

GENERAL CONDITIONS OF ENGEL FOR CONSTRUCTION (Released on October 2018)

1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

- 1.1.1 APPLICABLE CODE REQUIREMENTS: The term "Applicable Code Requirements" means all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over INVESTOR, CONTRACTOR, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work including without limitation the requirements set forth in Section 3.7.
- 1.1.2 APPLICATION FOR PAYMENT: The term "Application For Payment" means the submittal from CONTRACTOR wherein payment for certain portions of the completed Work is requested in accordance with Section 8.
- 1.1.3 CERTIFICATE FOR PAYMENT: The term "Certificate For Payment" means the form signed by INVESTOR's Representative attesting to the CONTRACTOR's right to receive payment for certain completed portions of the Work in accordance with Section 8.
- 1.1.4 COMPENSABLE DELAY: The term "Compensable Delay" means a delay that entitles the CONTRACTOR to an adjustment of the Contract Sum and an adjustment of the Contract Time pursuant to Sections 6 and 7 of the General Conditions.
- 1.1.5 CONTRACT: The term "Contract" means the Purchase Order issued by INVESTOR to CONTRACTOR and the other Contract Documents.
- 1.1.6 CONTRACT DOCUMENTS: The term "Contract Documents" means all documents listed in Section 1.3 of the Agreement, as modified by Change Order, including but not limited to the Drawings and Specifications.
- 1.1.7 CONTRACT MILESTONE: The term "Contract Milestone" means any requirement in the Contract Documents that reflects a planned point in time for the start or completion of a portion of the Work measured from (i) the date of the Notice to Proceed or (ii) the date of another Contract Milestone defined in the Contract Documents, as applicable.
- 1.1.8 CONTRACT SCHEDULE: The term "Contract Schedule" means the graphical representation of a practical plan, in accordance with the Specifications, to perform and complete the Work within the Contract Time in accordance with Section 3.
- 1.1.9 CONTRACT SUM: The term "Contract Sum" means the amount of compensation stated in the Agreement for the performance of the Work, as adjusted by Change Order.
- 1.1.10 CONTRACT TIME: The term "Contract Time" means the number of days set forth in the Agreement, as adjusted by Change Order, within which CONTRACTOR must achieve Final Completion.
- 1.1.11 CONTRACTOR: The term "Contractor" means the person or firm identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.
- 1.1.12 DAY: The term "day," as used in the Contract Documents, shall mean day, unless otherwise specifically provided.
- 1.1.13 DEFECTIVE WORK: The term "Defective Work" means work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of INVESTOR's Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.
- 1.1.14 DRAWINGS: The term "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams. The Drawings are listed in the List of Drawings.
- 1.1.15 EXCUSABLE DELAY: The term "Excusable Delay" means a delay that entitles the CONTRACTOR to an adjustment of the Contract Time but not an adjustment of the Contract Sum, pursuant to Sections 6 and 7 of the General Conditions.
- 1.1.16 EXTRA WORK: The term "Extra Work" means Work beyond or in addition to the Work required by the Contract Documents.
- 1.1.17 FINAL COMPLETION: The term "Final Completion" means the date at which the Work has been fully completed in accordance with the requirements of the Contract Documents pursuant to Section 8.7 of the General Conditions.
- 1.1.18 GUARANTEE TO REPAIR PERIOD: See Section 11 of the General Conditions.
- 1.1.19 PROJECT: The term "Project" means the Work of the Contract and all other work, labor, equipment, and materials necessary to accomplish the Project. The Project may include construction by INVESTOR or by Separate CONTRACTORS.
- 1.1.20 SEPARATE CONTRACTOR: The term "Separate CONTRACTOR" means a person or firm under separate contract with INVESTOR performing other work related to the Project.
- 1.1.21 SPECIFICATIONS: The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- 1.1.22 SUBCONTRACTOR: The term "Subcontractor" means a person or firm that has a contract with CONTRACTOR or with a Subcontractor to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

- 1.1.23 SUBSTANTIAL COMPLETION: See Section 8.6 of the General Conditions.
- 1.1.24 SUPERINTENDENT: The term "Superintendent" means the person designated by CONTRACTOR to represent CONTRACTOR at the Project site in accordance with Section 3.
- 1.1.25 TIER: The term "tier" means the contractual level of a Subcontractor or supplier with respect to CONTRACTOR. For example, a first-tier Subcontractor is under subcontract with CONTRACTOR, a second-tier Subcontractor is under subcontract with a first-tier Subcontractor, and so on.
- 1.1.26 UNEXCUSABLE DELAY: The term "Unexcusable Delay" means a delay that does not entitle the CONTRACTOR to an adjustment of the Contract Sum and does not entitle the CONTRACTOR to an adjustment of the Contract Time.
- 1.1.27 UNILATERAL CHANGE ORDER: See Section 6.2 of the General Conditions.
- 1.1.28 INVESTOR: The term "INVESTOR" means [REDACTED] [insert respective ENGEL-Company, address]
- 1.1.29 INVESTOR'S REPRESENTATIVE: The term "INVESTOR's Representative" means the person or firm identified as such in the Contract.
- 1.1.30 WORK: The term "Work" means all construction, services and other requirements of the Contract Documents as modified by Change Order, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or to be provided by CONTRACTOR to fulfill CONTRACTOR's obligations. The Work may constitute the whole or a part of the Project.

1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

- 1.2.1 The Contract Documents and all copies thereof furnished to or provided by CONTRACTOR are the property of INVESTOR and are not to be used on other work.

1.3 INTERPRETATION

- 1.3.1 The Contract Documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict between terms of the Contract Documents, the following order of precedence shall apply:
- .1 The Purchase Order,
 - .2 The Minutes of Negotiation,
 - .3 These General Conditions,
 - .4 The Specifications,
 - .5 The Drawings.
- 1.3.2 With respect to the Drawings, figured dimensions shall control over scaled measurements and specific details shall control over typical or standard detail.
- 1.3.3 With respect to the Contract Documents, Addenda shall govern over other portions of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specifically noted.
- 1.3.4 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings; and non-technical words and abbreviations are used in accordance with their commonly understood meanings.
- 1.3.5 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

2 INVESTOR

2.1 INFORMATION AND SERVICES PROVIDED BY INVESTOR

- 2.1.1 If required for performance of the Work, as determined by INVESTOR's Representative, INVESTOR will make available a survey describing known physical characteristics, boundaries, easements, and utility locations for the Project site.
- 2.1.2 INVESTOR is not subject to any requirement to obtain or pay for local building permits, inspection fees, plan checking fees, or certain utility fees. Except as otherwise provided in the Contract Documents, INVESTOR will obtain and pay for any utility permits, demolition permits, easements, and government approvals for the use or occupancy of permanent structures required in connection with the Work.
- 2.1.3 Contractor will be furnished, free of charge, such copies of the Contract Documents as INVESTOR deems reasonably necessary for execution of the Work.

2.2 ACCESS TO PROJECT SITE

- 2.2.1 INVESTOR will provide, no later than the date designated in the Contract Schedule accepted by INVESTOR's Representative, access to the lands and facilities upon which the Work is to be performed, including such access and

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other lands and facilities designated in the Contract Documents for use by CONTRACTOR.

2.3 INVESTOR'S RIGHT TO DEFER THE COMMENCEMENT OF THE WORK

2.3.1 INVESTOR may for any reason and without any further compensation to CONTRACTOR, order the deferral of the commencement of the WORK. CONTRACTOR shall then update then Contract Schedules in accordance with Section 3.8.

2.4 INVESTOR'S RIGHT TO STOP THE WORK

2.4.1 If CONTRACTOR fails to correct Defective Work as required by Section 11.1 or fails to perform the Work in accordance with the Contract Documents, INVESTOR or INVESTOR's Representative may direct CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated by CONTRACTOR. CONTRACTOR shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. INVESTOR and INVESTOR's Representative have no duty or responsibility to CONTRACTOR or any other party to exercise the right to stop the Work.

2.5 INVESTOR'S RIGHT TO CARRY OUT THE WORK

2.5.1 If CONTRACTOR fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and, after receipt of written notice from INVESTOR, fails within 2 days, excluding Saturdays, Sundays and legal holidays, or within such additional time as the INVESTOR may specify, to correct such failure, INVESTOR may, without prejudice to other remedies INVESTOR may have, correct such failure at CONTRACTOR's expense. In such case, INVESTOR will be entitled to deduct from payments then or thereafter due CONTRACTOR the cost of correcting such failure, including without limitation compensation for the additional services and expenses of INVESTOR's consultants made necessary thereby. If payments then or thereafter due CONTRACTOR are not sufficient to cover such amounts, CONTRACTOR shall pay the additional amount to INVESTOR.

2.6 INVESTOR'S RIGHT TO REPLACE INVESTOR'S REPRESENTATIVE

2.6.1 INVESTOR may at any time and from time to time, without prior notice to or approval of CONTRACTOR, replace INVESTOR's Representative with a new INVESTOR's Representative. Upon receipt of notice from INVESTOR informing CONTRACTOR of such replacement and identifying the new INVESTOR's representative, CONTRACTOR shall recognize such person or firm as INVESTOR's Representative for all purposes under the Contract Documents.

3 CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 Contractor and its Subcontractors shall review and compare each of the Contract Documents with the others and with information furnished or made available by INVESTOR, and shall promptly report in writing to INVESTOR's Representative any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with Applicable Code Requirements observed by CONTRACTOR or its Subcontractors.

3.1.2 Contractor and its Subcontractors shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to CONTRACTOR before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to INVESTOR's Representative.

3.1.3 If CONTRACTOR and its Subcontractors performs any construction activity involving an error, inconsistency, or omission referred to in Sections 3.1.1 and 3.1.2, without giving the notice required in those Sections and obtaining the written consent of INVESTOR's Representative, CONTRACTOR shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Contractor shall supervise, coordinate, and direct the Work using CONTRACTOR's best skill and attention. CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work.

3.2.2 Contractor shall be responsible to INVESTOR for acts and omissions of CONTRACTOR's agents, employees, and Subcontractors, and their respective agents and employees.

3.2.3 Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by acts or omissions of INVESTOR or INVESTOR's Representative in the administration of the Contract, or by tests, inspections, or approvals required or performed by persons or firms other than CONTRACTOR.

3.2.4 Contractor shall be responsible for inspection of all portions of the Work, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract and are ready to receive subsequent Work.

3.2.5 Contractor shall at all times maintain good discipline and order among its employees and Subcontractors. CONTRACTOR shall provide competent, fully qualified personnel to perform the Work.

3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract, CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Final Completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4 CONTRACTOR'S WARRANTY

3.4.1 Contractor warrants to INVESTOR that all materials and equipment used in or incorporated into the Work will be of good quality, new, and free of liens, claims, and security interests of third parties; that the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract. If required by INVESTOR's Representative, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5 TAXES

3.5.1 Contractor shall pay all sales, consumer, use, and similar taxes for the Work or portions thereof provided by CONTRACTOR.

3.6 PERMITS, FEES, AND NOTICES

3.6.1 Except for the permits and approvals which are to be obtained by INVESTOR or the requirements with respect to which INVESTOR is not subject as provided in Section 2.1.2, CONTRACTOR shall secure and pay for all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Work. CONTRACTOR shall deliver to INVESTOR all original licenses, permits, and approvals obtained by CONTRACTOR in connection with the Work prior to the final payment or upon termination of the Contract, whichever is earlier.

3.7 APPLICABLE CODE REQUIREMENTS

3.7.1 Contractor shall perform the Work in accordance with the following Applicable Code Requirements:

- .1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over INVESTOR, CONTRACTOR, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.
- .2 All applicable laws, regulations and standards in force in the health, safety, environmental protection fields, and specifically with the labor laws, in each of the countries where the production and marketing of the Supplies occurs.
- .3 All requirements of any insurance company issuing insurance required hereunder.

3.7.2 If CONTRACTOR performs Work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to INVESTOR and INVESTOR's Representative, CONTRACTOR shall be responsible for such Work and any resulting damages including, without limitation, the costs of correcting Defective Work.

3.8 SUPERINTENDENT

3.8.1 Contractor shall employ a competent Superintendent satisfactory to INVESTOR who shall be in attendance at the Project site at all times during the performance of the Work. Superintendent shall represent CONTRACTOR and communications given to and received from Superintendent shall be binding on CONTRACTOR.

3.8.2 Failure to maintain a Superintendent on the Project site at all times Work is in progress shall be considered a material breach of this Contract, entitling INVESTOR to terminate the Contract or alternatively, issue a stop Work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop Work order, CONTRACTOR fails to complete the Contract on time, CONTRACTOR will be assessed Liquidated Damages in accordance with the Agreement.

3.8.3 The Superintendent approved for the Project must be able to read, write and verbally communicate in English.

3.8.4 The Superintendent may not perform the Work of any trade, pick-up materials, or perform any Work not directly related to the supervision and coordination of the Work at the Project site when Work is in progress.

3.9 SCHEDULES REQUIRED OF CONTRACTOR

3.9.1 Contractor shall submit a Contract Schedule and updated Contract Schedules to INVESTOR's Representative in the form and within the time limits required

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- by the Specifications and acceptable to INVESTOR's Representative. INVESTOR's Representative will determine acceptability of the Contract Schedule and updated Contract Schedules within the time limits required by the Specifications, or if no such time period is specified, within a reasonable period of time. If INVESTOR's Representative deems the Contract Schedule or updated Contract Schedule unacceptable, it shall specify in writing to CONTRACTOR the basis for its objection.
- 3.9.2 The Contract Schedule and updated Contract Schedules shall represent a practical plan to complete the Work within the Contract Time. Schedules showing the Work completed in less than the Contract Time may be acceptable if judged by INVESTOR's Representative to be practical. Acceptance of any schedule showing completion beyond the Contract Time by INVESTOR's Representative shall not change the Contract Time and is without prejudice to any right of the INVESTOR. The Contract Time, not the Contract Schedule, shall control in the determination of liquidated damages payable by CONTRACTOR and in the determination of any delay.
- 3.9.3 The Preliminary Contract Schedule and the Updated Contract Schedules shall meet the following requirements:
- .1 Schedules must be suitable for monitoring progress of the Work.
 - .2 Schedules must provide necessary data about the timing for the INVESTOR's decisions and INVESTOR's furnished items.
 - .3 Schedules must be in sufficient detail to demonstrate adequate planning for the Work.
 - .4 Schedules must represent a practical plan to perform and complete the Work within the Contract Time.
- 3.9.4 Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work will permit its completion within the Contract Time, any Contract milestones and any Contract phases.
- 3.9.5 In preparing the Contract Schedule and updated Contract Schedules, CONTRACTOR shall obtain such information and data from Subcontractors as may be required to develop a reasonable and appropriate schedule for performance of the work and shall provide such information and data to the INVESTOR's Representative upon request. CONTRACTOR shall continuously obtain from Subcontractors information and data about the planning for and progress of the Work and the delivery of equipment, shall coordinate and integrate such information and data into updated Contract Schedules, as appropriate, and shall monitor the progress of the Work and the delivery of equipment.
- 3.9.6 Contractor shall cooperate with INVESTOR's Representative in the development of the Contract Schedule and updated Contract Schedules. INVESTOR's Representative's acceptance of or its review comments about any schedule or scheduling data shall not relieve CONTRACTOR from its sole responsibility to plan for, perform, and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.
- 3.10 AS-BUILT DOCUMENTS**
- 3.10.1 Contractor shall maintain one set of As-built drawings and specifications, which shall be kept up to date during the Work of the Contract. All changes which are incorporated into the Work which differ from the documents as drawn and written shall be noted on the As-built set. Notations shall reflect the actual materials, equipment and installation methods used for the Work and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion each drawing and the specification cover shall be signed by CONTRACTOR and dated attesting to the completeness of the information noted therein. As-built Documents shall be turned over to the INVESTOR's Representative (electronically and hard-copy) and shall become part of the Record Documents.
- 3.11 DOCUMENTS AND SAMPLES AT PROJECT SITE**
- 3.11.1 Contractor shall maintain the following at the Project site:
- .1 One as-built copy of the Contract Documents, in good order and marked to record current changes and selections made during construction.
 - .2 The current accepted Contract Schedule.
 - .3 Shop Drawings, Product Data, and Samples.
 - .4 All other required submittals.
- These shall be available to INVESTOR's Representative and shall be delivered to INVESTOR's Representative for submittal to INVESTOR upon the earlier of Final Completion or termination of the Contract.
- 3.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**
- 3.12.1 Definitions:
- .1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by CONTRACTOR or a Subcontractor to illustrate some portion of the Work.
 - .2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by CONTRACTOR to illustrate or describe materials or equipment for some portion of the Work.
 - .3 Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
- 3.12.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which submittals are required, how CONTRACTOR proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 3.12.3 Contractor shall review, approve, and submit to INVESTOR's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of INVESTOR or of Separate CONTRACTORS. Submittals made by CONTRACTOR which are not required by the Contract Documents may be returned without action by INVESTOR's Representative.
- 3.12.4 Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by INVESTOR's Representative and no exceptions have been taken by INVESTOR's Representative. Such Work shall be in accordance with approved submittals and the Contract Documents.
- 3.12.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, CONTRACTOR represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related Work.
- 3.12.6 If CONTRACTOR discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, CONTRACTOR shall notify INVESTOR's Representative and receive instruction before proceeding with the affected Work.
- 3.12.7 Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by INVESTOR's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless CONTRACTOR has specifically informed INVESTOR's Representative in writing of such deviation at the time of submittal and INVESTOR's Representative has given written approval of the specific deviation. CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by INVESTOR's Representative's review, acceptance, comment, or approval thereof.
- 3.12.8 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by INVESTOR's Representative on previous submittals.
- 3.13 USE OF SITE AND CLEAN UP**
- 3.13.1 Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. CONTRACTOR shall not unreasonably encumber the Project site with materials or equipment.
- 3.13.2 Contractor shall, during performance of the Work, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by CONTRACTOR. CONTRACTOR shall remove all excess dirt, waste material, and rubbish caused by the CONTRACTOR; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Work.
- 3.13.3 Personnel of CONTRACTOR and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that Work is not being performed at the Project site, except as otherwise provided in the Contract Documents.
- 3.14 CUTTING, FITTING, AND PATCHING**
- 3.14.1 Contractor shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly and to allow the Work to receive or be received by work of Separate CONTRACTORS shown upon, or reasonably implied by, the Contract Documents.
- 3.14.2 Contractor shall not endanger the Work, the Project, or adjacent property by cutting, digging, or otherwise. CONTRACTOR shall not cut or alter the work of any Separate CONTRACTOR without the prior consent of INVESTOR's Representative.
- 3.15 ACCESS TO WORK**
- 3.15.1 INVESTOR, INVESTOR's Representative, their consultants, and other persons authorized by INVESTOR will at all times have access to the Work wherever it is in preparation or progress. CONTRACTOR shall provide safe and proper facilities for such access and for inspection.

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3.16 CONCEALED, UNFORESEEN, OR UNKNOWN CONDITIONS OR EVENTS

3.16.1 Except and only to the extent provided otherwise in Sections 6 and 7 of these General Conditions, by signing the Agreement, CONTRACTOR agrees:

- .1 To bear the risk of concealed, unforeseen or unknown conditions or events, if any, which may be encountered in performing the Contract; and
- .2 That CONTRACTOR's signature of the Contract was made with full knowledge of this risk.

3.16.2 In agreeing to bear the risk of concealed, unforeseen or unknown conditions or events, CONTRACTOR understands that, except and only to the extent provided otherwise in Sections 6 and 7, concealed, unforeseen or unknown conditions or events shall not excuse CONTRACTOR from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle the CONTRACTOR to an adjustment of the Contract Sum.

3.16.3 If CONTRACTOR encounters concealed, unforeseen or unknown conditions or events that may require a change to the design shown in the Contract Documents, CONTRACTOR shall immediately notify INVESTOR's Representative in writing such that INVESTOR's Representative can determine if a change to the design is required. CONTRACTOR shall be liable to INVESTOR for any extra costs incurred as the result of CONTRACTOR's failure to immediately give such notice.

3.16.4 If, as the result of concealed, unforeseen or unknown conditions or events, the INVESTOR issues a Change Order or Field Order that changes the design from the design depicted in the Contract Documents, CONTRACTOR shall be entitled, subject to compliance all the provisions of the Contract, including those set forth in Sections 4, 6 and 7, to an adjustment of the Contract Sum and/or Contract Time, for the cost and delay resulting from implementing the changes to the design. Except as provided in this Section 3.16.3, or as may be expressly provided otherwise in the Contract, there shall be no adjustment of the Contract Sum and/or Contract Time as a result of concealed, unforeseen or unknown conditions or events.

3.16.5 Contractor shall, as a condition precedent to any adjustment in Contract Sum or Contract Time under Section 3.16.3, fully comply with Section 4 (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.17 LIABILITY FOR AND REPAIR OF DAMAGED WORK

3.17.1 Contractor shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to INVESTOR's acceptance of the Project as fully completed except that CONTRACTOR shall not be liable for damages and losses to the Project caused by earthquake in excess of magnitude 3.5 on the Richter Scale, tidal wave, or flood, provided that the damages or losses were not caused in whole or in part by the negligent acts or omissions of CONTRACTOR, its officers, agents or employees (including all Subcontractors and suppliers of all tiers). As used herein, "flood" shall have the same meaning as in the builder's risk property insurance.

3.17.2 Contractor shall promptly repair and replace any Work or materials damaged or destroyed for which the CONTRACTOR is liable under Section 3.17.1.

3.18 INDEMNIFICATION

3.18.1 Contractor shall indemnify, defend and hold harmless INVESTOR, INVESTOR's consultants, INVESTOR's Representative, INVESTOR's Representative's consultants, and their respective directors, officers, agents, and employees from and against losses (including without limitation the cost of repairing defective work and remedying the consequences of defective work) arising out of, resulting from, or relating to the following:

- .1 The failure of CONTRACTOR to perform its obligations under the Contract.
- .2 The inaccuracy of any representation or warranty by CONTRACTOR given in accordance with or contained in the Contract Documents.
- .3 Any claim of damage or loss by any Subcontractor against INVESTOR arising out of any alleged act or omission of CONTRACTOR or any other Subcontractor, or anyone directly or indirectly employed by CONTRACTOR or any Subcontractor.

3.18.2 The INVESTOR shall not be liable or responsible for any accidents, loss, injury (including death) or damages happening or accruing during the term of the performance of the Work herein referred to or in connection therewith, to persons and/or property, and CONTRACTOR shall fully indemnify, defend and hold harmless INVESTOR and protect INVESTOR from and against the same as provided in paragraph 3.17.1 above.

4 ADMINISTRATION OF THE CONTRACT

4.1 ADMINISTRATION OF THE CONTRACT BY INVESTOR'S REPRESENTATIVE

4.1.1 INVESTOR's Representative will provide administration of the Contract as provided in the Contract Documents and will be the representative of INVESTOR.

4.2 CONTRACTOR CHANGE ORDER REQUESTS

4.2.1 Contractor may request changes to the Contract Sum and/or Contract Time for Extra Work, materially differing site conditions, or Delays to Final Completion of the Work.

4.2.2 Conditions precedent to obtaining an adjustment of the Contract Sum and/or Contract Time, payment of money, or other relief with respect to the Contract Documents, for any other reason, are:

- .1 Timely submission of a Change Order Request that meets the requirements of Sections 4.2.3.1 and 4.2.3.2; and
- .2 If requested, timely submission of additional information as requested by the INVESTOR Representative pursuant to Section 4.2.3.3.

4.2.3 Change Order Request:

4.2.3.1 A Change Order Request will be deemed timely submitted if, and only if, it is submitted within 7 days of the date the CONTRACTOR discovers, or reasonably should discover the circumstances giving rise to the Change Order Request, unless additional time is allowed in writing by INVESTOR's Representative for submission of the Change Order Request, provided that if :

- .1 the Change Order Request includes compensation sought by a Subcontractor; AND
- .2 the CONTRACTOR requests in writing to the INVESTOR's Representative, within the 7-day time period, additional time to permit CONTRACTOR to conduct an appropriate review of the Subcontractor Change Order Request,

the time period for submission of the actual Change Order Request shall be extended by the number of days specified in writing by the INVESTOR's Representative.

4.2.3.2 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment of the Contract Sum, Contract Time, and/or other monetary relief. If the CONTRACTOR requests an adjustment to the Contract Sum or other monetary relief, the CONTRACTOR shall submit the following with the Change Order Request:

- .1 a completed Cost Proposal in the form contained in the Annexes meeting the requirements of Section 6; OR
- .2 a partial Cost Proposal and a declaration of what required information is not then known to CONTRACTOR. If CONTRACTOR failed to submit a completed Cost Proposal with the Change Order Request, CONTRACTOR shall submit a completed Cost Proposal meeting the requirements of Section 6 within 7 days of the date the CONTRACTOR submitted the Change Order Request unless additional time is allowed by the INVESTOR's Representative.

4.2.3.3 Upon request of INVESTOR's Representative, CONTRACTOR shall submit such additional information as may be requested by INVESTOR's Representative for the purpose of evaluating the Change Order Request. Such additional information may include:

- .1 If CONTRACTOR seeks an adjustment of the Contract Sum or other monetary relief, actual cost records for any changed or extra costs (including without limitation, payroll records, material and rental invoices and the like), shall be submitted by the deadline established by the INVESTOR's Representative, who may require such actual cost records to be submitted and reviewed, on a daily basis, by the INVESTOR's Representative and/or representatives of the INVESTOR's Representative.
- .2 If CONTRACTOR seeks an adjustment of the Contract Time, written documentation demonstrating CONTRACTOR's entitlement to a time extension under Section 8.4, which shall be submitted within 15 days of the date requested.
- .3 If CONTRACTOR seeks an adjustment of the Contract Sum or other monetary relief for delay, written documentation demonstrating CONTRACTOR's entitlement to such an adjustment under Section 6.3.4, which shall be submitted within 15 days of the date requested.
- .4 Any other information requested by the INVESTOR's Representative for the purpose of evaluating the Change Order Request, which shall be submitted by the deadline established by the INVESTOR's Representative.

4.2.4 INVESTOR's Representative will make a decision on a Change Order Request, within a reasonable time, after receipt of a Change Order Request. In the event the Change Order Request is submitted pursuant to Section 7.4.1, the INVESTOR's Representative shall promptly review and accept or reject it within thirty (30) days. A final decision is any decision on a Change Order Request which states that it is final.

4.2.5 Contractor may file a written demand for a final decision by INVESTOR's Representative on all or part of any Change Order Request as to which the INVESTOR's Representative has not previously issued a final decision pursuant to Section 4.2.4; such written demand may not be made earlier than the 30th day after submission of the Change Order Request. Within 30 days of receipt of the demand, INVESTOR's Representative will issue a final decision on the Change Order Request. The INVESTOR's Representative's

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failure to issue a decision within the 30-day period shall be treated as the issuance, on the last day of the 30-day period, of a final decision to deny the Change Order Request in its entirety.

5 SUBCONTRACTORS

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

5.1.1 Unless otherwise stated in the Contract Documents, CONTRACTOR shall submit in writing, prior to entering into subcontract agreements, the names and addresses of all Subcontractors proposed for the Work that were not previously listed in the Contract and its Annexes.

5.1.2 Any Subcontractor may be disqualified if INVESTOR or INVESTOR's Representative determines that such Subcontractor fails to meet the requirements of the Contract Documents or for any other reason.

5.1.3 Except as hereinafter provided, any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor, as required by INVESTOR or INVESTOR's Representative pursuant to Section 5.1.1 shall be borne solely by CONTRACTOR and CONTRACTOR shall not be entitled to any increase in Contract Sum or extension of Contract Time on account of such replacement or substitution.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 Any part of the Work performed for CONTRACTOR by a first-tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to CONTRACTOR by the terms of the Contract Documents, to assume toward CONTRACTOR all the obligations and responsibilities which CONTRACTOR assumes towards INVESTOR by the Contract Documents, and to perform such portion of the Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of INVESTOR under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights.

5.2.2 Upon the request of INVESTOR, CONTRACTOR shall promptly furnish to INVESTOR a true, complete, and executed copy of any subcontract.

5.2.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and INVESTOR, except when, and only to the extent that, INVESTOR elects to accept the assignment of the subcontract with such Subcontractor pursuant to Section 5.3, Contingent Assignment of Subcontracts.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Contractor hereby assigns to INVESTOR all its interest in first-tier subcontracts now or hereafter entered into by CONTRACTOR for performance of any part of the Work. The assignment will be effective upon acceptance by INVESTOR in writing and only as to those subcontracts which INVESTOR designates in writing. INVESTOR may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of CONTRACTOR's rights under the Contract Documents. Such assignment is part of the consideration to INVESTOR for entering into the Contract with CONTRACTOR and may not be withdrawn prior to Final Completion.

6 CHANGES IN THE WORK

6.1 CHANGES

6.1.1 INVESTOR may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to INVESTOR.

6.1.2 Contractor may request a Change Order under the procedures specified in Section 4.2.

6.1.3 Contractor shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order or Field Order.

6.2 DEFINITIONS

6.2.1 A Change Order is a Contract Document which has been signed by both INVESTOR and CONTRACTOR, and states their agreement, as applicable, to the following:

- .1 A change in the Work, if any.
- .2 The amount of an adjustment of the Contract Sum, if any.
- .3 The amount of an adjustment of the Contract Time, if any.
- .4 A modification to any other Contract term or condition.

6.2.2 A Unilateral Change Order may be issued by INVESTOR, without the CONTRACTOR's signature, where the INVESTOR determines that a change in the Work requires an adjustment of the Contract Sum or Contract Time, even though no agreement has been reached between INVESTOR and CONTRACTOR with regard to such change in the Work.

6.3 CHANGE ORDER PROCEDURES

6.3.1 Contractor shall provide a Change Order Request and Cost Proposal pursuant to Section 4.2 and this Section 6.3 of the General Conditions. Adjustments of the Contract Sum resulting from Extra Work and Deductive Work shall be determined using one of the methods described in this Section 6.3. Adjustments of the Contract Time shall be subject to the provisions in Section 7. CONTRACTOR's obligation to provide Cost Proposals shall be subject to the following:

- .1 The obligation of CONTRACTOR to provide Cost Proposals is not Extra Work, and shall not entitle the CONTRACTOR to an adjustment of the Contract Sum or Contract Time.
- .2 The failure of CONTRACTOR to timely provide a Cost Proposal pursuant to Section 4.2 and this Section 6.3.1 is a material breach of the Contract. CONTRACTOR shall be responsible for any delay in implementing a change for which CONTRACTOR failed to timely provide a Cost Proposal consistent with the requirements of Section 4.2 and this Section 6.3.1.

6.3.2 As a condition to CONTRACTOR's right to an adjustment of the Contract Sum, CONTRACTOR must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to INVESTOR's Representative on a daily basis.

6.3.3 For Work to be deleted by Change Order, the Contract Sum shall be reduced in proportion of the deleted portion(s) of the Works.

6.3.4 The Contract Sum will be adjusted for a delay if, and only if, CONTRACTOR demonstrates that all of the following two conditions are met:

- .1 Condition Number One: The delay results in an extension of the Contract Time pursuant to Article 7.4.1.
- .2 Condition Number Two: The delay is caused solely by one or more of the following:
 - a.) INVESTOR's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the CONTRACTOR; or
 - b.) INVESTOR's decision to suspend the Work, where such decision is not the result of any default or misconduct of the CONTRACTOR; or
 - c.) The failure of INVESTOR to perform any Contract obligation where the failure to so perform is not the result of any default or misconduct of the CONTRACTOR.

6.3.5 Except as expressly provided herein to the contrary, CONTRACTOR shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

6.4 FORMAL REQUIREMENTS

6.4.1 The CONTRACTOR agrees and understands that no oral approval, either express or implied, of any adjustment of the Contract Sum by INVESTOR or its agents shall be binding upon INVESTOR unless and until such approval is ratified by execution of a written Change Order.

7 CONTRACT TIME

7.1 COMMENCEMENT OF THE WORK

7.1.1 The date of commencement of the Work shall be set forth in the Notice To Proceed. The date of commencement of the Work shall not be postponed by the failure of CONTRACTOR, Subcontractors, or of persons or firms for whom CONTRACTOR is responsible, to act.

7.2 PROGRESS AND COMPLETION

7.2.1 By signing the Contract CONTRACTOR represents to INVESTOR that the Contract Time is reasonable for performing the Work and that CONTRACTOR is able to perform the Work within the Contract Time.

7.2.2 Contractor shall not commence operations on the Project site or elsewhere without the prior written approval of INVESTOR.

7.2.3 Contractor shall proceed expeditiously with adequate forces and shall achieve full completion of the Work within the Contract Time. If INVESTOR's Representative determines and notifies CONTRACTOR that CONTRACTOR's progress is such that CONTRACTOR will not achieve full completion of the Work within the Contract Time, CONTRACTOR shall immediately and at no additional cost to INVESTOR, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the Work is fully completed within the Contract Time. Upon receipt of such notice from INVESTOR's representative, CONTRACTOR shall immediately notify INVESTOR's Representative of all measures to be taken to ensure full completion of the Work within the Contract Time. CONTRACTOR shall reimburse INVESTOR for any extra costs or expenses (including the reasonable value of any services provided by INVESTOR's employees) incurred by INVESTOR as the result of such measures.

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7.3 DELAY

7.3.1 Except and only to the extent provided otherwise in Sections 6 and 7, by signing the Agreement, CONTRACTOR agrees:

- .1 to bear the risk of delays to the Work; and
- .2 that CONTRACTOR's signature of the Contract was made with full knowledge of this risk.

7.3.2 In agreeing to bear the risk of delays to the Work, CONTRACTOR understands that, except and only to the extent provided otherwise in Sections 6 and 7, the occurrence of events that delay the Work shall not excuse CONTRACTOR from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle the CONTRACTOR to an adjustment of the Contract Sum.

7.4 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY

7.4.1 Subject to Section 7.4.2, the Contract Time will be extended for each day of delay for which CONTRACTOR demonstrates that all of the following four conditions have been met; a time extension will not be granted for any day of delay for which CONTRACTOR fails to demonstrate compliance with the four conditions:

- .1 Condition Number One: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying Final Completion of the Work beyond the Contract Time. Under this Section 7.4.1.1, if the Contract Schedule shows Final Completion of the Work before expiration of the Contract Time, a delay is critical if and only to the extent the delay pushes Final Completion of the Work to a date that is beyond the Contract Time.
- .2 Condition Number Two: Within 7 days of the date the CONTRACTOR discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay is likely to have an impact on the critical path of the Project, (even if the CONTRACTOR has not yet been delayed when the CONTRACTOR discovers or reasonably should discover the critical path impact of the act, error, omission or unforeseen condition giving rise to the delay) the CONTRACTOR submits both a timely and complete Change Order Request that meets the requirements of Section 4.2.
- .3 Condition Number Three: The delay is not caused by:
 - a) A concealed, unforeseen or unknown condition or event as per Section 3.16; or
 - b) The financial inability, misconduct or default of the CONTRACTOR, a Subcontractor or supplier; or
 - c) The unavailability of materials or parts.
- .4 Condition Number Four: The delay is caused by:
 - a) Fire; or
 - b) Strikes, boycotts, or like obstructive actions by labor organizations; or
 - c) Acts of God (As used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale
 - d) The INVESTOR's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the CONTRACTOR; or
 - e) The INVESTOR's decision to suspend the Work, where such decision is not the result of any default or misconduct of the CONTRACTOR; or
 - f) The failure of the INVESTOR (including the INVESTOR acting through its consultants, Design Professionals, Separate CONTRACTORS or the INVESTOR's representative) to perform any Contract obligation unless such failure is due to CONTRACTOR's default or misconduct.

7.4.2 If and only if a delay meets all four conditions prescribed in Section 7.4.1, then a time extension will be granted for each day that Final Completion of the Work is delayed beyond the Contract Time.

7.4.3 If for any reason one or more of the four conditions prescribed in Section 7.4.1 is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time under Section 7.4.2.

7.5 COMPENSATION FOR DELAY

7.5.1 An adjustment of the Contract Sum due to a delay shall be only admissible, if (i) the delay is within the INVESTOR's control and responsibility; (ii) CONTRACTOR complies with all respective provisions of the Contract, including those set forth in Sections 4 and 7; and (iii) no provision of this Contract shall be applicable that expressly precludes CONTRACTOR from claiming such compensation.

8 PAYMENTS AND COMPLETION

8.1 COST BREAKDOWN

8.1.1 Basis for the assignment of CONTRACTOR with the Work shall be a Cost Breakdown of the Contract Sum issued by CONTRACTOR to INVESTOR on or before the date of signature of the Contract and shall be attach to this Agreement. The Cost Breakdown shall itemize as separate line items the cost of each Work activity and all associated costs, including but not limited to warranties, as-built documents, overhead expenses, and the total allowance for profit. Insurance shall each be listed as separate line items. The total of all line items shall equal the Contract Sum. The Cost Breakdown, when approved by the INVESTOR's Representative, shall become the basis for determining the cost of Work performed for CONTRACTOR's Applications for Payment.

8.2 PROGRESS PAYMENT

8.2.1 Unless otherwise agreed in the Contract, INVESTOR agrees to pay monthly to CONTRACTOR, subject to Section 8.4.3, an amount equal to 80% of the sum of the following:

- .1 Cost of the Work in permanent place as of the date of the CONTRACTOR's Application For Payment.
- .2 Plus cost of materials not yet incorporated in the Work, subject to Section 8.3.6.
- .3 Less amounts previously paid.

8.2.2 Under this Section 8.2.1, INVESTOR may, but is not required, to pay CONTRACTOR more frequently than monthly.

8.2.3 After Substantial Completion, if INVESTOR has decided to issue an Certificate of Substantial Completion, and subject to Section 8.4.3, INVESTOR will make any of the remaining progress payments in full.

8.3 APPLICATION FOR PAYMENT

8.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, CONTRACTOR shall submit to INVESTOR's Representative an itemized Application For Payment, for the cost of the Work in permanent place, as approved by INVESTOR's Representative, which has been completed in accordance with the Contract Documents, less amounts previously paid.

The Application For Payment shall be prepared as follows:

- .1 Itemize in accordance with the Cost Breakdown as defined in Section 8.3.2.
- .2 Include such data substantiating CONTRACTOR's right to payment as INVESTOR's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Section 8.5, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application For Payment.
- .3 Itemize retention.

8.3.2 The Cost Breakdown as per 8.3.1.1 must include an itemization of costs for i) labor including names, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information; ii) materials stored or incorporated in the work including invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information; and iii) itemization of machinery and equipment including make, model, hours of use, dates of use and equipment rental rates of any rented equipment.

8.3.3 Applications For Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders or (2) amounts CONTRACTOR does not intend to pay a Subcontractor because of a dispute or other reason.

8.3.4 If required by INVESTOR, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such application and conditional releases upon progress payment or final payment.

8.3.5 Contractor warrants that, upon submittal of an Application For Payment, all Work, for which Certificates For Payment have been previously issued and payment has been received from INVESTOR, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of CONTRACTOR, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

8.3.6 At the sole discretion of INVESTOR, INVESTOR's Representative may approve for inclusion in the Application For Payment the cost of materials not yet incorporated in the Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to INVESTOR's Representative. In such case, CONTRACTOR shall furnish evidence satisfactory to INVESTOR's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of CONTRACTOR. Only materials to be incorporated in the Work will be considered for payment. Any payment shall not be construed as acceptance

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of such materials nor relieve CONTRACTOR from sole responsibility for the care and protection of such materials; nor relieve CONTRACTOR from risk of loss to such materials from any cause whatsoever; nor relieve CONTRACTOR from its obligation to complete the Work in accordance with the Contract; nor act as a waiver of the right of INVESTOR to require fulfillment of all terms of the Contract. Nothing contained within this Section 8.3.6 shall be deemed to obligate INVESTOR to agree to payment for any non-incorporated materials or any part thereof, payment being in the sole and absolute discretion of INVESTOR.

8.4 CERTIFICATE FOR PAYMENT

8.4.1 If CONTRACTOR has submitted an Application For Payment in accordance with Section 8.4, INVESTOR's Representative shall, not later than 15 days after the date of receipt of the Application For Payment, issue to INVESTOR, with a copy to CONTRACTOR, a Certificate For Payment for such amount as INVESTOR's Representative determines to be properly due.

8.4.2 If any such Application For Payment is determined not to be in accordance with Section 8.4, INVESTOR will inform CONTRACTOR as soon as practicable, but not later than 15 working days after receipt. Thereafter, CONTRACTOR shall have 3 working days to revise and resubmit such Application For Payment; otherwise INVESTOR's Representative may issue a Certificate For Payment in the amount that INVESTOR's Representative determines to be properly due without regard to such Application For Payment.

8.4.3 Approval of all or any part of an Application For Payment may be withheld, a Certificate For Payment may be withheld, and all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment on account of any of the following:

- .1 Defective Work not remedied.
- .2 Third-party claims against CONTRACTOR or INVESTOR arising from the acts or omissions of CONTRACTOR or Subcontractors.
- .3 Stop notices.
- .4 Failure of CONTRACTOR to make timely payments due Subcontractors for material or labor.
- .5 A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.
- .6 Damage to INVESTOR or Separate CONTRACTOR for which CONTRACTOR is responsible.
- .7 Reasonable evidence that the Work will not be completed within the Contract Time; and that the unpaid balance of the Contract Sum would not be adequate to cover INVESTOR's damages for the anticipated delay.
- .8 Failure of CONTRACTOR to maintain and update as-built documents.
- .9 Failure of CONTRACTOR to submit schedules or their updates as required by the Contract Documents.
- .10 Performance of Work by CONTRACTOR without properly processed Shop Drawings.
- .11 Liquidated damages assessed in accordance with the Contract.
- .12 Failure to provide updated Reports of Subcontractor Information and Self-Certifications, as applicable.
- .13 Any other failure of CONTRACTOR to perform its obligations under the Contract Documents.

8.4.4 Subject to the withholding provisions of Section 8.4.3, INVESTOR will pay CONTRACTOR the amount set forth in the Certificate For Payment no later than 30 days after the issuance of the Certificate For Payment.

8.4.5 Neither INVESTOR nor INVESTOR's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

8.4.6 Neither a Certificate For Payment nor a progress payment made by INVESTOR will constitute acceptance of Defective Work.

8.5 BENEFICIAL OCCUPANCY

8.5.1 INVESTOR reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Work at any time prior to Substantial Completion or Final Completion upon 10 days' notice to CONTRACTOR. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy by INVESTOR shall not be construed by CONTRACTOR as an acceptance by INVESTOR of that portion of the Work which is to be occupied and shall not constitute a waiver of existing claims of INVESTOR or CONTRACTOR against each other. The Guarantee to Repair Periods, as defined in Section 11, will commence except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which INVESTOR has not taken Beneficial Occupancy or issued a Certificate of Substantial Completion shall not commence until the INVESTOR has taken Beneficial Occupancy for that portion of the Work or has issued a Certificate of Substantial Completion with respect to the entire Project. INVESTOR will pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied. INVESTOR will pay all utility costs which arise out of the Beneficial Occupancy. INVESTOR will use its best efforts to prevent its Beneficial Occupancy from

interfering with the conduct of CONTRACTOR's remaining Work. CONTRACTOR shall continue to maintain all insurance required by the Contract in full force and effect.

8.6 SUBSTANTIAL COMPLETION

8.6.1 "Substantial Completion" means the stage in the progress of the Work, as determined by INVESTOR's Representative, when the Work is complete and in accordance with the Contract Documents except only for completion of minor items which do not impair INVESTOR's ability to occupy and fully utilize the Work for its intended purpose.

8.6.2 When CONTRACTOR gives notice to INVESTOR's Representative that the Work is substantially complete, INVESTOR can determine in its sole discretion whether or not to inspect the Work and proceed with the provisions of this Section 8.6. For the avoidance of doubt, CONTRACTOR shall have no right to obtain a Certificate of Substantial Completion hereunder.

8.6.3 If the INVESTOR's Representative accepts an Application for Substantial Completion, but determines that the Work is not substantially completed the INVESTOR's Representative will prepare and give to CONTRACTOR a comprehensive list of items to be completed or corrected before establishing Substantial Completion. CONTRACTOR shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with the Contract Documents. Upon notification that the items on the list are completed or corrected, as applicable, the INVESTOR's Representative will make an inspection to determine whether the Work is substantially complete. Costs for additional inspection by INVESTOR's Representative shall be deducted from any monies due and payable to CONTRACTOR.

8.6.4 When INVESTOR's Representative determines that the Work is substantially complete and ready for occupation by the INVESTOR, INVESTOR's Representative will prepare a Certificate of Substantial Completion including, as the case may be, a comprehensive "punch list" of items to be completed or corrected prior to Final Completion.

8.6.5 Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the Work covered by the Certificate of Substantial Completion, shall commence on the date of Substantial Completion of the Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

- .1 Are not operational (equipment or systems shall not be considered operational if they cannot be used to provide the intended service; or
- .2 Are not accepted by the INVESTOR.

8.6.6 The Guarantee To Repair Period for equipment or systems which become operational and accepted subsequent to Substantial Completion will begin on the date of their written acceptance by INVESTOR.

8.7 FINAL COMPLETION, FINAL PAYMENT, AND RELEASE OF RETENTION

8.7.1 Upon receipt of notice from CONTRACTOR that the Work is ready for final inspection, INVESTOR's Representative will make such inspection. Final Completion shall be when INVESTOR's Representative determines that the Work is fully completed and in accordance with the Contract Documents, including without limitation, satisfaction of all "punch list" items, and determines that a Certificate of Occupancy has been issued by the INVESTOR's Building Official. INVESTOR will file a Notice of Completion within 15 days after Final Completion. After receipt of the final Application For Payment, if INVESTOR's Representative determines that Final Completion has occurred, INVESTOR's Representative shall, not later than 60 days after the date of receipt of the Application For Final Payment, issue to INVESTOR, with a copy to CONTRACTOR, a Certificate For Final Payment for such amount as INVESTOR's Representative determines to be properly due.

8.7.2 Final payment and retention shall be released to CONTRACTOR, as set forth in Section 8.7.3, after:

- .1 Contractor submits the final Application For Payment and all submittals required in accordance with Section 8.3;
- .2 Contractor submits all guarantees and warranties procured by CONTRACTOR from Subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents; and
- .3 INVESTOR's Representative issues the final Certificate For Payment.

At its sole discretion, after Final Completion, INVESTOR may waive the requirement that CONTRACTOR submit a final Application For Payment before making final payment and/or release of retention to CONTRACTOR.

8.7.3 Final Payment shall be made 30 days after the issuance of the Certificate. Retention shall be released to CONTRACTOR 35 days after the filing of the Notice of Completion.

8.7.4 Acceptance of final payment by CONTRACTOR shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by CONTRACTOR as unsettled at the time of the final Application For Payment.

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9 PROTECTION OF PERSONS AND PROPERTY

Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

10 INSURANCE AND SECURITIES

10.1 CONTRACTOR'S INSURANCE

10.1.1 Contractor shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and INVESTOR from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Contract.

10.1.2 Certificates of Insurance, as evidence of the insurance required by these Contract Documents, shall be submitted by CONTRACTOR to INVESTOR. The Certificates of Insurance shall provide for no cancellation or modification of coverage without prior written notice to INVESTOR, in accordance with policy provisions. In the event CONTRACTOR does not comply with these insurance requirements, INVESTOR may, at its option, provide insurance coverage to protect INVESTOR; and the cost of such insurance shall be paid by CONTRACTOR and may be deducted from the Contract Sum.

10.1.3 The form and substance of all insurance policies required to be obtained by CONTRACTOR shall be subject to approval by INVESTOR. At the request of INVESTOR, CONTRACTOR shall submit to INVESTOR copies of the policies obtained by CONTRACTOR.

10.2 BUILDER'S RISK PROPERTY INSURANCE

10.2.1 If and only if the Contract Sum exceeds US \$200,000, INVESTOR will provide its standard builder's risk property insurance, subject to the deductibles, terms and conditions, exclusions, and limitations as contained in the provisions of the policy. INVESTOR will provide CONTRACTOR with a certificate of insurance upon request. CONTRACTOR agrees that the INVESTOR's provision of its standard builder's risk property insurance policy meets the INVESTOR's obligation to provide builder's risk property insurance under the Contract and shall be conclusively presumed to fulfill the INVESTOR's obligation to provide such insurance. The proceeds under such insurance policies taken out by INVESTOR insuring the Work and materials will be payable to INVESTOR and CONTRACTOR as their respective interests, from time to time, may appear. CONTRACTOR shall be responsible for the deductible amount in the event of a loss. In addition, nothing in this Section 10.2 shall be construed to relieve CONTRACTOR of full responsibility for loss of or damage to materials not incorporated in the Work, and for CONTRACTOR's tools and equipment used to perform the Work, whether on the Project site or elsewhere, or to relieve CONTRACTOR of its responsibilities referred to under this Section 10. Materials incorporated in the Work, as used in this Section 10.2, shall mean materials furnished while in transit to, stored at, or in permanent place at the Project site. CONTRACTOR shall participate in the premiums paid by INVESTOR for such builder's risk property insurance; INVESTOR may therefore charge CONTRACTOR with 0.3% of the Contract Sum and deduct such amount from the Final Payment.

10.2.2 Builder's risk insurance coverage under this Section 10.2 will expire on the date of Final Completion.

10.3 SECURITIES

10.3.1 To secure the proper performance of the Contract, CONTRACTOR shall obtain at its cost, from a first-class international bank in the INVESTOR's country, a first demand bank guarantee amounting to twenty percent (20%) of the Contract Sum, unless otherwise agreed, which shall be subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce (URDG), or a standby L/C subject either to such Rules or to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce issued by a first-class international bank. Such performance guarantee shall be in effect on the date the Contract is signed by INVESTOR and shall remain in force and effect until Final Completion plus two months. In case the CONTRACT TIME shall be adjusted or delayed under Section 7, CONTRACTOR shall issue an adequate extension of the performance guarantee.

10.3.2 INVESTOR shall be entitled to deduct five percent (5%) of the Contract Sum from the Final Payment, dischargeable against issuance by CONTRACTOR of an irrevocable and unconditional warranty guarantee in the same amount to guarantee the compliance by CONTRACTOR of its warranty obligations under the Contract. This guarantee shall be subject to the URDG or in any other form satisfactory to INVESTOR. This guarantee shall be valid during the warranty period plus additional two (2) months.

11 CORRECTION OF WORK

11.1 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

11.1.1 The term "Guarantee To Repair Period" means a period of 3 years, unless a longer period of time is specified, commencing as follows:

- .1 For any Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.
- .2 For all Work other than .1 above, from the date of Final Completion.

11.1.2 Contractor shall (i) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period and (ii) replace, repair, or restore to INVESTOR's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. CONTRACTOR shall promptly commence such correction, replacement, repair, or restoration upon notice from INVESTOR's Representative or INVESTOR, but in no case later than 7 days after receipt of such notice; and CONTRACTOR shall diligently and continuously prosecute such correction to completion. CONTRACTOR shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such Defective Work, including additional testing, inspection, and compensation for INVESTOR's Representative's services and expenses. CONTRACTOR shall perform corrective Work at such times that are acceptable to INVESTOR and in such a manner as to avoid, to the extent practicable, disruption to INVESTOR's activities.

11.1.3 If immediate correction of Defective Work is required for life safety or the protection of property and is performed by INVESTOR or Separate CONTRACTORS, CONTRACTOR shall pay to INVESTOR all reasonable costs of correcting such Defective Work. CONTRACTOR shall replace, repair, or restore to INVESTOR's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

11.1.4 Contractor shall remove from the Project site portions of the Work and materials which are not in accordance with the Contract Documents and which are neither corrected by CONTRACTOR nor accepted by INVESTOR.

11.1.5 If CONTRACTOR fails to commence correction of Defective Work within 7 days after notice from INVESTOR or INVESTOR's Representative or fails to diligently prosecute such correction to completion, INVESTOR may correct the Defective Work in accordance with Section 2.5; and, in addition, INVESTOR may remove the Defective Work and store salvageable materials and equipment at CONTRACTOR's expense.

11.1.6 If CONTRACTOR fails to pay the costs of such removal and storage as required by Sections 11.1.4 and 11.1.5 within 10 days after written demand, INVESTOR may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. CONTRACTOR shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which CONTRACTOR is liable to INVESTOR, including compensation for INVESTOR's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which CONTRACTOR is liable to INVESTOR, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due CONTRACTOR or the remaining payments are insufficient to cover such deficiency, CONTRACTOR shall promptly pay the difference to INVESTOR.

11.1.7 Contractor's obligations under this Section 11 are in addition to and not in limitation of its warranty under Section 3.4 or any other obligation of CONTRACTOR under the Contract Documents. Enforcement of CONTRACTOR's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies INVESTOR may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Section 11 shall be construed to establish a period of limitation with respect to other obligations of CONTRACTOR under the Contract Documents. Establishment of the Guarantee To Repair Period relates only to the specific obligation of CONTRACTOR to correct the Work and in no way limits either CONTRACTOR's liability for Defective Work or the time within which proceedings may be commenced to enforce CONTRACTOR's obligations under the Contract Documents.

12 TERMINATION OR SUSPENSION OF THE CONTRACT

12.1 TERMINATION BY CONTRACTOR

12.1.1 Subject to Section 12.1.2, CONTRACTOR shall have the right to terminate the Contract only upon the occurrence of one of the following:

- .1 Provided that INVESTOR has not commenced reasonable action to remove any order of a court within the 90 day period, the Work is stopped for 90 consecutive days, through no act or fault of CONTRACTOR, any Subcontractor, or any employee or agent of CONTRACTOR or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

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- .2 INVESTOR fails to perform any material obligation under the Contract and fails to cure such default within 30 days, or INVESTOR has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from CONTRACTOR stating the nature of such default(s).
 - .3 Repeated suspensions by INVESTOR, other than such suspensions as are agreed to by CONTRACTOR under Section 12.3, which constitute in the aggregate more than 20% of the Contract Time.
- 12.1.2 Upon the occurrence of one of the events listed in Section 12.1.1, CONTRACTOR may, upon 10 days additional notice to INVESTOR and INVESTOR's Representative, and provided that the condition giving rise to CONTRACTOR's right to terminate is continuing, terminate the Contract.
- 12.1.3 Upon termination by CONTRACTOR, INVESTOR will pay to CONTRACTOR the sum determined by Section 12.4.4. Such payment will be the sole and exclusive remedy to which CONTRACTOR is entitled in the event of termination of the Contract by CONTRACTOR pursuant to Section 12.1; and CONTRACTOR will be entitled to no other compensation or damages and expressly waives the same.
- 12.2 TERMINATION BY INVESTOR FOR CAUSE**
- 12.2.1 INVESTOR will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:
- .1 Contractor becomes insolvent or files for relief under the bankruptcy laws or any similar proceeding.
 - .2 Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
 - .3 A receiver is appointed to take charge of CONTRACTOR's property.
 - .4 The commencement or completion of any Work activity on the critical path is more than 30 days behind the date set forth in the Contract Schedule for such Work activity, as a result of an inexcusable Delay. For a Contract with a Contract Time of less than 300 days, the 30-day period shall be reduced to the number of days commensurate with 10% of the Contract Time.
 - .5 Contractor abandons the Work.
- 12.2.2 Upon the occurrence of any of the following events, INVESTOR will have the right to terminate the Contract for cause if CONTRACTOR fails to promptly commence to cure such default and diligently prosecute such cure within 5 days after notice from INVESTOR, or within such longer period of time as is reasonably necessary to complete such cure:
- .1 Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
 - .2 Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from INVESTOR.
 - .3 Contractor disregards Applicable Code Requirements.
 - .4 Contractor persistently or materially fails to execute the Work in accordance with the Contract Documents.
 - .5 Contractor is in default of any other material obligation under the Contract Documents.
 - .6 Contractor persistently or materially fails to comply with applicable safety requirements.
- 12.2.3 Upon any of the occurrences referred to in Sections 12.2.1 and 12.2.2, INVESTOR may, at its election and by notice to CONTRACTOR, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by CONTRACTOR; accept the assignment of any or all of the subcontracts; and then complete the Work by any method INVESTOR may deem expedient. If requested by INVESTOR, CONTRACTOR shall remove any part or all of CONTRACTOR's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within 7 days of such request; and if CONTRACTOR fails to do so, INVESTOR may remove or store, and after 90 days sell, any of the same at CONTRACTOR's expense.
- 12.2.4 If the Contract is terminated by INVESTOR as provided in this Section 12.2, CONTRACTOR shall not be entitled to receive any further payment until the expiration of 35 days after Final Completion and acceptance of all Work by INVESTOR.
- 12.2.5 If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for INVESTOR staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to CONTRACTOR. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, CONTRACTOR shall pay such excess to INVESTOR.
- 12.2.6 No termination or action taken by INVESTOR after termination shall prejudice any other rights or remedies of INVESTOR provided by law or by the Contract Documents upon such termination; and INVESTOR may proceed against CONTRACTOR to recover all losses suffered by INVESTOR.

12.3 SUSPENSION BY INVESTOR FOR CONVENIENCE

- 12.3.1 INVESTOR may, at any time and from time to time, without cause, order CONTRACTOR, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to 90 days, as INVESTOR may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Section 12.3. The Work may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, CONTRACTOR shall, at INVESTOR's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within 90 days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by CONTRACTOR and INVESTOR, INVESTOR shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order.
- 12.3.2 If a Suspension Order is canceled or expires, CONTRACTOR shall continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. Any Claim by CONTRACTOR for an adjustment of the Contract Sum or the Contract Time shall be made within 21 days after the end of the Work suspension. CONTRACTOR agrees that submission of its claim within said 21 days is an express condition precedent to its right to Arbitrate or Litigate such a claim.
- 12.3.3 The provisions of this Section 12.3 shall not apply if a Suspension Order is not issued by INVESTOR. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.
- 12.4 TERMINATION BY INVESTOR FOR CONVENIENCE**
- 12.4.1 INVESTOR may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to CONTRACTOR. Upon such termination, CONTRACTOR agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of CONTRACTOR, INVESTOR shall pay CONTRACTOR in accordance with Section 12.4.4.
- 12.4.2 Upon receipt of notice of termination under this Section 12.4, CONTRACTOR shall, unless the notice directs otherwise, do the following:
- .1 Immediately discontinue the Work to the extent specified in the notice.
 - .2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.
 - .3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
 - .4 Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.
- 12.4.3 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to CONTRACTOR's obligations under Section 12.4.2, as to bona fide obligations assumed by CONTRACTOR prior to the date of termination.
- 12.4.4 Upon such termination, INVESTOR shall pay to CONTRACTOR the sum of the following:
- .1 The amount of the Contract Sum allocable to the portion of the Work properly performed by CONTRACTOR as of the date of termination, less sums previously paid to CONTRACTOR.
 - .2 Plus an amount equal to the lesser of \$50,000 or 1% of the difference between the Contract Sum and the amount of the Contract Sum allocable to the portion of the Work properly performed by CONTRACTOR as of the date of termination.
 - .3 Plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the Work.
 - .4 Plus any proven losses with respect to materials and equipment directly resulting from such termination.
 - .5 Plus reasonable demobilization costs.
 - .6 Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.
- 12.4.5 The above payment shall be the sole and exclusive remedy to which CONTRACTOR is entitled in the event of termination of the Contract by INVESTOR pursuant to Section 12.4; and CONTRACTOR will be entitled to no other compensation or damages and expressly waives same.

13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

- 13.1.1 Unless otherwise provided in the Contract, the Contract shall be governed by the law of the country / state where the Project site is located.

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13.2 Dispute Resolution

13.2.1 Any or all disputes arising out of or in connection with the Contract shall finally be submitted to the China International Economic and Trade Arbitration Commission (hereinafter referred to as The "CIETAC") for arbitration, acting on the basis of its arbitration rules in force at that time. The place of arbitration shall be Beijing. If the total value of the claims quantified and estimated in the request for arbitration is up to EUR 1.00 million, the number of arbitrators shall be one. If the total value of the claims quantified and estimated in the request for arbitration is more than EUR 1.00 million, the number of arbitrators shall be three. The chairman shall neither have Austrian, nor Chinese nationality. The arbitration proceedings shall be held in English. The arbitral award is final and binding upon both Parties.

13.3 SUCCESSORS AND ASSIGNS

13.3.1 INVESTOR and CONTRACTOR respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

13.4 RIGHTS AND REMEDIES

13.4.1 All INVESTOR's rights and remedies under the Contract Documents will be cumulative and in addition to and not in limitation of all other rights and remedies of INVESTOR under the Contract Documents or otherwise available at law or in equity.

13.4.2 No action or failure to act by INVESTOR or INVESTOR's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by INVESTOR or INVESTOR's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

13.4.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against INVESTOR, INVESTOR's Representative, or CONTRACTOR.

13.5 SURVIVAL

13.5.1 The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and INVESTOR 's right to audit CONTRACTOR's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

13.6 COMPLETE AGREEMENT

13.6.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Section 6.

13.7 SEVERABILITY OF PROVISIONS

13.7.1 If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

13.8 INVESTOR'S RIGHT TO AUDIT

13.8.1 INVESTOR and entities and agencies designated by INVESTOR will have access to and the right to audit and the right to copy at INVESTOR's cost all of CONTRACTOR's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. CONTRACTOR shall preserve all such records and other items during the performance of the Contract and for the longer period of 3 years after Final Completion or the warranty period.

13.9 NOTICES

13.9.1 Any notice required to be given hereunder shall be in writing in English and shall be delivered in person or sent by courier, registered or certified mail by facsimile or via email. The documents submitted in accordance with the foregoing shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted.

13.9.2 Any Party may, from time to time, change its address or representative for receipt of notices provided for in this Agreement by giving to the other Party not less than 30 days prior written notice.

13.10 TIME OF THE ESSENCE

13.10.1 Time limits stated in the Contract Documents are of the essence of the Contract.

13.11 MUTUAL DUTY TO MITIGATE

13.11.1 INVESTOR and CONTRACTOR shall use all reasonable and economically practicable efforts to mitigate delays and damages to the Project and to one another with respect to the Project, regardless of the cause of such delay or damage.

13.12 CONFIDENTIALITY

13.12.1 Confidential Information in this context shall mean any and all technical, financial or commercial information stated by INVESTOR to be confidential or confidential in nature, provided, however, that the term "Confidential Information" shall not include any information of which CONTRACTOR can demonstrate that the information:

- is generally known to the public at the time of disclosure or becomes generally known or state of the art after this time through no wrongful act on the part of CONTRACTOR; or
- becomes known to CONTRACTOR through a disclosure by sources other than the disclosing party or of one of its affiliates having no duty of confidentiality to INVESTOR, whether direct or indirect, with all respect to such information and having the legal right to disclose such information; or
- has been independently gained and without infringing of a duty of confidentiality.

13.12.2 Contractor shall store away carefully the Confidential Information disclosed by INVESTOR and shall take reasonable measures to prevent disclosure to unauthorized parties. CONTRACTOR may disclose Confidential Information to its employees and to third parties only to the extent strictly necessary for the performance of this Contract or as required by law. CONTRACTOR so disclosing shall cause its employees and third parties to observe the obligations of this Section 13.12. CONTRACTOR shall use Confidential Information only to the extent necessary to perform its obligations under the Contract.

13.12.3 The obligations contained in this Section 13.12 shall survive any termination or expiration of this Contract and shall end after 5 years from formation of the contract.

13.13 COMPLIANCE AND BUSINESS ETHICS

Prerequisite for any business cooperation shall be the unreserved compliance with our Code of Compliance as amended (www.engelglobal.com) as well as compliance with all relevant laws, regulations, directives, and similar rules with regard to the aforementioned Code of Compliance. Any breach of the obligations set forth in this Section shall be regarded as a serious breach of contract, which shall entitle us to terminate all agreements not yet fulfilled with immediate effect and claim for all damages and losses incurred by such breach.

13.14 DATAPROTECTION

13.14.1 The parties hereby expressly consent to the processing of personal data, in particular name, address, contact and professional data, of the persons acting on their behalf and intervening vis-à-vis the companies of the respective other party for the purpose of contract fulfilment, order processing as well as for the fulfilment of the relevant legal requirements and accounting obligations.

13.14.2 Furthermore, the parties consent to the transfer of this personal data to affiliated companies of the respective other party in countries outside the European Union for the purpose of order processing and contract fulfilment, always considering the potential risks related thereto

13.14.3 By giving such consent, the parties also warrant to obtain corresponding declarations of consent by the respective data subjects, and upon first request to indemnify each other from all disadvantages related to any breach of the foregoing warranty.

13.14.4 Without prejudice to the lawfulness of the processing based upon consent given before, such consent (pursuant to 13.14.1 and 13.14.2) may be withdrawn at any time by either party or the respective data subject, by using the options stated in 13.14.5.

13.14.5 An overview to all companies affiliated to the INVESTOR can be found under www.engelglobal.com/dataprotection. Options for withdrawal pursuant to 13.14.4 to the INVESTOR as well as respective information are provided at www.engelglobal.com/dataprotection.

LEGAL NOTICE:

ENGEL

Insert respective ENGEL-Company, address, reg.no., tax.no.

Version: