commercial and technical standards and revisions thereto, all of which shall be the property of Princeton University. Prior to final payment, all the original documents (whether hardcopy or electronic) and samples shall be delivered to Princeton University, and Contractor (at its sole expense) may make and keep a copy of the documents and any extra samples.

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CLAUSE 16 CONTRACTOR'S RECORDS/RIGHT TO AUDIT

The Contractor is required to retain records which shall include, but not be limited to, copies of all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, policies, procedures, accounting records and other data, regardless of type and regardless of whether such items are in written form, in the form of electronic data, or in any other form, which document the Project, its design, and its construction, and all costs relating thereto, and that in Princeton University's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Contract. The Contractor shall retain all records relating to this Contract until the expiration of seven (7) years after final payment is made under this Contract or for any longer period of time as may be required by law or good business practice, or six (6) months after final resolution (by non-appealable judgment or settlement) of any disputes, whichever may be later. Upon the request of Princeton University, and by no later than three (3) days from written notice, the Contractor shall make its records available during normal business hours to Princeton University, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, Princeton University, and its authorized representative(s) shall be entitled to inspect, examine, review, copy, and audit the Contractor's records at its own expense, within adequate work space at the Contractor's facilities. Failure by the Contractor to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by Princeton University to the Contractor pursuant to the Contract.

CLAUSE 17 CONFIDENTIAL INFORMATION

In the course of Contractor's performance of its services hereunder, Princeton University may make available to Contractor access to certain trade secrets and other confidential engineering, technical and business information. So long as Princeton University identifies said information as confidential and to the extent that such information remains confidential information available to others only with the consent of Princeton University, or is not generally available to the public from other sources, Contractor shall maintain such information in strict confidence and shall not disclose any of such information to others, including its employees, except to the extent necessary to enable Contractor to carry out its Work. Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed hereunder, to maintain said information in strict confidence. Contractor agrees to be liable for any breach of this confidentiality obligation by any of its Subcontractors or their respective employees or representatives. Contractor also agrees that, in the event of any breach of this confidentiality obligation, Princeton University shall be entitled to equitable relieve, including injunctive relief and specific performance, in addition to all other rights and remedies otherwise available. The rights and obligations of the parties under this Clause 17 shall survive any termination of the Contract. At Princeton University's request, Contractor and any of its Subcontractors and their employees or agents shall execute Princeton University's standard form of nondisclosure agreement.

CLAUSE 18 EQUAL OPPORTUNITY EMPLOYER

Princeton University is an Equal Opportunity Employer. Pursuant to Executive Orders 11246 and 11375, Section 503 of the Rehabilitation Act of 1973 and Section 402 of the Vietnam-Era Veterans Readjustment Act of 1974, Princeton University has developed Affirmative Action Plans that have been filed with and approved by the U.S. Department of Labor's Office of Federal Contract Compliance Programs, and are available for review upon request. The Contractor (and subcontractors, if applicable) shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Contractor also warrants that it will comply with all applicable executive orders, and federal, state, and local laws, regulations, and rules, and, Princeton University policies, as appropriate, relating to nondiscrimination, equal employment opportunity, and affirmative action.

CLAUSE 19 ENTIRE CONTRACT

This Contract represents the entire and integrated agreement between Princeton University and Contractor, and supersedes all prior negotiations, representations, or agreements, either written or oral.

SECTION J – TERMS & CONDITIONS FOR FIXED PRICE TYPE CONTRACTS

CLAUSE J1 CHANGES

(a) **Princeton University Initiated Changes.** Princeton University's authorized Technical Representative may, at any time, without notice to the sureties, if any, by written request for proposal designated or indicated to be a change order, make changes in the Work within the general scope of the Contract, including changes (i) in the specifications (including drawings and designs); (ii) in the method or manner of performance of the Work; (iii) in the Princeton University-furnished facilities, equipment, materials, services, or site; or (iv) directing acceleration in the performance of the Work.

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- (1) With each change request Princeton University shall direct the Contractor to either (1) proceed to perform the changed Work, with an estimate to follow; or (2) submit an estimate for the changed Work but not proceed to perform the changed Work without additional written authorization.
 - (2) Within ten (10) business days of receiving a Princeton University-initiated request for proposal, the Contractor shall provide Princeton University with a written change order request (hereinafter "Change Order Request") stating all changes in the Contract, including, without limitation, any changes to the Contract Time, the Project Schedule, the Contract Price, to which it believes it is entitled as a result of the request for proposal. The Change Order Request submitted by Contractor for changes in the Work must be completely itemized and show the affected drawings, quantities of material involved, and the dollar amounts for labor, materials, equipment rental, salaried personnel costs, insurance, and taxes, as well as changes in the then-current Project Schedule and in the Contract Time in format and detail reasonably satisfactory to Princeton University. Princeton University may request, and the Contractor shall promptly provide, further cost breakdowns, clarifications, documentation, or back-up if Princeton University reasonably believes such additional information is needed to understand and evaluate the request.
- (b) **Contractor Initiated Changes.** Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from Princeton University that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives Princeton University written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.
- (1) Except with respect to written requests for proposal issued by Princeton University pursuant to the provisions of paragraph (a) hereof, the Contractor must give Princeton University written notice of any change within five (5) business days of the date on which the Contractor knew, or reasonably should have known, of the change. The notice must state (1) the nature of the change; the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. The timely furnishing of such notice is an express condition precedent to any claim or request for adjustment to the Contract Time, the Project Schedule or the Contract Price arising from the claimed change and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the Contract Time, the Project Schedule, or the Contract Price arising from the change. If the change involves a differing site condition, it is a further express condition precedent of any such claim or request for adjustment that the Contractor has complied with Clause B12.
 - (2) Within twenty (20) business days after giving initial notice of a change, the Contractor shall submit a written Change Order Request that shall include all of the same information as described in paragraph (a)(2) above.
- (c) Except as provided in this Clause, no order, statement, or conduct of Princeton University shall be treated as a change under this Contract or entitle the Contractor to an equitable adjustment.
- (d) Within twenty (20) business days (or such other time period as may be agreed between the Parties) after receiving such submission, Princeton University shall review the submission and either (a) issue a change order (hereinafter "Change Order") based upon the revised cost and time schedules submitted by Contractor or (b) object to the submitted cost and/or time schedule adjustments. If Princeton University objects to the proposed adjustments, Princeton University may issue a disputed change order (hereinafter "Disputed Change Order") pursuant to Paragraph (f) or, authorize Contractor to perform the change on a time and material basis pursuant to Paragraph (g).
- (e) Princeton University and Contractor acknowledge and agree that any Change Order Request submitted by Contractor and any resulting Change Order shall include provision for any and all costs (including overhead and profit) associated with the change, both with respect to changed Work and unchanged Work, and whether direct, indirect, impact, or consequential in nature, and shall include provision for any and all claims which Contractor or its Subcontractors may have relating to the change, including without limitation delay, acceleration, inefficiency and/or impact claims.
- (f) **Disputed Changes.** If Contractor should dispute a decision by Princeton University as to whether a change has occurred or whether, or to what extent, a change in the Work will result in a change in the Contract Price, the Contract Time or the Project Schedule, then Contractor shall, if directed by Princeton University in a Disputed Change Order or other written directive, nevertheless perform such work pursuant to Clause H5; provided that the performance of the work shall not prejudice any claim that Contractor may have with respect to such work, so long as Contractor has given Princeton University timely notice of such claim pursuant to Clause H3, and so long as Contractor maintains the records required under Clause H5 and paragraph (g) below. Such records shall be maintained for the sole purpose of documenting the performance of the work and shall not be determinative of the amount of such change, if a change occurred, unless and until the parties agree that a change has occurred and that the change is to be performed on a time and material basis.

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(g) **Time and Material Changes.** If the parties are unable to agree on a lump sum amount for any increase or decrease in the Contract Price resulting from any change in the Work, then the amount of such increase or decrease may, at the sole discretion of Princeton University, be determined on a time and material basis as the sum of (a) Contractor's aggregate additional reasonable and necessary costs or savings resulting from such change in the Work (whether incurred directly by Contractor or indirectly through one or more Subcontractors) for (i) labor and labor burdens for time actually spent at work on the Site, (ii) materials and equipment incorporated in the Work, (iii) rental of equipment, machinery or temporary facilities, and (iv) salaried personnel working directly on the Work, plus (b) a reasonable allowance for Contractor's overhead and profit relating to such costs or savings. Contractor shall keep, with respect to changes in the Work performed on a time and material basis, a complete and accurate account of all quantities of labor, materials, machinery, equipment, and salaried personnel costs relating thereto, itemized in such form and supported by such evidence as Princeton University may reasonably request. In addition, Contractor shall provide Princeton University with access to such records as Princeton University may reasonably request to allow the University to determine the amount of any savings applicable to any changes in the Work.

(h) **Limitation of Markup.** Contractor shall include in each subcontract a limitation on the markup that Subcontractors can include in Change Orders. The cumulative total of markup (Subcontractor markup plus all lower-tier Subcontractor markups) shall not exceed fifteen percent (15%) of the cost of the change.

(i) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

CLAUSE J2 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

(a) Princeton University shall pay the Contractor the Contract price as provided in this Contract. The form of application for payment (the "Application for Payment") shall be as specified by Princeton University.

(b) Princeton University shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Princeton University, on estimates of Work performed which meet the standards of quality established under the Contract, as approved by Princeton University or its representatives. If requested by Princeton University or its representatives, the Contractor shall furnish a breakdown of the total Contract Price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, Princeton University or its representatives may authorize material delivered to the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if –

- (1) Payment for material delivered to locations other than the site is specifically authorized by this Contract;
- (2) The Contractor furnishes satisfactory evidence that it has acquired free and clear title to such material and that the material will be used to perform this Contract;
- (3) Storage and security procedures for the material have been approved by Princeton University, satisfactory evidence of insurance covering such material (with Princeton University named as an additional insured) has been provided to Princeton University, procedures for identifying and segregating the material (whether by serial numbers, tagging, photographs or other methods) have been approved by Princeton University, and the form and substance of bills of sale transferring title to Princeton University (if and when directed by Princeton University) have been approved by Princeton University; and
- (4) All other documentation required by Princeton University has been provided by Contractor.

(c) Each Application for Payment constitutes a certification by the Contractor that:

- (1) the application represents a just estimate of amount properly payable to Contractor under the terms of the Contract;
- (2) all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application;
- (3) there are no construction liens outstanding as of the date of application; and
- (4) except for bills not paid but included in the application, there is no known basis for the filing of any construction liens with respect to the Work.

(d) The Application for Payment shall be accompanied by a written waiver and release of liens in the applicable form set forth in Clause H10 Exhibits of the General Terms and Conditions, executed by Contractor and stating the amounts of all payments received by it and confirming its right to file a construction lien pursuant to the Construction Lien Law (P.L. 1993, c. 318, section 37), and its rights under any construction lien which may be filed, and any amendments thereto, are waived and

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released in consideration for, upon receipt of, and to the extent of all payments received by it to date. Upon the request of Princeton University, the Contractor shall provide written waivers and releases of liens in the applicable form set forth in Clause H10 Exhibits of the General Terms and Conditions, executed by all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors.

(e) Princeton University or, at Princeton University's request, the Architect-Engineer will review Contractor's Application for Payment and will promptly take appropriate action thereon. Such amount as may be approved for payment shall be payable by Princeton University not later than the later of (i) the twentieth (20th) day of the month next succeeding the date of submission of the Application for Payment or (ii) thirty (30) days after the date of submission of the Application for Payment. Princeton University shall be entitled to rely on the accuracy and completeness of the information provided by Contractor and shall not be deemed to have made audits of the supporting data, exhaustive or continuous on-site inspections or examinations to ascertain how or for what purpose Contractor has used the moneys previously paid on account of this Contract. The payment of any Application for Payment, including the final payment, does not constitute approval or acceptance of any item of cost in such Application for Payment, nor does it constitute acceptance of the Work.

(f) Princeton University shall retain an amount equal to ten percent (10%) of the price of the Work set forth in each Application for Payment submitted in accordance with paragraph (b). Further, Princeton University may consent, in its discretion, to release portions of the retainage prior to Final Completion of the Project for the price of the Work relating to Subcontractors who complete their work in the early stages of the Project. In no event shall any interest be due and payable by Princeton University to Contractor, any Subcontractor or any other party on any of the sums retained by Princeton University pursuant to any of the terms or provisions of the Contract.

(g) Payments Upon Completion of the Work.

(1) When the Contractor achieves Substantial Completion of all of the Work, and the punchlist and punchlist completion schedule have been approved by Princeton University and the Architect-Engineer, then Princeton University shall pay all amounts due and remaining unpaid to Contractor, less whatever portion of the retainage Princeton University deems it appropriate (in its discretion) to continue to hold until Final Completion, and less two hundred percent (200%) of the cost to complete the work on the punchlist (as determined by Princeton University).

(2) Ten (10) days after Contractor achieves Final Completion of the Work and final acceptance thereof by Princeton University, or as soon thereafter as possible, Contractor shall submit a final Application for Payment which will set forth all amounts due and remaining unpaid to Contractor, including retainage. Upon approval thereof by Princeton University and, at Princeton University's request, by the Architect-Engineer, Princeton University shall pay to Contractor the amount due under such final Application for Payment within thirty (30) days after its approval. The final Application for Payment shall be accompanied by a written final waiver and release of liens executed by Contractor and, if requested by Princeton University, by all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors.

(h) Notwithstanding the foregoing provisions, Princeton University shall not be obligated to make any payment to Contractor hereunder if any one or more of the following conditions exists:

(1) Contractor is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents.

(2) Any part of such payment is attributable to Work that is defective or not performed in accordance with the Contract Documents.

(3) Contractor has failed to make payments promptly to Contractor's Subcontractors or for material or labor used in the Work for which Princeton University has made payment to Contractor,

(4) If Princeton University, in its good faith judgment, determines that the portion of the Contract price remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, whereupon no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract price then remaining unpaid is determined by Princeton University to be sufficient to so complete the Work; or

(5) If Princeton University has offsets or backcharges which reduce or eliminate any amounts otherwise due to Contractor.

(i) When payment is received from Princeton University, the Contractor shall immediately pay all Subcontractors, materialmen, laborers, and suppliers the amount they are due for the Work covered by such payment. In the event Princeton

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University becomes informed that the Contractor has not paid a Subcontractor, materialman, laborer or supplier as provided herein, Princeton University may issue future checks to the Contractor in appropriate amounts otherwise due hereunder naming the Contractor and any such Subcontractor, materialman, laborer or supplier as joint payees. Such joint check procedure, if employed by Princeton University, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check, shall not create any rights in such Subcontractor, materialman, laborer or supplier against Princeton University, and shall not be deemed to commit Princeton University to repeat the procedure in the future.

SECTION K – TERMS & CONDITIONS FOR TIME-AND MATERIALS (T&M) TYPE CONTRACTS

CLAUSE K1 CHANGES

(a) **Princeton University Initiated Changes.** Princeton University's authorized Technical Representative may, at any time, without notice to the sureties, if any, by written request for proposal designated or indicated to be a change order, make changes in the Work within the general scope of the Contract, including changes (i) in the specifications (including drawings and designs); (ii) in the method or manner of performance of the Work; (iii) in the Princeton University-furnished facilities, equipment, materials, services, or site; or (iv) directing acceleration in the performance of the Work.

- (1) With each change request Princeton University shall direct the Contractor to either (1) proceed to perform the changed Work, with an estimate to follow; or (2) submit an estimate for the changed Work but not proceed to perform the changed Work without additional written authorization.
- (2) Within ten (10) business days of receiving a Princeton University-initiated request for proposal, the Contractor shall provide Princeton University with a written change order request (hereinafter "Change Order Request") stating all changes in the Contract, including, without limitation, any changes to the Contract Time, the Project Schedule, the Contract Price, to which it believes it is entitled as a result of the request for proposal. The Change Order Request submitted by Contractor for changes in the Work must be completely itemized and show the affected drawings, quantities of material involved, and the dollar amounts for labor, materials, equipment rental, salaried personnel costs, insurance, and taxes, as well as changes in the then-current Project Schedule and in the Contract Time in format and detail reasonably satisfactory to Princeton University. Princeton University may request, and the Contractor shall promptly provide, further cost breakdowns, clarifications, documentation or back-up if Princeton University reasonably believes such additional information is needed to understand and evaluate the request.

(b) **Contractor Initiated Changes.** Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from Princeton University that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives Princeton University written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

- (1) Except with respect to written requests for proposal issued by Princeton University pursuant to the provisions of paragraph (a) hereof, the Contractor must give Princeton University written notice of any change within five (5) business days of the date on which the Contractor knew, or reasonably should have known, of the change. The notice must state (1) the nature of the change; the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. The timely furnishing of such notice is an express condition precedent to any claim or request for adjustment to the Contract Time, the Project Schedule or the Contract Price arising from the claimed change and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the Contract Time, the Project Schedule, or the Contract Price arising from the change. If the change involves a differing site condition, it is a further express condition precedent of any such claim or request for adjustment that the Contractor has complied with Clause B12.
- (2) Within twenty (20) business days after giving initial notice of a change, the Contractor shall submit a written Change Order Request that shall include all of the same information as described in paragraph (a)(2) above.

(c) Except as provided in this Clause, no order, statement, or conduct of Princeton University shall be treated as a change under this Contract or entitle the Contractor to an equitable adjustment.

(d) Within twenty (20) business days (or such other time period as may be agreed between the parties) after receiving such submission, Princeton University shall review the submission and either (a) issue a change order (hereinafter "Change Order") based upon the revised cost and time schedules submitted by Contractor or (b) object to the submitted cost and/or time schedule adjustments. If Princeton University objects to the proposed adjustments, Princeton University may issue a

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disputed change order (hereinafter "Disputed Change Order") pursuant to Paragraph (f) or, authorize Contractor to perform the change on a time and material basis pursuant to Paragraph (g).

(e) Princeton University and Contractor acknowledge and agree that any Change Order Request submitted by Contractor and any resulting Change Order shall include provision for any and all costs (including overhead and profit) associated with the change, both with respect to changed Work and unchanged Work, and whether direct, indirect, impact, or consequential in nature, and shall include provision for any and all claims which Contractor or its Subcontractors may have relating to the change, including without limitation delay, acceleration, inefficiency and/or impact claims.

(f) **Disputed Changes.** If Contractor should dispute a decision by Princeton University as to whether a change has occurred or whether, or to what extent, a change in the Work will result in a change in the Contract Price, the Contract Time or the Project Schedule, then Contractor shall, if directed by Princeton University in a Disputed Change Order or other written directive, nevertheless perform such work pursuant to Clause H5; provided that the performance of the work shall not prejudice any claim that Contractor may have with respect to such work, so long as Contractor has given Princeton University timely notice of such claim pursuant to Clause H3, and so long as Contractor maintains the records required under Clause H5 and paragraph (g) below. Such records shall be maintained for the sole purpose of documenting the performance of the work and shall not be determinative of the amount of such change, if a change occurred, unless and until the parties agree that a change has occurred and that the change is to be performed on a time and material basis.

(g) **Time and Material Changes.** If the parties are unable to agree on a lump sum amount for any increase or decrease in the Contract Price resulting from any change in the Work, then the amount of such increase or decrease may, at the sole discretion of Princeton University, be determined on a time and material basis as the sum of (a) Contractor's aggregate additional reasonable and necessary costs or savings resulting from such change in the Work (whether incurred directly by Contractor or indirectly through one or more Subcontractors) for (i) labor and labor burdens for time actually spent at work on the Site, (ii) materials and equipment incorporated in the Work, (iii) rental of equipment, machinery or temporary facilities, and (iv) salaried personnel working directly on the Work, plus (b) a reasonable allowance for Contractor's overhead and profit relating to such costs or savings. Contractor shall keep, with respect to changes in the Work performed on a time and material basis, a complete and accurate account of all quantities of labor, materials, machinery, equipment, and salaried personnel costs relating thereto, itemized in such form and supported by such evidence as Princeton University may reasonably request. In addition, Contractor shall provide Princeton University with access to such records as Princeton University may reasonably request to allow the University to determine the amount of any savings applicable to any changes in the Work.

(h) **Limitation of Markup.** Contractor shall include in each subcontract a limitation on the markup that Subcontractors can include in Change Orders. The cumulative total of markup (Subcontractor markup plus all lower-tier Subcontractor markups) shall not exceed fifteen percent (15%) of the cost of the change.

(i) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

CLAUSE K2 PAYMENTS UNDER TIME-AND-MATERIAL CONTRACTS

(a) Princeton University shall pay the Contractor the Contract price as provided in this Contract. The form of application for payment (the "Application for Payment") shall be as specified by Princeton University.

(b) Hourly Rate.

(1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Contract by the number of direct labor hours performed. Payroll records or time cards should be signed by the Princeton University Technical Representative before noon the next work day, to verify work performed the preceding day. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Applications for Payment may be submitted once each month (or at more frequent intervals, if approved by Princeton University). The Contractor shall substantiate Applications for Payment by evidence of actual payment and by individual daily job time cards, or other substantiation approved by Princeton University. Promptly after receipt of each substantiated Application for Payment, Princeton University shall, except as otherwise provided in this Contract, and subject to the terms of (e) below, pay the Application for Payment as approved.

(2) Unless the Contract prescribes otherwise, the hourly rates in the Contract shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Contract and overtime work is approved in advance by Princeton University, overtime rates shall be negotiated. If the Contract provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by Princeton University.

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- (c) Materials and Contracts.
- (1) Allowable costs of direct materials shall be determined by Princeton University. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices. The Contractor shall be reimbursed for items and services purchased directly for the Contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.
 - (2) The cost of lower-tier contracts that are authorized under the lower-tier contracts clause of this Contract shall be reimbursable costs under this clause provided that the costs are consistent with subparagraph (3) below. Reimbursable in connection with lower-tier contracts shall be limited to the amounts paid to the Contractor in the same manner as for items and services purchased directly for the Contract under subparagraph (1) above.
 - (3) To the extent possible, the Contractor shall--
 - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory material.
 - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify Princeton University and give the reasons. Credit shall be given to Princeton University for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of Princeton University, shall not be deducted from gross costs.
 - (4) Material delivered to the Contractor at locations other than the site may also be taken into consideration if--
 - (i) payment for material delivered to locations other than the site is specifically authorized by this Contract;
 - (ii) the Contractor furnishes satisfactory evidence that it has acquired free and clear title to such material and that the material will be used to perform this Contract;
 - (iii) storage and security procedures for the material have been approved by Princeton University, satisfactory evidence of insurance covering such material (with Princeton University named as an additional insured) has been provided to Princeton University, procedures for identifying and segregating the material (whether by serial numbers, tagging, photographs or other methods) have been approved by Princeton University, and the form and substance of bills of sale transferring title to Princeton University (if and when directed by Princeton University) have been approved by Princeton University; and,
 - (iv) all other documentation required by Princeton University has been provided by Contractor.
- (d) Total Cost. It is estimated that the total cost to Princeton University for the performance of this Contract shall not exceed the ceiling price set forth in the Contract and the Contractor agrees to use its best efforts to perform the Work specified in the Contract and all obligations under this Contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this Contract in the next succeeding thirty (30) days, if added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the ceiling price in the Contract, the Contractor shall notify Princeton University giving a revised estimate of the total price for performing this Contract with supporting reasons and documentation. If at any time during performing this Contract, the Contractor has reason to believe that the total price to Princeton University for performing this Contract will be substantially greater or less than stated ceiling price, the Contractor shall so notify Princeton University, giving a revised estimate of the total price for performing this Contract, with supporting reasons and documentation. If at any time during performing this Contract, Princeton University has reason to believe that the work to be required in performing this Contract will be substantially greater or less than the stated ceiling price, Princeton University will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the Contract.

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(e) Ceiling Price. Princeton University shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Contract, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until Princeton University shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Contract. When and to the extent that the ceiling price has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(f) Each Application for Payment constitutes a certification by the Contractor that:

- (1) the application represents a just estimate of amount properly payable to Contractor under the terms of the Contract;
- (2) all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application;
- (3) there are no construction liens outstanding as of the date of the application; and
- (4) except for bills not paid but included in the application, there is no known basis for the filing of any construction liens with respect to the Work.

(g) The Application for Payment shall be accompanied by a written waiver and release of liens in the applicable form set forth in Clause H10 Exhibits of the General Terms and Conditions, executed by Contractor and stating the amounts of all payments received by it and confirming its right to file a construction lien pursuant to the Construction Lien Law (P.L. 1993, c. 318, section 37), and its rights under any construction lien which may be filed, and any amendments thereto, are waived and released in consideration for, upon receipt of, and to the extent of all payments received by it to date. Upon the request of Princeton University, the Contractor shall provide written waivers and releases of liens in the applicable form set forth in Clause H10 Exhibits of the General Terms and Conditions, executed by all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors.

(h) Princeton University or, at Princeton University's request, the Architect-Engineer will review Contractor's Application for Payment and will promptly take appropriate action thereon. Such amount as may be approved for payment shall be payable by Princeton University not later than the later of (i) the twentieth (20th) day of the month next succeeding the date of submission of the Application for Payment or (ii) thirty (30) days after the date of submission of the Application for Payment. Princeton University shall be entitled to rely on the accuracy and completeness of the information provided by Contractor and shall not be deemed to have made audits of the supporting data, exhaustive or continuous on-site inspections or examinations to ascertain how or for what purpose Contractor has used the moneys previously paid on account of this Contract. The payment of any Application for Payment, including the final payment, does not constitute approval or acceptance of any item of cost in such Application for Payment, nor does it constitute acceptance of the Work.

(i) Princeton University shall retain an amount equal to five percent (5%) of the price of the Work set forth in each Application for Payment submitted in accordance with paragraph (b). Further, Princeton University may consent, in its discretion, to release portions of the retainage prior to Final Completion of the Project for the price of the Work relating to Subcontractors who complete their work in the early stages of the Project. In no event shall any interest be due and payable by Princeton University to Contractor, any Subcontractor or any other party on any of the sums retained by Princeton University pursuant to any of the terms or provisions of the Contract.

(j) Payments Upon Completion of the Work.

- (1) When the Contractor achieves Substantial Completion of all of the Work, and the punchlist and punchlist completion schedule have been approved by Princeton University and the Architect-Engineer, then Princeton University shall pay all amounts due and remaining unpaid to Contractor, less whatever portion of the retainage Princeton University deems it appropriate (in its discretion) to continue to hold until Final Completion, and less two hundred percent (200%) of the cost to complete the work on the punchlist (as determined by Princeton University).
- (2) Ten (10) days after Contractor achieves Final Completion of the Work and final acceptance thereof by Princeton University, or as soon thereafter as possible, Contractor shall submit a final Application for Payment which will set forth all amounts due and remaining unpaid to Contractor, including retainage. Upon approval thereof by Princeton University and, at Princeton University's request, by the Architect-Engineer, Princeton University shall pay to Contractor the amount due under such final Application for Payment within thirty (30) days after its approval. The final Application for Payment shall be accompanied by a written final waiver and release of liens executed by Contractor and, if requested by Princeton

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University, by all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors.

(k) Notwithstanding the foregoing provisions, Princeton University shall not be obligated to make any payment to Contractor hereunder if any one or more of the following conditions exists:

- (1) Contractor is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents.
- (2) Any part of such payment is attributable to Work which is defective or not performed in accordance with the Contract Documents.
- (3) Contractor has failed to make payments promptly to Contractor's Subcontractors or for material or labor used in the Work for which Princeton University has made payment to Contractor,
- (4) If Princeton University, in its good faith judgment, determines that the portion of the Contract price remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, whereupon no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract price then remaining unpaid is determined by Princeton University to be sufficient to so complete the Work; or
- (5) If Princeton University has offsets or backcharges which reduce or eliminate any amounts otherwise due to Contractor.

(l) When payment is received from Princeton University, the Contractor shall immediately pay all Subcontractors, materialmen, laborers and suppliers the amount they are due for the Work covered by such payment. In the event Princeton University becomes informed that the Contractor has not paid a Subcontractor, materialman, laborer or supplier as provided herein, Princeton University may issue future checks to the Contractor in appropriate amounts otherwise due hereunder naming the Contractor and any such Subcontractor, materialman, laborer or supplier as joint payees. Such joint check procedure, if employed by Princeton University, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check, shall not create any rights in such Subcontractor, materialman, laborer or supplier against Princeton University, and shall not be deemed to commit Princeton University to repeat the procedure in the future.

SECTION L – TERMS & CONDITIONS FOR GUARANTEED MAXIMUM PRICE (GMP) TYPE CONTRACTS

CLAUSE L1 SUBCONTRACTS AND OTHER AGREEMENTS UNDER GMP CONTRACTS

(a) Subcontracts and other agreements involving amounts not in excess of Ten Thousand Dollars (\$10,000.00) or such other amount as Princeton University may designate from time to time (including multiple subcontracts and agreements with the same or affiliated entities for similar work which, when taken together, are worth no more than \$10,000.00) may be awarded without the prior approval of Princeton University. This does not include changes in the Work. All other subcontracts and purchase orders shall be awarded according to the following procedure:

- (1) Contractor shall recommend to Princeton University and potential Subcontractors and suppliers for approval. Contractor shall invite bids from, and enter into contracts and material orders with, only those Subcontractors and suppliers who have first been approved by Princeton University.
- (2) Contractor shall prepare, and provide to Princeton University for review if requested, properly assembled Subcontractor solicitation packages consisting of, but not limited to, the following:
 - (i) An invitation to bid form containing project name, location, and description; Contractor name, address and contact; Architect-Engineer name and contact; prebid conference date and location; bid due date; de-scope (interview) meeting date(s); bidding procedures; documents pick-up information; base bid(s), alternates and unit price requirements.
 - (ii) Applicable attachments including contract documents (drawings and specifications); qualification statement; subcontractor agreement form; preliminary billing schedule; stored materials request for payment form; preconstruction schedule; current construction schedule; change order procedures and mark-up; waiver of liens form.
 - (iii) A scope of work document listing subcontractor responsibilities derived from the Contract as well as Project specific requirements.

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- (3) Except as provided for in subparagraphs (a) and (a)(4) herein, all subcontracts and purchase orders shall be awarded on a competitive basis using the following procedures:
- (i) The Contractor shall solicit an appropriate number of Subcontractors or suppliers to obtain a minimum of three (3) bids.
 - (ii) The Contractor shall address substantive questions and clarifications that arise during the bidding process by formal written addendum issued to all bidders. Verbal communication shall be discouraged.
 - (iii) For each solicitation, the Contractor shall establish a firm date, time, and location for submission of bids. Bids shall be submitted in sealed envelopes. No other form of bid submission is allowable without prior written approval from Princeton University. The Contractor shall conduct private bid openings and shall provide ample notification to Princeton University of such bid openings to afford Princeton University an opportunity to attend. The Contractor shall record all bids received on a summary form that shall be signed by all persons in attendance.
 - (iv) The Contractor shall analyze all bids received and shall conduct bid review meetings for significant portions of the work, or when otherwise determined necessary, with those firms who have a reasonable chance of being awarded the subcontract or purchase order. The Contractor shall provide ample notice of such bid review meetings to afford Princeton University an opportunity to attend.
 - (v) If updated bids are required subsequent to the bid review meetings, the Contractor shall establish a firm date, time, and location for submission of updated bids. Updated bids shall be submitted in a sealed envelope. No other form of bid submission is allowable without prior written approval from Princeton University. The Contractor shall conduct private bid openings and shall provide ample notification to Princeton University of such bid openings to afford Princeton University an opportunity to attend. The Contractor shall record all bids received on a summary form that shall be signed by all persons in attendance.
 - (vi) The Contractor shall not negotiate further price adjustments (e.g., reductions) with the apparent successful bidder without prior written approval from Princeton University.
 - (vii) The Contractor shall make a formal written recommendation to Princeton University for all subcontracts and purchase orders that shall include, but not be limited to, the following:
 - Introduction presenting all of the pertinent information relating to the project and the individual subcontract or purchase order being awarded (i.e., Project title, Project location, description of Subcontract, relevant cost code, budget amount, etc.).
 - Bid Summary that recaps all bids received (i.e., list of bidders, bid opening amount, qualifications and adjustments for scope, final bid results, etc.).
 - Award recommendation. Name of subcontractor, award amount, alternates, options, unit prices, labor rates, allowances, contingency holds, qualifications, clarifications, exclusions, etc. Additional supporting rationale is required for a recommendation of other than the low bidder. Include a statement that the bid of the recommended Subcontractor or supplier has been submitted in good faith and is fair and reasonable. Include a signature block for Princeton University approval.
 - Attachments. The Contractor shall attach copies of initial bids received from all bidders and any updates to the initial bids (i.e., revised bids, final bids, etc.).
- (4) With the prior written approval of Princeton University, for designated portions of the Work, the Contractor may negotiate with approved Subcontractors and suppliers for subcontracts and material purchases without undergoing the formal bid process described in (a)(3) herein. Contractor shall inform Princeton University of the results of the negotiations and provide Princeton University with the information that would otherwise be required if the designated portion of the Work were open to competitive bidding as described in Subparagraph (a)(3).
- (5) When Princeton University has accepted the Contractor's recommendation for the award of any such subcontract or other agreement, Contractor shall contract solely in its own name and behalf, and not in the name or behalf of Princeton University, with the specified Subcontractor or supplier.

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- (6) If Princeton University refuses to accept the Contractor's recommendation for award, the Contractor shall make an alternate recommendation.
- (b) All subcontracts shall, so far as practicable, contain unit prices, labor rates and any other feasible formula for use in the determination of the costs of changes in the Work.
- (c) Contractor agrees to hold all Subcontractors, including all persons directly or indirectly employed by them, responsible for any damages due to breach of contract or any negligent act, and to endeavor diligently to effect recoveries of such damages and, where appropriate to remit the proceeds of those recoveries to Princeton University.
- (d) Contractor agrees to obtain Subcontractor certificates of insurance in accordance with Clause G1(a)(8).
- (e) The duties and requirements set forth in this Clause L1 are in addition to those set forth in Clause D2.

CLAUSE L2 ON-GOING DOCUMENT REVIEW

The Contractor shall conduct ongoing review of the architectural, civil, mechanical, electrical, and structural drawings and specifications subsequent to the Notice to Proceed, and shall advise and make recommendations and perform value engineering with respect to such factors as construction feasibility, possible economies, availability of material and labor, time requirements for procurement and construction, and projected costs.

CLAUSE L3 MONTHLY STATUS REPORTS

- (a) The Contractor shall prepare a monthly status report containing the following items:
 - (1) An executive summary consisting of a narrative of the project cost and schedule status, an outline of remedial action plans required by all team members to meet the project cost and schedule requirements and a narrative of the outstanding items of information or decisions that must be made to progress the work.
 - (2) A construction cost report that shows the approved budget, costs committed and paid to date, the anticipated cost for each budget line item and the variance of each budgeted line item and total to the anticipated cost.
 - (3) A summary of the commitments, anticipated items, and transfers against the Contractor's Construction Contingency within the GMP budget.
 - (4) A schedule report that compares the baseline schedule to the current version and an explanation of the variance between the schedules. Also include an action plan to recover any negative variance from the approved baseline, an explanation of how past productivity has influenced the updated logic and durations, and explanation(s) for the cause of any delays and the party responsible for the cost of the related recovery efforts.
 - (5) Monthly cash flow and manpower reports that compare an approved baseline to actual and projected cash flows and manpower forecasts. Also, include an explanation of the cause for any variance between the actual/current projections and the baseline.
 - (6) Progress photographs of the project.
 - (7) Project metrics as deemed important by the entire team such as the number of outstanding shop drawings and RFI's, Architect-Engineer and Princeton University response time. Also, include a narrative of the metric data and its impact on the Project. Do not include the logs used to track this information.
 - (8) A summary of major outstanding quality issues including schedules and remedies to correct the conditions.
 - (9) A summary of the follow-up actions taken from the previous month's reports and any outstanding issues that still require action and by which team members.
 - (10) A summary of the posting of digital archiving documents to the Princeton Collaborative System including as-built drawings, record submittals, maintenance manuals, commissioning reports and warranty letters.
- (b) The Contractor shall prepare and submit this report in an electronic format to the Project Manager no later than the fifth calendar day of the month following the reporting period. When applicable, the Contractor shall post the report as an Adobe Acrobat (*.pdf) file on Princeton University's web-based project management application in accordance with Clause D3, Princeton Collaborative System - PCS.

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CLAUSE L4 COST OF THE WORK - GMP CONTRACTS

(a) The term "Cost of the Work" shall be defined as a sum of money equal to the total of Contractor's costs actually incurred as hereinafter enumerated. Contractor's costs shall be those costs necessarily incurred by Contractor in connection with the proper performance of all of the Work. Such costs shall be at rates not higher than the standard paid in the locality of the Work, except with the prior written consent of Princeton University and shall include and be limited to the following items:

- (1) Wages and salaries paid to personnel directly employed by the Contractor to perform the Work in accordance with the following:
 - (i) Wages paid to field labor in accordance with applicable collective bargaining agreements or pursuant to a rate schedule agreed upon in advance by Princeton University and the Contractor.
 - (ii) Salaries or other amounts in accordance with a salary or rate schedule agreed upon in advance by Princeton University and the Contractor, paid to Contractor's personnel employed in any capacity and stationed at the field office.
 - (iii) Contractor's personnel engaged in expediting the production or transportation of materials or equipment and stationed at shops or on the road shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Work.
 - (iv) Salaries or other amounts in accordance with a salary or rate schedule agreed upon in advance by Princeton University and the Contractor, for Contractor's personnel while involved in engineering, expediting, procurement, purchasing, scheduling, shop drawing review and processing whether such personnel are stationed in the field office or the main office.
- (2) Cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration to employees of Contractor and included in the Cost of the Work under subparagraphs (1) and (2) above, subject to the limitations set forth in the Contract.
- (3) The portion of reasonable travel and subsistence expenses of Contractor or of its officers or employees incurred while traveling in discharge of duties connected with the Work, subject to the prior approval of Princeton University.
- (4) Payments made by Contractor to Subcontractors for Work performed pursuant to subcontracts under this Contract; provided, however that the costs of claims of Subcontractors (including without limitation claim preparation costs, claims consultant fees and attorneys' fees) shall not be paid as a Cost of the Work, except with the prior written approval of Princeton University in its sole discretion.
- (5) Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation and installation thereof. Costs of suitable, off-site storage with the prior written approval of Princeton University.
- (6) Sales, use, or similar taxes related to the Work and for which Contractor is liable imposed by any governmental authority, subject to the following provisions and limitations:
 - (i) Princeton University is exempt from New Jersey Sales Taxes (Exemption No. EO-210-634-501), and from New Jersey Excise Taxes (Exemption No. A-110839). Pursuant to N.J.S.A. 54:32B-8.22, this exemption applies to all purchases by contractors, subcontractors, or repairmen of materials, supplies or services for the exclusive use in erecting structures or building on, or otherwise improving, altering or repairing Princeton University's real property. Contractor shall utilize this exemption to the fullest extent possible. Contractor shall not be reimbursed for any taxes paid subject to the aforementioned exemptions regardless of whether Contractor has paid such taxes.
 - (ii) The Contractor shall place the exemption certificate number on invoices for materials incorporated in the Work and furnish copies of invoices to Princeton University. Upon completion of the Work, the Contractor shall file with Princeton University a notarized statement that all purchases made under the exemption certificate were entitled to be exempt. The Contractor shall pay legally assessed penalties for improper use of exemption certificate number.
- (7) Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the Contractor's employees and used in self-performed work. Title to all equipment and materials shall pass to Princeton University upon payment therefore, and Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title.

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- (8) Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the Site of the Work for self-performed work, whether rented from Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges no higher than those prevailing in the area.
 - (9) Cost of removal of all debris including recycling and any related permits or handling fees.
 - (10) Costs incurred to provide site safety. Costs incurred due to an emergency affecting the safety of persons and property; provided, however, to the extent any cost referred to in this paragraph is incurred by reason of the negligence or other fault of Contractor or any Subcontractor or sub-subcontractor or is reimbursable by insurance or otherwise, or is the responsibility of Contractor under Clause G2 of the General Conditions, then such costs shall be excluded from the Cost of the Work.
 - (11) Cost of premiums for all bonds which Contractor is required by the Contract to purchase and maintain or which Princeton University has the right to require Contractor to purchase and maintain, including bonds for Subcontractors as required by Princeton University or Contractor with Princeton University's prior approval.
 - (12) That portion of insurance premiums that can be directly attributable to this Contract.
 - (13) Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Contract to pay.
 - (14) All reasonable costs and expenditures necessary for the operation of the site office such as stationary supplies, blueprinting, furniture, fixtures, office equipment, and field computer services, provided that quantity and rates are subject to Princeton University's prior approval.
 - (15) Cost of reprographics with prior written approval of Princeton University.
 - (16) Communication expenses such as local and long distance line charges (equipment installation provided by Princeton University at no charge to Contractor), cellular phone usage, personal data assistant (PDA) usage, expressage, messenger service, and similar petty cash items in connection with the Work.
 - (17) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Princeton University.
- (b) The Cost of the Work shall not include costs such as, but not limited to, the following:
- (1) Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work.
 - (2) Costs due to the negligence of Contractor, or any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.
 - (3) Costs, if any, in excess of the GMP as set forth in the Contract.
 - (4) Cost of preconstruction services under separate contract.
 - (5) Legal expenses incurred in prosecuting or defending claims in mediation or litigation (including without limitation, legal expenses incurred pursuant to Clause G2 indemnifying Princeton University and other Covered Parties).
 - (6) Cost of any gift, bonus, severance pay, payments to discretionary profit sharing plans, tuition reimbursement, allowance for home office overhead, or payroll processing charges paid to or associated with payments to Contractor's or Subcontractor's employees.
 - (7) All moving costs associated with the relocation of Contractor's personnel for the purpose of staffing the Project, except as approved by Princeton University in writing in advance.
 - (8) Cost of performing Work under any warranty or guarantee provided under or required by this Contract.
 - (9) Cost of any deductibles incurred under the Contractor's Builder's Risk Insurance.
 - (10) Cost of maintaining or storing records required under this Contract.
 - (11) Costs excluded from the Cost of the Work under any other express provision of the Contract.

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(c) All cash discounts shall accrue to the Cost of the Work. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the Cost of the Work, and Contractor shall endeavor to make provisions to secure same.

CLAUSE L5 CHANGES UNDER GMP CONTRACTS

(a) **Princeton University Initiated Changes.** Princeton University's authorized Technical Representative may, at any time, without notice to the sureties, if any, by written Request for Proposal designated or indicated to be a change order, make changes in the Work within the general scope of the Contract, including changes (i) in the specifications (including drawings and designs); (ii) in the method or manner of performance of the Work; (iii) in the Princeton University-furnished facilities, equipment, materials, services, or site; or (iv) directing acceleration in the performance of the Work.

- (1) With each change request, Princeton University shall direct the Contractor to either (1) proceed to perform the changed Work, with an estimate to follow; or (2) submit an estimate for the changed Work but not proceed to perform the changed Work without additional written authorization.
- (3) Within ten (10) business days of receiving an Princeton University-initiated Request for Proposal, the Contractor shall provide Princeton University with a written Change Order Request stating all changes in the Contract, including, without limitation, any changes to the Contract Time, the Project Schedule, the Guaranteed Maximum Price, to which it believes it is entitled as a result of the Request for Proposal. The Change Order Request submitted by Contractor for changes in the Work must be completely itemized and show the affected Drawings, quantities of material involved, and the dollar amounts for labor, materials, equipment rental, salaried personnel costs, insurance, and taxes, as well as changes in the then-current Project Schedule and in the Contract Time in format and detail reasonably satisfactory to Princeton University. Princeton University may request, and the Contractor shall promptly provide, further cost breakdowns, clarifications, documentation, or back-up if Princeton University reasonably believes such additional information is needed to understand and evaluate the request.

(b) **Contractor Initiated Changes.** Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from Princeton University that causes a change shall be treated as a change order under this Clause L5; provided, that the Contractor gives Princeton University written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

- (1) Except with respect to written Requests for Proposal issued by Princeton University pursuant to the provisions of Paragraph (a) hereof, the Contractor must give Princeton University written notice of any change within five (5) business days of the date on which the Contractor knew, or reasonably should have known, of the change. The notice must state (1) the nature of the change; the date, circumstances, and source of the change; and an order of magnitude of the price of the change, and (2) that the Contractor regards the change as a change order and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. The timely furnishing of such notice is an express condition precedent to any claim or request for adjustment to the Contract Time, the Project Schedule or the Guaranteed Maximum Price arising from the claimed change and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the Contract Time, the Project Schedule, or the Guaranteed Maximum Price arising from the change. If the change involves a differing site condition, it is a further express condition precedent of any such claim or request for adjustment that the Contractor has complied with Clause B12.
- (4) Within twenty (20) business days after giving initial notice of a change, the Contractor shall submit a written Change Order Request that shall include all of the same information as described in (a)(2) above.

(c) Except as provided in this Clause L5, no order, statement, or conduct of Princeton University shall be treated as a change under this Contract or entitle the Contractor to an equitable adjustment.

(d) Within twenty (20) business days (or such other time period as may be agreed between the parties) after receiving such submission, Princeton University shall review the submission and either (1) issue a Change Order based upon the revised cost and time schedules submitted by Contractor; or, (2) object to the submitted cost and/or time schedule adjustments. If Princeton University objects to the proposed adjustments, Princeton University may issue a Disputed Change Order pursuant to Paragraph (f) or, authorize Contractor to perform the change on a time and material basis pursuant to Paragraph (g).

(e) Princeton University and Contractor acknowledge and agree that any Change Order Request submitted by Contractor and any resulting Change Order shall include provision for any and all costs (including overhead and profit) associated with the change, both with respect to changed Work and unchanged Work, and whether direct, indirect, impact, or consequential in

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nature, and shall include provision for any and all claims which Contractor or its Subcontractors may have relating to the change, including without limitation delay, acceleration, inefficiency and/or impact claims.

(f) **Disputed Changes.** If Contractor should dispute a decision by Princeton University as to whether a change has occurred or whether, or to what extent, a change in the Work will result in a change in the Guaranteed Maximum Price, the Contract Time, or the Project Schedule, then Contractor shall, if directed by Princeton University in a Disputed Change Order or other written directive, nevertheless perform such work pursuant to Clause H5; provided that the performance of the work shall not prejudice any claim that Contractor may have with respect to such work, so long as Contractor has given Princeton University timely notice of such claim pursuant to Clause H3, and so long as Contractor maintains the records required under Clause H5 and subparagraph (g) below. Such records shall be maintained for the sole purpose of documenting the performance of the work and shall not be determinative of the amount of such change, if a change has occurred, unless and until the parties agree that a change has occurred and the change is to be performed on a time and material basis.

(g) **Time and Material Changes.** If the parties are unable to agree on a lump sum amount for any increase or decrease in the Guaranteed Maximum Price resulting from any change in the Work, then the amount of such increase or decrease may, at the sole discretion of Princeton University, be determined on a time and material basis as the sum of (a) Contractor's aggregate additional reasonable and necessary costs or savings resulting from such change in the Work (whether incurred directly by Contractor or indirectly through one or more Subcontractors) for (i) labor and labor burdens for time actually spent at work on the Site, (ii) materials and equipment incorporated in the Work, (iii) rental of equipment, machinery or temporary facilities, and (iv) salaried personnel working directly on the Work, plus (b) a reasonable allowance for Contractor's overhead and profit relating to such costs or savings. Contractor shall keep, with respect to changes in the Work performed on a time and material basis, a complete and accurate account of all quantities of labor, materials, machinery, equipment, and salaried personnel costs relating thereto, itemized in such form and supported by such evidence as Princeton University may reasonably request. In addition, Contractor shall provide Princeton University with access to such records as Princeton University may reasonably request to allow the University to determine the amount of any savings applicable to any changes in the Work.

(h) Contractor will receive no Fee based on the adjusted costs of the Work resulting from Change Orders other than the modification of the Fee, as set forth in the Contract.

(i) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

CLAUSE L6 PAYMENTS UNDER GMP CONTRACTS

(a) On or before the twentieth (20th) day of each month during the performance of the Work, Contractor shall submit to Princeton University for its review an application for payment (the "Application for Payment"), together with the reports or revised schedules specified elsewhere in this Contract. Additionally, Contractor shall submit payrolls (e.g., time sheets) for all labor and other data supporting the Contractor's right to payment for contracts or materials in accordance with Generally Accepted Accounting Procedures (GAAP). The Application for Payment shall comprise both (1) the Cost of the Work incurred during the preceding month for which the Contractor is to be paid and (2) the amount of the Contractor's Fee due. Requests for payment may include the cost of materials or equipment not incorporated in the Work, but delivered and suitably stored at the site or in an approved off-site location if:

- (1) Payment for material delivered to locations other than the site is specifically authorized by this Contract;
 - (2) The Contractor furnishes satisfactory evidence that it has acquired free and clear title to such material and that the material will be used to perform this Contract;
 - (3) Storage and security procedures for the material have been approved by Princeton University, satisfactory evidence of insurance covering such material (with Princeton University named as an additional insured) has been provided to Princeton University, procedures for identifying and segregating the material (whether by serial numbers, tagging, photographs or other methods) have been approved by Princeton University, and the form and substance of bills of sale transferring title to Princeton University (if and when directed by Princeton University) have been approved by Princeton University; and,
 - (4) All other documentation required by Princeton University has been provided by Contractor.
- (b) The form of Application for Payment shall be as specified by Princeton University.
- (c) Each Application for Payment constitutes a certification by the Contractor that:
- (1) the application represents a just estimate of the amount properly payable to Contractor under the terms of the Contract;

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- (2) all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application;
 - (3) there are no construction liens outstanding as of the date of the application; and
 - (4) except for bills not paid but included in the application, there is no known basis for the filing of any construction liens with respect to the Work.
- (d) The Application for Payment shall be accompanied by a written waiver and release of liens in the applicable form set forth in Clause H10 Exhibits of the General Terms and Conditions, executed by Contractor and stating the amounts of all payments received by it and confirming its right to file a construction lien pursuant to the Construction Lien Law (P.L. 1993, c. 318, section 37), and its rights under any construction lien which may be filed, and any amendments thereto, are waived and released in consideration for, upon receipt of, and to the extent of all payments received by it to date. Upon the request of Princeton University, the Contractor shall provide written waivers and releases of liens in the applicable form set forth in Clause H10 Exhibits of the General Terms and Conditions, executed by all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors.
- (e) Princeton University or, at Princeton University's request, the Architect-Engineer will review Contractor's Application for Payment and will promptly take appropriate action thereon. Such amount as may be approved for payment shall be payable by Princeton University not later than the later of (i) the twentieth (20th) day of the month next succeeding the date of submission of the Application for Payment or (ii) thirty (30) days after the submission of the Application for Payment. Princeton University shall be entitled to rely on the accuracy and completeness of the information provided by Contractor and shall not be deemed to have made audits of the supporting data, exhaustive or continuous on-site inspections or examinations to ascertain how or for what purpose Contractor has used the moneys previously paid on account of this Contract. The payment of any Application for Payment, including the final payment, does not constitute approval or acceptance of any item of cost in such Application for Payment, nor does it constitute acceptance of the Work.
- (f) Princeton University shall retain an amount equal to ten percent (10%) of the Cost of the Work set forth in each Application for Payment submitted in accordance with paragraph (a). Further, Princeton University and Architect-Engineer may consent, in their discretion, to release portions of the retainage prior to Final Completion of the Project for costs of the Work relating to Subcontractors who complete their work in the early stages of the Project. In no event shall any interest be due and payable by Princeton University to Contractor, any Subcontractor or any other party on any of the sums retained by Princeton University pursuant to any of the terms or provisions of the Contract.
- (g) Payment Upon Completion of Work.
- (1) When the Contractor achieves Substantial Completion of all of the Work, and the punchlist and punchlist completion schedule have been approved by Princeton University and the Architect-Engineer, then Princeton University shall pay all amounts due and remaining unpaid to Contractor, less whatever portion of the retainage Princeton University deems it appropriate (in its discretion) to continue to hold until Final Completion, and less two hundred percent (200%) of the cost to complete the work on the punchlist (as determined by Princeton University).
 - (2) Ten (10) days after Contractor achieves Final Completion of the Work and final acceptance thereof by Princeton University, or as soon thereafter as possible, Contractor shall submit a final Application for Payment which will set forth all amounts due and remaining unpaid to Contractor, including retainages and the unpaid portion of Contractor's Fee. Upon approval thereof by Princeton University and, at Princeton University's request, by the Architect-Engineer, Princeton University shall pay to Contractor the amount due under such final Application for Payment within thirty (30) days after its approval. The final Application for Payment shall be accompanied by a written final waiver and release of liens executed by the Contractor and, if requested by Princeton University, by all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors.
- (h) Notwithstanding the foregoing provisions, Princeton University shall not be obligated to make any payment to Contractor hereunder if any one or more of the following conditions exists:
- (1) Contractor is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents.
 - (2) Any part of such payment is attributable to Work that is defective or not performed in accordance with the Contract Documents.
 - (3) Contractor has failed to make payments promptly to Contractor's Subcontractors or for material or labor used in the Work for which Princeton University has made payment to Contractor.

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- (4) If Princeton University, in its good faith judgment, determines that the portion of the GMP remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, whereupon no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the GMP then remaining unpaid is determined by Princeton University to be sufficient to so complete the Work.
 - (5) If Princeton University has offsets or backcharges which reduce or eliminate any amounts otherwise due to Contractor.
- (i) When payment is received from Princeton University, the Contractor shall immediately pay all Subcontractors, materialmen, laborers, and suppliers the amount they are due for the Work covered by such payment. In the event Princeton University becomes informed that the Contractor has not paid a Subcontractor, materialman, laborer or supplier as provided herein, Princeton University may, in its sole discretion, issue future checks to the Contractor in appropriate amounts otherwise due hereunder naming the Contractor and any such Subcontractor, materialman, laborer or supplier as joint payees. Such joint check procedure, if employed by Princeton University, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check, shall not create any rights in such Subcontractor, materialman, laborer or supplier against Princeton University, and shall not be deemed to commit Princeton University to repeat the procedure in the future.

SECTION M – TERMS & CONDITIONS FOR COST PLUS FIXED FEE (CPFF) TYPE CONTRACTS

CLAUSE M1 SUBCONTRACTS AND OTHER AGREEMENTS UNDER CPFF CONTRACTS

(a) Subcontracts and other agreements involving amounts not in excess of Ten Thousand Dollars (\$10,000.00) or such other amount as Princeton University may designate from time to time (including multiple subcontracts and agreements with the same or affiliated entities for similar work which, when taken together, are worth no more than \$10,000.00) may be awarded without the prior approval of Princeton University. This does not include changes in the Work. All other subcontracts and purchase orders shall be awarded according to the following procedure:

- (1) Contractor shall recommend to Princeton University any potential Subcontractors and suppliers for approval. Contractor shall invite bids from, and enter into contracts and material orders with, only those Subcontractors and suppliers who have first been approved by Princeton University.
- (2) Contractor shall prepare, and provide to Princeton University for review if requested, properly assembled Subcontractor solicitation packages consisting of, but not limited to, the following:
 - (i) An invitation to bid form containing project name, location, and description; Contractor name, address and contact; Architect-Engineer name and contact; prebid date and location; bid due date; de-scope (interview) meeting date(s); bidding procedures; documents pick-up information; base bid(s), alternates and unit price requirements.
 - (ii) Applicable attachments including contract documents (drawings and specifications); qualification statement; subcontractor agreement form; preliminary billing schedule; stored materials request for payment form; preconstruction schedule; current construction schedule; change order procedures and mark-up; waiver of liens form.
 - (iii) A scope of work document listing subcontractor responsibilities derived from the Contract as well as Project specific requirements.
- (3) Except as provided for in subparagraphs (a) and (a)(4) herein, all subcontracts and purchase orders shall be awarded on a competitive basis using the following procedures:
 - (i) The Contractor shall solicit an appropriate number of Subcontractors or suppliers to obtain a minimum of three (3) bids.
 - (ii) The Contractor shall address substantive questions and clarifications that arise during the bidding process by formal written addendum issued to all bidders. Verbal communication shall be discouraged.
 - (iii) For each solicitation, the Contractor shall establish a firm date, time, and location for submission of bids. Bids shall be submitted in sealed envelopes. No other form of bid submission is allowable without prior written approval from Princeton University. The Contractor shall conduct private bid openings and shall provide ample notification to Princeton University of such bid openings to afford Princeton University an opportunity to attend. The Contractor shall record all bids received on a summary form that shall be signed by all persons in attendance.

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- (iv) The Contractor shall analyze all bids received and shall conduct bid review meetings for significant portions of the work, or when otherwise determined necessary, with those firms who have a reasonable chance of being awarded the subcontract or purchase order. The Contractor shall provide ample notice of such bid review meetings to afford Princeton University an opportunity to attend.
- (v) If updated bids are required subsequent to the bid review meetings, the Contractor shall establish a firm date, time, and location for submission of updated bids. Updated bids shall be submitted in a sealed envelope. No other form of bid submission is allowable without prior written approval from Princeton University. The Contractor shall conduct private bid openings and shall provide ample notification to Princeton University of such bid openings to afford Princeton University an opportunity to attend. The Contractor shall record all bids received on a summary form that shall be signed by all persons in attendance.
- (vi) The Contractor shall not negotiate further price adjustments (e.g., reductions) with the apparent successful bidder without prior written approval from Princeton University.
- (vii) The Contractor shall make a formal written recommendation to Princeton University for all subcontracts and purchase orders that shall include, but not be limited to, the following:
 - Introduction which presents all of the pertinent information relating to the project and the individual subcontract or purchase order being awarded (i.e., Project title, Project location, description of Subcontract, relevant cost code, budget amount, etc.).
 - Bid summary which recaps all bids received (i.e., list of bidders, bid opening amount, qualifications and adjustments for scope, final bid results, etc.).
 - Award recommendation (i.e., name of subcontractor, award amount, alternates, options, unit prices, labor rates, allowances, contingency holds, qualification, clarifications, exclusions, etc.). Additional supporting rationale is required for a recommendation of other than the low bidder. Include a statement that the bid of the recommended Subcontractor or supplier has been submitted in good faith and is fair and reasonable. Include a signature block for Princeton University approval.
 - Attachments. The Contractor shall attach a copy of each initial bid, as well as any updates to the initial bid (i.e., revised bids, final bids, etc.) for all bidders.
- (4) With the prior written approval of Princeton University, for designated portions of the Work, the Contractor may negotiate with approved Subcontractors and suppliers for subcontracts and material purchases without undergoing the formal bid process described in (a)(3) herein. Contractor shall inform Princeton University of the results of the negotiations and provide Princeton University with the information that would otherwise be required if the designated portion of the Work were open to competitive bidding as described in Subparagraph (a)(3).
- (5) When Princeton University has accepted the Contractor's recommendation for the award of any subcontract or other agreement, Contractor shall contract solely in its own name and behalf, and not in the name or behalf of Princeton University, with the specified Subcontractor or supplier.
- (6) If Princeton University refuses to accept the Contractor's recommendation for award, the Contractor shall make an alternate recommendation.
- (b) All subcontracts shall, except as otherwise approved by Princeton University in advance in writing, be awarded on a lump sum fixed price basis.
- (c) All subcontracts shall, so far as practicable, contain unit prices, labor rates and any other feasible formula for use in the determination of the costs of changes in the Work.
- (d) Contractor agrees to hold all Subcontractors, including all persons directly or indirectly employed by them, responsible for any damages due to breach of contract or any negligent act, and to endeavor diligently to effect recoveries of such damages and, where appropriate to remit the proceeds of those recoveries to Princeton University.
- (e) Contractor agrees to obtain Subcontractor certificates of insurance in accordance with Clause G1(a)(8).
- (f) The duties and requirements set forth in this Clause M1 are in addition to those set forth in Clause D2.

CLAUSE M2 ON-GOING DOCUMENT REVIEW

The Contractor shall conduct ongoing review of the architectural, civil, mechanical, electrical, and structural drawings and specifications subsequent to the Notice to Proceed, and shall advise and make recommendations and perform value engineering with respect to such factors as construction feasibility, possible economies, availability of material and labor, time requirements for procurement and construction, and projected costs.

CLAUSE M3 MONTHLY STATUS REPORTS

- (a) The Contractor shall prepare a monthly status report containing the following items:
- (1) An executive summary consisting of a narrative of the project cost and schedule status, an outline of remedial action plans required by all team members to meet the project cost and schedule requirements and a narrative of the outstanding items of information or decisions that must be made to progress the work.
 - (2) A construction cost report that shows the then-current approved Target Price breakdown, costs committed and paid to date, the anticipated cost for each Target Price line item and the variance of each budgeted line item and total to the anticipated cost.
 - (3) A summary of the commitments, anticipated items and transfers against the Construction Contingency, if any, within the Target Price.
 - (4) A schedule report that compares the baseline schedule to the current version and an explanation of the variance between the schedules. Also include an action plan to recover any negative variance from the approved baseline, an explanation of how past productivity has influenced the updated logic and durations, and explanation(s) of the cause of any delays and the party responsible for the cost of the related recovery efforts.
 - (5) Monthly cash flow and manpower reports that compare an approved baseline to actual and projected cash flows and manpower forecasts. Also, include an explanation of the cause for any variance between the actual/current projections and the baseline.
 - (6) Progress photographs of the project.
 - (7) Project metrics as deemed important by the entire team such as the number of outstanding shop drawings and RFIs, Architect-Engineer and Princeton University response time. Also, include a narrative of the metric data and its impact on the Project. Do not include the logs used to track this information.
 - (8) A summary of major outstanding quality issues including schedules and remedies to correct the conditions.
 - (9) A summary of the follow-up actions taken from the previous month's reports and any outstanding issues that still require action and by which team members.
 - (10) A summary of the posting of digital archiving documents to the Princeton Collaborative System including as-built drawings, record submittals, maintenance manuals, commissioning reports and warranty letters.
- (b) The Contractor shall prepare and submit this report in an electronic format to the Project Manager no later than the fifth calendar day of the month following the reporting period. When applicable, the Contractor shall post the report as an Adobe Acrobat (*.pdf) file on Princeton University's web-based project management application in accordance with Clause D3, Princeton Collaborative System - PCS.

CLAUSE M4 COST OF THE WORK - CPFF CONTRACTS

- (a) The term "Cost of the Work" shall be defined as a sum of money equal to the total of Contractor's costs actually incurred as hereinafter enumerated. Contractor's costs shall be those costs necessarily incurred by Contractor in connection with the proper performance of all of the Work. Such costs shall be at rates not higher than the standard paid in the locality of the Work, except with the prior written consent of Princeton University and shall include and be limited to the following items:
- (1) Wages and salaries paid to personnel directly employed by the Contractor to perform the Work in accordance with the following:
 - (i) Wages paid to field labor in accordance with applicable collective bargaining agreements or pursuant to a rate schedule agreed upon in advance by Princeton University and the Contractor.

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- (ii) Salaries or other amounts in accordance with a salary or rate schedule agreed upon in advance by Princeton University and the Contractor, paid to Contractor's personnel employed in any capacity and stationed at the field office.
 - (iii) Contractor's personnel engaged in expediting the production or transportation of materials or equipment and stationed at shops or on the road shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Work.
 - (iv) Salaries or other amounts in accordance with a salary or rate schedule agreed upon in advance by Princeton University and the Contractor, for Contractor's personnel while involved in engineering, expediting, procurement, purchasing, scheduling, shop drawing review and processing whether such personnel are stationed in the field office or the main office.
- (2) Cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration to employees of Contractor and included in the Cost of the Work under subparagraphs (1) and (2) above, subject to the limitations set forth in the Contract.
 - (3) The portion of reasonable travel and subsistence expenses of Contractor or of its officers or employees incurred while traveling in discharge of duties connected with the Work, subject to the prior approval of Princeton University.
 - (4) Payments made by Contractor to Subcontractors for Work performed pursuant to subcontracts under this Contract; provided, however that the costs of claims of Subcontractors (including without limitation claim preparation costs, claims consultant fees and attorneys' fees) shall not be paid as a Cost of the Work, except with the prior written approval of Princeton University in its sole discretion.
 - (5) Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation and installation thereof. Costs of suitable, off-site storage with the prior written approval of Princeton University.
 - (6) Sales, use, or similar taxes related to the Work and for which Contractor is liable imposed by any governmental authority, subject to the following provisions and limitations:
 - (i) Princeton University is exempt from New Jersey Sales Taxes (Exemption No. EO-210-634-501), and from New Jersey Excise Taxes (Exemption No. A-110839). Pursuant to N.J.S.A. 54:32B-8.22, this exemption applies to all purchases by contractors, subcontractors, or repairmen of materials, supplies or services for the exclusive use in erecting structures or building on, or otherwise improving, altering or repairing Princeton University's real property. Contractor shall utilize this exemption to the fullest extent possible. Contractor shall not be reimbursed for any taxes paid subject to the aforementioned exemptions regardless of whether Contractor has paid such taxes.
 - (ii) The Contractor shall place the exemption certificate number on invoices for materials incorporated in the Work and furnish copies of invoices to Princeton University. Upon completion of the Work, the Contractor shall file with Princeton University a notarized statement that all purchases made under the exemption certificate were entitled to be exempt. The Contractor shall pay legally assessed penalties for improper use of exemption certificate number.
 - (7) Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the Contractor's employees and used in self-performed work. Title to all equipment and materials shall pass to Princeton University upon payment therefore, and Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title.
 - (8) Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the Site of the Work for self-performed work, whether rented from Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges no higher than those prevailing in the area.
 - (9) Cost of removal of all debris including recycling and any related permits or handling fees.
 - (10) Costs incurred to provide site safety. Costs incurred due to an emergency affecting the safety of persons and property; provided, however, to the extent any cost referred to in this paragraph is incurred by reason of the negligence or other fault of Contractor or any Subcontractor or sub-subcontractor or is reimbursable

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by insurance or otherwise, or is the responsibility of Contractor under Clause G2 of the General Conditions, then such costs shall be excluded from the Cost of the Work.

- (11) Cost of premiums for all bonds which Contractor is required by the Contract to purchase and maintain or which Princeton University has the right to require Contractor to purchase and maintain, including bonds for Subcontractors as required by Princeton University or Contractor with Princeton University's prior approval.
 - (12) That portion of insurance premiums that can be directly attributable to this Contract.
 - (13) Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Contract to pay.
 - (14) All reasonable costs and expenditures necessary for the operation of the site office such as stationary supplies, blueprinting, furniture, fixtures, office equipment, and field computer services, provided that quantity and rates are subject to Princeton University's prior approval.
 - (15) Cost of reprographics with prior written approval of Princeton University.
 - (16) Communication expenses such as local and long distance line charges (equipment installation provided by Princeton University at no charge to Contractor), cellular phone usage, personal data assistant (PDA) usage, expressage, messenger service, and similar petty cash items in connection with the Work.
 - (17) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Princeton University.
- (b) The Cost of the Work shall not include costs such as, but not limited to, the following:
- (1) Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work.
 - (2) Costs due to the negligence of Contractor, or any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.
 - (3) Cost of preconstruction services under separate contract.
 - (4) Legal expenses incurred in prosecuting or defending claims in mediation or litigation (including without limitation, legal expenses incurred pursuant to Clause G2 indemnifying Princeton University and other Covered Parties).
 - (5) Cost of any gift, bonus, severance pay, payments to discretionary profit sharing plans, tuition reimbursement, allowance for home office overhead, or payroll processing charges paid to or associated with payments to Contractor's or Subcontractor's employees.
 - (6) All moving costs associated with the relocation of Contractor's personnel for the purpose of staffing the Project, except as approved by Princeton University in writing in advance.
 - (7) Cost of performing Work under any warranty or guarantee provided under or required by this Contract.
 - (8) Cost of any deductibles incurred under the Contractor's Builder's Risk Insurance.
 - (9) Cost of maintaining or storing records required under this Contract.
 - (10) Costs excluded from the Cost of the Work under any other express provision of the Contract.
- (c) All cash discounts shall accrue to the Cost of the Work. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the Cost of the Work, and Contractor shall endeavor to make provisions to secure same.

CLAUSE M5 CHANGES UNDER CPFF CONTRACTS

- (a) Princeton University Initiated Changes. Princeton University's authorized Technical Representative may, at any time, without notice to the sureties, if any, by written Request for Proposal designated or indicated to be a change order, make changes in the Work within the general scope of the Contract, including changes (i) in the specifications (including drawings and designs); (ii) in the method or manner of performance of the Work; (iii) in the Princeton University-furnished facilities, equipment, materials, services, or site; or (iv) directing acceleration in the performance of the Work.

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- (1) With each change request, Princeton University shall direct the Contractor to either (1) proceed to perform the changed Work, with an estimate to follow; or (2) submit an estimate for the changed Work but not proceed to perform the changed Work without additional written authorization.
 - (2) Within ten (10) business days of receiving an Princeton University-initiated Request for Proposal, the Contractor shall provide Princeton University with a written Change Order Request stating all changes in the Contract, including, without limitation, any changes to the Contract Time, the Project Schedule, the Target Price, to which it believes it is entitled as a result of the Request for Proposal. The Change Order Request submitted by Contractor for changes in the Work must be completely itemized and show the affected Drawings, quantities of material involved, and the dollar amounts for labor, materials, equipment rental, salaried personnel costs, insurance, and taxes, as well as changes in the then-current Project Schedule and in the Contract Time in format and detail reasonably satisfactory to Princeton University. Princeton University may request, and the Contractor shall promptly provide, further cost breakdowns, clarifications, documentation, or back-up if Princeton University reasonably believes such additional information is needed to understand and evaluate the request.
- (j) **Contractor Initiated Changes.** Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from Princeton University that causes a change shall be treated as a change order under this Clause M5; provided, that the Contractor gives Princeton University written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.
- (1) Except with respect to written Requests for Proposal issued by Princeton University pursuant to the provisions of Paragraph (a) hereof, the Contractor must give Princeton University written notice of any change within five (5) business days of the date on which the Contractor knew, or reasonably should have known, of the change. The notice must state (1) the nature of the change; the date, circumstances, and source of the change; and an order of magnitude of the price of the change, and (2) that the Contractor regards the change as a change order and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. The timely furnishing of such notice is an express condition precedent to any claim or request for adjustment to the Contract Time, the Project Schedule or the Target Price arising from the claimed change and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the Contract Time, the Project Schedule, or the Target Price arising from the change. If the change involves a differing site condition, it is a further express condition precedent of any such claim or request for adjustment that the Contractor has complied with Clause B12.
 - (2) Within twenty (20) business days after giving initial notice of a change, the Contractor shall submit a written Change Order Request that shall include all of the same information as described in (a)(2) above.
- (k) Except as provided in this Clause M5, no order, statement, or conduct of Princeton University shall be treated as a change under this Contract or entitle the Contractor to an equitable adjustment.
- (l) Within twenty (20) business days (or such other time period as may be agreed between the parties) after receiving such submission, Princeton University shall review the submission and either (1) issue a Change Order based upon the revised cost and time schedules submitted by Contractor or (2) object to the submitted cost and/or time schedule adjustments. If Princeton University objects to the proposed adjustments, Princeton University may issue a Disputed Change Order pursuant to Paragraph (f) or, authorize Contractor to perform the change on a time and material basis pursuant to Paragraph (g).
- (m) Princeton University and Contractor acknowledge and agree that any Change Order Request submitted by Contractor and any resulting Change Order shall include provision for any and all costs (including overhead and profit) associated with the change, both with respect to changed Work and unchanged Work, and whether direct, indirect, impact, or consequential in nature, and shall include provision for any and all claims which Contractor or its Subcontractors may have relating to the change, including without limitation delay, acceleration, inefficiency and/or impact claims.
- (n) **Disputed Changes.** If Contractor should dispute a decision by Princeton University as to whether a change has occurred or whether, or to what extent, a change in the Work will result in a change in the Target Price, the Contract Amount, the Contract Time, or the Project Schedule, then Contractor shall, if directed by Princeton University in a Disputed Change Order or other written directive, nevertheless perform such work pursuant to Clause H5; provided that the performance of the work shall not prejudice any claim that Contractor may have with respect to such work, so long as Contractor has given Princeton University timely notice of such claim pursuant to Clause H3, and so long as Contractor maintains the records required under Clause H5 and subparagraph (g) below. Such records shall be maintained for the sole purpose of documenting the performance of the work and shall not be determinative of the amount of such change, if a change has occurred, unless and until the parties agree that a change has occurred and the change is to be performed on a time and material basis.

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(o) **Time and Material Changes.** If the parties are unable to agree on a lump sum amount for any increase or decrease in the Target Price resulting from any change in the Work, then the amount of such increase or decrease may, at the sole discretion of Princeton University, be determined on a time and material basis as the sum of (a) Contractor's aggregate additional reasonable and necessary costs or savings resulting from such change in the Work (whether incurred directly by Contractor or indirectly through one or more Subcontractors) for (i) labor and labor burdens for time actually spent at work on the Site, (ii) materials and equipment incorporated in the Work, (iii) rental of equipment, machinery or temporary facilities, and (iv) salaried personnel working directly on the Work, plus (b) a reasonable allowance for Contractor's overhead and profit relating to such costs or savings. Contractor shall keep, with respect to changes in the Work performed on a time and material basis, a complete and accurate account of all quantities of labor, materials, machinery, equipment, and salaried personnel costs relating thereto, itemized in such form and supported by such evidence as Princeton University may reasonably request. In addition, Contractor shall provide Princeton University with access to such records as Princeton University may reasonably request to allow the University to determine the amount of any savings applicable to any changes in the Work.

(p) Contractor will receive no Fee based on the adjusted costs of the Work resulting from Change Orders other than the modification of the Fee, to the extent provided in the Contract.

(q) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

CLAUSE M6 PAYMENTS UNDER CPFF CONTRACTS

(a) On or before the twentieth (20th) day of each month during the performance of the Work, Contractor shall submit to Princeton University for its review an application for payment (the "Application for Payment"), together with the reports or revised schedules specified elsewhere in this Contract. Additionally, Contractor shall submit payrolls (e.g., time sheets) for all labor and other data supporting the Contractor's right to payment for contracts or materials in accordance with Generally Accepted Accounting Procedures (GAAP). The Application for Payment shall comprise both (1) the Cost of the Work incurred during the preceding month for which the Contractor is to be paid and (2) the amount of the Contractor's Fee due. Requests for payment may include the cost of materials or equipment not incorporated in the Work, but delivered and suitably stored at the site or in an approved off-site location if:

- (1) Payment for material delivered to locations other than the site is specifically authorized by this Contract;
- (2) The Contractor furnishes satisfactory evidence that it has acquired free and clear title to such material and that the material will be used to perform this Contract;
- (3) Storage and security procedures for the material have been approved by Princeton University, satisfactory evidence of insurance covering such material (with Princeton University named as an additional insured) has been provided to Princeton University, procedures for identifying and segregating the material (whether by serial numbers, tagging, photographs or other methods) have been approved by Princeton University, and the form and substance of bills of sale transferring title to Princeton University (if and when directed by Princeton University) have been approved by Princeton University; and
- (4) All other documentation required by Princeton University has been provided by Contractor.

(b) The form of Application for Payment shall be as specified by Princeton University.

(c) Each Application for Payment constitutes a certification by the Contractor that:

- (1) the application represents a just estimate of the amount properly payable to Contractor under the terms of the Contract;
- (2) all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application;
- (3) there are no construction liens outstanding as of the date of the application; and
- (4) except for bills not paid but included in the application, there is no known basis for the filing of any construction liens with respect to the Work.

(d) The Application for Payment shall be accompanied by a written waiver and release of liens in the applicable form set forth in Clause H10 Exhibits of the General Terms and Conditions, executed by Contractor and stating the amounts of all payments received by it and confirming its right to file a construction lien pursuant to the Construction Lien Law (P.L. 1993, c. 318, section 37), and its rights under any construction lien which may be filed, and any amendments thereto, are waived and released in consideration for, upon receipt of, and to the extent of all payments received by it to date. Upon the request of Princeton University, the Contractor shall provide written waivers and releases of liens in the applicable form set forth in Clause

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H10 Exhibits of the General Terms and Conditions, executed by all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors.

(e) Princeton University or, at Princeton University's request, the Architect-Engineer will review Contractor's Application for Payment and will promptly take appropriate action thereon. Such amount as may be approved for payment shall be payable by Princeton University not later than the later of (i) the twentieth (20th) day of the month next succeeding the date of submission of the Application for Payment or (ii) thirty (30) days after the submission of the Application for Payment. Princeton University shall be entitled to rely on the accuracy and completeness of the information provided by Contractor and shall not be deemed to have made audits of the supporting data, exhaustive or continuous on-site inspections or examinations to ascertain how or for what purpose Contractor has used the moneys previously paid on account of this Contract. The payment of any Application for Payment, including the final payment, does not constitute approval or acceptance of any item of cost in such Application for Payment, nor does it constitute acceptance of the Work.

(f) Princeton University shall retain an amount equal to ten percent (10%) of the Cost of the Work set forth in each Application for Payment submitted in accordance with paragraph (a). Further, Princeton University and Architect-Engineer may consent, in their discretion, to release portions of the retainage prior to Final Completion of the Project for costs of the Work relating to Subcontractors who complete their work in the early stages of the Project. In no event shall any interest be due and payable by Princeton University to Contractor, any Subcontractor or any other party on any of the sums retained by Princeton University pursuant to any of the terms or provisions of the Contract.

(g) Payment Upon Completion of Work.

(1) When the Contractor achieves Substantial Completion of all of the Work, and the punchlist and punchlist completion schedule have been approved by Princeton University and the Architect-Engineer, then Princeton University shall pay all amounts due and remaining unpaid to Contractor, less whatever portion of the retainage Princeton University deems it appropriate (in its discretion) to continue to hold until Final Completion, and less two hundred percent (200%) of the cost to complete the work on the punchlist (as determined by Princeton University).

(2) Ten (10) days after Contractor achieves Final Completion of the Work and final acceptance thereof by Princeton University or as soon thereafter as possible, Contractor shall submit a final Application for Payment which will set forth all amounts due and remaining unpaid to Contractor, including retainages and the unpaid portion of Contractor's Fee. Upon approval thereof by Princeton University and, at Princeton University's request, by the Architect-Engineer, Princeton University shall pay to Contractor the amount due under such final Application for Payment within thirty (30) days after its approval. The final Application for Payment shall be accompanied by written final waivers and release of liens executed by Contractor and, if requested by Princeton University, by all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors.

(h) Notwithstanding the foregoing provisions, Princeton University shall not be obligated to make any payment to Contractor hereunder if any one or more of the following conditions exists:

(1) Contractor is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents.

(2) Any part of such payment is attributable to Work that is defective or not performed in accordance with the Contract Documents.

(3) Contractor has failed to make payments promptly to Contractor's Subcontractors or for material or labor used in the Work for which Princeton University has made payment to Contractor.

(4) If Princeton University, in its good faith judgment, determines that the portion of the Target Price remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, whereupon no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by Princeton University to be sufficient to so complete the Work

(5) If Princeton University has offsets or backcharges which reduce or eliminate any amounts otherwise due to Contractor.

(i) When payment is received from Princeton University, the Contractor shall immediately pay all Subcontractors, materialmen, laborers, and suppliers the amount they are due for the Work covered by such payment. In the event Princeton University becomes informed that the Contractor has not paid a Subcontractor, materialman, laborer or supplier as provided herein, Princeton University may, in its sole discretion, issue future checks to the Contractor in appropriate amounts otherwise

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due hereunder naming the Contractor and any such Subcontractor, materialman, laborer or supplier as joint payees. Such joint check procedure, if employed by Princeton University, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check, shall not create any rights in such Subcontractor, materialman, laborer or supplier against Princeton University, and shall not be deemed to commit Princeton University to repeat the procedure in the future.

MODEL DOCUMENT