

AIA[®] Document A201[™]

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address):

THE OWNER:
(Name and address):

VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

THE ARCHITECT:
(Name and address):

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Contract between Owner and Contractor (hereinafter the Contract), which includes and incorporates the:

- .1 Conditions of the Contract (General, Supplementary and other Conditions);
- .2 Purchase Orders, if any;
- .3 Meeting Minutes, if any;
- .4 Drawings;
- .5 Specifications shall include the **Project Manual**, and **all additional terms and documents provided in the RFQ**;
- .6 Addenda issued prior to execution of the Contract;
- .7 Other documents listed in the Contract; and
- .8 Modifications, if any, issued after execution of the Contract in accordance with the Contract.

A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, if any, or (4) a written order for a minor change in the Work issued by Owner. Unless specifically enumerated in the Contract, the Contract Documents do not include other documents such as bidding requirements, including advertisements or invitations to bid, Instructions to Bidders, sample forms, Contractor's bid or portions of addenda relating to bidding requirements.

These General Conditions and the other Contract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. In the case of any perceived inconsistency, ambiguity, omission or error in the Drawings, Specifications, or other Contract Documents which is not clarified by addendum or other Modification, or should Contractor be in doubt as to their exact meaning, Contractor shall immediately notify Architect and Owner. Contractor shall follow all written instructions from Owner. Owner shall not be responsible for oral instructions given by any other parties or for Contractor's misinterpretations of Drawings and Specifications and/or other Contract Documents.

§ 1.1.2 CONTRACT

The Contract Documents form the Contract for construction, and the Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Architect and Contractor, (2) between Construction Manager and Contractor, (3) between Architect and Construction Manager, (4) between Owner and a Subcontractor or Sub-subcontractor or (5) between any persons or entities other than Owner and Contractor. Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate or are otherwise related to the performance of their duties, and shall perform and be bound by obligations under the Contract relating to them or as instructed in by Owner.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment 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.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other contractors ("Other Contractors"), as further defined in Section 3.1.1, and by Owner's own forces including persons or entities under separate contracts not administered by Construction Manager.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications, which include the **Project Manual**, and **all additional terms and documents provided in the RFQ as defined above**, are 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.

§ 1.1.7 THE PROJECT MANUAL

The Project Manual, if applicable, is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2 EXECUTION, CORRELATION AND INTENT

§ 1.2.1 The Contract Documents shall be signed by Owner and Contractor as provided in the Contract. If either Owner or Contractor or both do not sign all the Contract Documents, Architect shall identify such unsigned Documents upon request.

§ 1.2.2 Execution of the Contract by Contractor is a representation that Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor's evaluation of the local conditions includes without limitation, (.1) the location, condition, layout, and nature of the Project site and surrounding conditions, (.2) generally prevailing weather conditions, (.3) anticipated labor supply and costs, (.4) availability and cost of materials, tools and equipment, (.5) access to the site and the number and size of work forces to be on site in a project of this size and complexity, and (.6) other similar issues. Contractor has considered the site conditions in connection with Contractor's observations of same with requirements of the Contract Documents, including all Applicable Laws. Owner assumes no liability for the physical condition of the Project site or any improvements located on the Project site.

§ 1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

§ 1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.5 Unless otherwise stated in the Contract Documents, words or abbreviations which have well-known technical, trade or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

§ 1.3.1 For purposes of this Contract, "Work Product" shall refer to Architect's and Contractor's services in connection with the Work and all information and documents produced by Architect or Contractor, including without limitation all Drawings, details, Specifications, schematics, models, visualizations, plans, documentation, reports, information, intellectual property, CADD (Computer Assisted Design and Drafting) and other electronic files, tapes, disks, and other data or materials (whether written or electronic) as any of the same may be revised, modified, and supplemented at any time (collectively the "Work Product").

§ 1.3.2 The Drawings, Specifications and other documents, including those in electronic form, are the instruments through which the Work to be executed by Contractor is described. Contractor may retain one record set of the Contract Documents. Neither Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Work Product, as defined herein. Owner shall own and retain all rights in and to all Work Product including without limitation all intellectual property rights.

§ 1.3.3 To the extent Work Product produced by Contractor is deemed to be a work made for hire for Owner, Owner shall be the sole and exclusive owner of the Work Product. To the extent such Work Product is not a work made for hire, Contractor hereby irrevocably assigns to Owner, its successors and assigns, all right, title and interest in and to all such Work Product immediately upon creation thereof, and agrees to take such actions and execute such documents as Owner may reasonably request to effectuate such ownership and to secure, protect and perfect Owner's rights hereunder. Contractor hereby irrevocably appoints and designates Owner and its agents as Contractor's agents and attorneys-in-fact to act for and on Contractor's behalf and instead of Contractor to execute such documents and to take such actions as Owner believes are necessary to accomplish and effectuate the assignment and to secure, protect and perfect Owner's rights hereunder. Contractor hereby irrevocably and unconditionally waives the benefit of any law, doctrine or principle known as "droit moral" or "moral rights of authors" or any similar law, doctrine or principle however denominated.

§ 1.3.4 The Work Product, including copies of Drawings, Specifications or other documents furnished by Architect and/or Owner to Contractor, are for use solely with respect to this Contract. They are not to be used by Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work of this Contract without the specific written consent of Owner. Contractor, Subcontractors, Sub-subcontractors and their respective material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and for use in the execution of their Work under the Contract Documents. Contractor agrees that it shall not produce Work Product or otherwise act in any manner contrary to any third party's intellectual property rights and shall indemnify Owner against all claims, damages, losses and expenses, including without limitation attorneys' fees, incurred by Owner arising out of Contractor's or its Subcontractors' violation of this Section.

§ 1.3.5 Contractor warrants and represents that Contractor shall not, without prior written consent of Owner, communicate or disclose to any person or entity any information in connection with the Work or the Project, except (.1) information in the public domain prior to the date of the Contract, (.2) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of Contractor, or (.3) as may be required to the perform the Work or by any Applicable Laws.

§ 1.4 CAPITALIZATION

§ 1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined in the Contract Documents, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.5 INTERPRETATION

§ 1.5.1 In the interest of brevity the Contract Documents may omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.6 INTERPRETATION OF AND ADHERENCE TO CONTRACT DOCUMENTS

§ 1.6.1 Interpretation of Contract Documents

§ 1.6.1.1 Contract Documents shall be interpreted as being complementary, requiring a complete Project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the Specifications address quality, types of materials and Contract conditions while the drawings show placement, sizes and fabrication details of materials.

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

- .1 Addenda shall govern over all other Contract Documents and subsequent addenda shall govern over prior addenda only to the extent modified.
- .2 The RFQ, including its Specifications, **Project Manual**, and **all additional terms and documents provided in the RFQ**, shall take precedence over all Contract Documents except Change Orders.
- .3 In case of conflict between Drawings and Specifications, the Specifications take precedence over Drawings for the specific type, quantity, and quality of materials in addition to the quality of installation; the Drawings take precedence over the Specifications with regard to locations of installation.
- .4 Conflicts within the Drawings:
 - (a) schedules, when identified as such, shall govern over all other portions of the Drawings.
 - (b) specific notes shall govern over all other notes and all other portions of the Drawings except the schedules described in Subparagraph 1.6.1.2.3(a), above.
 - (c) larger scale drawings shall govern over smaller scale drawings.
 - (d) figured or numerical dimensions shall govern over dimensions obtained by scaling.
- .5 Conflicts within the Specifications: These General Conditions shall govern over all sections of the Specifications except for specific modifications thereto that may be stated in Supplemental General Conditions or addenda. No other section of the Specifications shall modify these General Conditions.
- .6 In the event provisions of codes, safety orders, Contract Documents, referenced manufacturers specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

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

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

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

§ 1.6.1.4 Portions of the Work which can be best illustrated by the Drawings may not be included in the Specifications and portions best described by the Specifications may not be depicted on the Drawings. Contractor shall perform all Work described in any of the Contract Documents, notwithstanding such Work being described only on the Drawings, Specifications, or other Contract Documents.

If an item or system is either shown or specified, all material and equipment normally furnished with such items and needed to make a complete operating installation shall be provided whether mentioned or not, omitting only such

parts as are specifically excepted. Owner shall not be held responsible for the absence of any detail that Contractor may require for any construction which may be found necessary as the Work progresses.

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

All Contract Documents, including without limitation Drawings, Specifications, renderings and models or other documentation, and copies thereof, furnished by Owner or any agent, employee or consultant of Owner, or Architect, are and shall remain the property of Owner. They are to be used only with respect to the Project and are not to be used on any other project. With the exception of one Contract set for Contractor, such documents furnished to Contractor are to be returned or suitably accounted for to Owner on request at the completion of the Work.

§ 1.6.1.5 Architect shall be the interpreter of the Contract Documents and shall, with Construction Manager, be the judge of the performance of Contractor and Subcontractors. Subject to the provisions Paragraph hereof, claims, disputes and other matters of controversy relating to the Contract Documents or the Work shall be decided initially by Architect.

§ 1.6.2 Issuance of Interpretations, Clarifications, Additional Instructions

Should Contractor discover any conflicts, omissions, or errors in the Contract Documents or have any question concerning interpretation or clarification of the Contract Documents, Contractor shall request in writing interpretation, clarification, or additional detailed instructions, before proceeding with the Work affected. The written request shall be submitted to Architect, with a copy to Owner.

Architect, upon review and approval as required by Owner, shall, within a reasonable time but not more than five (5) days, issue in writing the interpretation, clarification, or additional detailed instructions requested.

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

Should any interpretation, clarification, or additional detailed instructions constitute, in the opinion of Contractor, work beyond the scope of the Contract Documents, Contractor shall submit written notice thereof to Architect within five (5) calendar days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of work thereon. Contractor shall send copies of such written notice to Owner. Such notice shall include Contractor's explanation of how the interpretation, clarification, or additional detailed instruction constitutes work beyond the scope of the Contract Documents, along with a detailed cost breakdown and an explanation of any delay impacts. Architect shall consider such notice and make a recommendation to Owner. If, in the judgment of Owner, the notice is justified, the interpretation, clarification or additional detailed instructions shall either be revised or the extra work shall become Work authorized by Change Order or by Construction Change Directive. If Owner decides that the claim is not justified and the Contractor disagrees with Owner's decision, Contractor shall nevertheless perform such extra work (which shall then constitute Work under the Contract) upon receipt from Owner of a written order to do so. In such case, Contractor shall have the right to have the claim later determined pursuant to this Contract. Contractor shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instruction, unless it gives written notice to Architect within five (5) calendar days as specified above.

ARTICLE 2 OWNER

§ 2.1 DEFINITION

§ 2.1.1 Owner is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means Owner or Owner's authorized representative.

§ 2.1.2 Owner upon reasonable written request shall furnish to Contractor a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and Owner's interest therein

at the time of execution of the Contract and, within five (5) days after any change in title, information of such change.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF OWNER

§ 2.2.1 Intentionally Deleted.

§ 2.2.2 Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 2.2.3 Except for permits and fees which are the responsibility of Contractor under the Contract Documents, including Section 3.7.1, Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, Owner, through Construction Manager, shall secure and pay for the building permit.

§ 2.2.4 Unless otherwise provided in the Contract Documents, Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work, and Contractor's use of such Drawings and Project Manuals shall comply with the terms of the Contract.

§ 2.2.5 Owner shall forward all communications to Contractor through Construction Manager and shall contemporaneously provide the same communications to Architect.

§ 2.2.6 The foregoing provisions pertaining to information and services required of Owner are in addition to other duties and responsibilities of Owner enumerated herein, including those in respect to Article 6 (Construction by Owner or by Other Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

§ 2.2.7 Owner shall not be deemed to be obligated to furnish any services or incur obligations hereunder other than as explicitly set forth in the Contract Documents.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, or if Owner determines that an emergency requires a Work stoppage, Owner, by written order or by an agent specifically so empowered by Owner in writing, may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a five (5) day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies at Contractor's expense. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the cost of correcting such deficiencies, including compensation for Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default or neglect. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 DEFINITION

§ 3.1.1 Contractor is the person or entity identified as such in the Contract and is referred to throughout this Contract as if singular in number. The term "Contractor" means Contractor or Contractor's authorized representative.

The term "Other Contractors" refers to persons or entities other than Contractor or its Subcontractors or Sub-subcontractors who perform construction or other work under contracts that are administered by Construction Manager, if any, and that are identical or substantially similar to this Contract.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner pursuant to Section 2.2.2 and shall at once report in writing to Owner, Construction Manager and Architect errors, inconsistencies or omissions discovered. Contractor shall not be liable to Owner, Construction Manager or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless Contractor recognized such error, inconsistency or omission and failed to report it in writing to Construction Manager and Architect in accordance with the Contract. If Contractor performs any Work or other activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to Owner, Construction Manager and Architect, Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction as applicable.

§ 3.2.2 Contractor acknowledges that reasonable investigations of subsurface conditions have been performed at the Work Site. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents, including any subsurface documentation, before commencing activities. Errors, inconsistencies or omissions discovered shall be reported in writing promptly to Owner, Construction Manager and Architect at once. Under no circumstances shall Contractor make a claim for extension of the final completion date or any Milestone Date due to existing conditions, including but not limited to subsurface conditions, which Contractor may encounter during its performance of the Work. Notwithstanding the foregoing, Contractor shall not be liable for any subsurface conditions provided (i) Contractor has no knowledge of such conditions as of the date of the Contract, and (ii) such conditions were not identified in the subsurface documentation, as applicable.

§ 3.2.3 Contractor represents and warrants that it is lawfully licensed to enter into the Contract and to perform the Work, and Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.12.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 Contractor shall supervise and direct the Work using Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, subject to overall coordination of Construction Manager as provided in Sections 4.6.3 and 4.6.4.

§ 3.3.2 Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons supplying materials, equipment or other supplies or performing portions of the Work for or on behalf of Contractor or any of its Subcontractors, including Sub-subcontractors and equipment and materials suppliers.

§ 3.3.3 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than Contractor.

§ 3.3.4 Contractor shall inspect portions of the Project related to Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, 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 completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not skilled, licensed or permitted, as applicable, in tasks assigned to them. Contractor shall take all appropriate measures to verify that all personnel performing Work at the site are legally eligible to work in the United States. Contractor shall complete, execute and maintain all forms and documentation, including a federal Form I-9, for all personnel performing Work at the site. Contractor shall not knowingly or intentionally direct or allow any of its personnel to enter the site or to perform any Work of any nature who is not legally eligible to work in the United States. Upon Owner's request and subject to Applicable Laws, Contractor shall make available to Owner the employment, qualification and training records and documentation of its personnel, including Form I-9 and other records and documentation regarding the eligibility of Contractor's personnel to work in the United States.

§ 3.4.3 Contractor may make substitutions of employees and other persons carrying out the Work only with the consent of Owner which shall not be unreasonably withheld or delayed, after evaluation by Architect and in accordance with a Change Order.

§ 3.4.4 Contractor shall at all times provide workmen and other personnel in sufficient numbers and the proper skills and training for the performance and completion of the Work in accordance with the Contract Documents within the time period provided in the Contract at all times while the Work is in progress, and Contractor shall have sufficient superintendents, project managers or other necessary supervisors in charge of the Work. In order to maintain continuity of the Work, Contractor shall not remove or replace any superintendent, project manager or supervisor without Owner's consent, which consent shall not be unreasonably withheld or delayed. Owner reserves the right to check at any time the qualifications and performance of any workers and other personnel of Contractor or its Subcontractors.

§ 3.4.5 Wherever the words "approved by", "satisfactory to", "as directed by", "submitted by", "inspected by", or similar phrases are used in the Specifications or other Contract Documents, they shall be understood to mean that the material or item referred to shall be approved by, satisfactory to, as directed by, submitted to, inspected by Architect and Owner; provided that, no inspection, approval or other action by Architect or Owner under this subparagraph or otherwise shall release Contractor from its obligations under the Contract Documents.

§ 3.5 WARRANTY

§ 3.5.1 Contractor represents and warrants to Owner, Construction Manager and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by Modifications for Work not requested or performed by Contractor or its Subcontractors or abuse, improper or insufficient maintenance or improper operation by a party other than Contractor or its Subcontractors, or normal wear and tear under normal usage. If required by Owner, Construction Manager or Architect, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor shall provide all warranties required in the Specifications. In the absence of any special manufacturer's warranties specified within the Contract Documents, Contractor shall warrant the Work and, in accordance with Section 12.2, correct all defects or deficiencies in materials or workmanship in the Work which appear within five (5) years after Final Completion of the Work (the "Warranty Period").

§ 3.5.2 Contractor represents and warrants that all Work performed pursuant to the Contract Documents shall conform to and meet the requirements of Owner and Contract Documents and otherwise be performed in a good and workmanlike manner free of defects in labor or materials.

§ 3.5.3 Contractor represents and warrants that all manufactured articles, materials and equipment constituting a part of the Work shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents

§ 3.5.4 Contractor shall collect and deliver to Construction Manager any specific written warranties given by others, including as required by Section 4.6.16.

§ 3.5.5 Owner, Contractor and Architect shall conduct an inspection of the Project one hundred eighty (180) days after Final Completion of all aspects of all Work for the building and other improvements upon which the Work is performed. Contractor will promptly remedy, at no cost to Owner, all defects in the Work and all defects in the buildings and other improvements to the extent arising out of defects in the Work which that inspection reveals. This subparagraph 3.5.5 shall not limit, modify or otherwise restrict the obligations, liabilities and responsibilities of Contractor for the Work under the Contract Documents, Applicable Laws or equity. Contractor shall coordinate such inspection with Architect and Owner and shall review and implement, or manage the implementation of, the recommendations set forth in the report prepared by Architect and Owner.

§ 3.5.6 Should Contractor fail to attend the inspection provided for in Section 3.5.5, Contractor will be deemed to accept such list of warranty claims compiled by Owner and Architect.

§ 3.6 TAXES; DISCOUNTS, REBATES AND REFUNDS

§ 3.6.1 Subject to the terms of this Section, Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Where an exemption or recovery of government sales or use tax, customs, duties or excise tax is applicable to the performance of the Work, Contractor shall cooperate with Owner and/or Construction Manager to provide appropriate documentation to enable Owner to receive such benefits. If applicable, at Owner's election and at no additional cost to Owner, Contractor shall obtain from the Tennessee Department of Revenue a "Rule 68" direct-pay letter or a sale for resale certificate for utilization on any purchases hereunder. In such event, the Contractor shall use its best efforts to pay all applicable sales and use taxes pursuant to the Rule 68 or sale for resale certificate procedure, thereby enabling the Owner to receive certain tax credits and applicable sales and use tax exemptions for current or future use. Contractor shall not be entitled to any additional compensation for any funds, credits or other incentives received by Owner pursuant to this Section. Contractor shall not pay sales or use tax on any purchase hereunder without first providing sufficient advance notice to Owner to enable Owner to capture all applicable sales and use tax exemptions and credits.

§ 3.6.2 In the event Owner provides Contractor with sufficient funds to make a payment within five (5) working days of the due date of an invoice for materials or equipment supplied, or if Owner pays the costs of financing such work, all cash discounts shall accrue to Owner as a reduction in the Contract Sum due when the Pay Application funded by Owner is paid. In all other events, cash discounts shall accrue to Contractor. Contractor shall notify Owner of any cash discount due to Owner with a value in excess of Ten Thousand Dollars (\$10,000) from a single source.

§ 3.6.3 All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment applicable to the Work shall accrue to Owner as a credit against the Contract Sum, and Contractor shall make provision to secure such items accordingly.

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, Owner shall secure and pay for the building permit and Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§ 3.7.2 Contractor shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the Work.

§ 3.7.3 It is not Contractor's responsibility to ascertain that the Contract Documents are in accordance with Applicable Laws, statutes, ordinances, building codes, and rules and regulations unless such laws, statutes, ordinances, building codes, rules and regulations bear upon the performance of the Work. However, if the

Contractor observes that portions of the Contract Documents are at variance therewith, Contractor shall promptly notify Construction Manager, Architect and Owner in writing, and cooperate with Owner to accomplish any necessary changes by appropriate Modification.

§ 3.7.4 If Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to Construction Manager, Architect and Owner, Contractor shall assume full responsibility for such Work and shall bear the attributable costs associated with such non-complying Work.

§ 3.8 ALLOWANCES

§ 3.8.1 Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as Owner may direct, but Contractor shall not be required to employ persons or entities against which Contractor makes reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 materials and equipment under an allowance shall be selected promptly by Owner to avoid delay in the Work;
- .2 allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- .4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly
- .5 by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.2 and (2) changes in Contractor's costs under Section 3.8.2.3.

§ 3.9 SUPERINTENDENT

§ 3.9.1 Contractor shall employ a competent superintendent, project manager(s) and other necessary supervising personnel who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent Contractor, and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall always be confirmed in writing, while other communications shall be similarly confirmed upon Owner's written request.

§ 3.9.2 The superintendent and all other supervising personnel retained by or on behalf of Contractor shall, at all times, be reasonably satisfactory to Owner. Contractor shall replace any supervising personnel with whom Owner may be dissatisfied promptly upon notice to such effect by Owner.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULE

§ 3.10.1 Contractor, promptly after being awarded the Contract, shall prepare and submit a "Contractor's Construction Schedule" for the Work, which shall be deemed a part of the Contract Documents upon review and written acceptance by Owner, Architect and Construction Manager. Contractor's Construction Schedule shall:

- .1 not exceed time limits set forth under the Contract Documents;
- .2 be revised at appropriate intervals as required by the conditions of the Work and Project or as otherwise requested by Owner;

- .3 be related to Owner's entire Project construction schedule (the "Project Schedule") to the extent required by the Contract Documents;
- .4 provide for expeditious and practicable execution of the Work; and
- .5 not be revised without the prior review and written approval of Owner.

Contractor's Construction Schedule shall be in a detailed precedence-style critical path management format satisfactory to Owner, Architect and Construction Manager. Contractor's Construction Schedule shall provide a graphic representation of all activities and events necessary for performance of the Work, identify each phase of construction and occupancy and set forth dates that are critical to ensure the timely and orderly completion of the Work. Contractor shall update Contractor's Construction Schedule in accordance with this Section 3.10.1 or if requested by Owner or Construction Manager.

§ 3.10.2 Contractor shall cooperate with Owner and Construction Manager in scheduling and performing Contractor's Work to avoid conflict, delay in or interference with the Work of Other Contractors or the construction or operations of Owner's own forces.

§ 3.10.3 Contractor shall prepare and keep current, for Owner, Construction Manager's and Architect's approval, a schedule of submittals which is coordinated with Contractor's Construction Schedule and allows Construction Manager and Architect reasonable time to review submittals.

§ 3.10.4 Contractor shall conform to the most recent Project Schedule, including Contractor's Construction Schedule.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 Contractor shall maintain at the site for Owner one record copy of all contracts, Drawings, Specifications, Addenda, Change Orders and other Modifications or Contract Documents, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to Owner, Construction Manager and Architect and shall be delivered to Construction Manager for submittal to Owner upon completion of the Work.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Architect and/or Construction Manager is subject to the limitations of Section 4.6.12.

§ 3.12.5 Contractor shall review, approve and submit to Owner and Construction Manager, in accordance with Contractor's Construction Schedule and sequence approved by Construction Manager, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Contractor shall cooperate with Owner and Construction Manager in the coordination of Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by Other Contractors. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.

§ 3.12.6 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 approved by Owner and Construction Manager or Architect, as applicable. Such Work shall be in accordance with approved submittals.

§ 3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.8 Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Owner's, Construction Manager's and/or Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed Owner, Construction Manager and/or Architect, as applicable, in writing of such deviation at the time of submittal and Owner, Construction Manager and/or Architect have given written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Owner's, Construction Manager's and/or Architect's approval thereof.

§ 3.12.9 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 Owner, Construction Manager and/or Architect on previous submittals.

§ 3.12.10 Informational submittals upon which Owner, Construction Manager and/or Architect are not expected to take responsive action may be so identified in the Contract Documents.

§ 3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Owner, Construction Manager and Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

§ 3.13 USE OF SITE

§ 3.13.1 Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Contractor shall coordinate Contractor's operations with, and secure the approval of, Owner and Construction Manager before using any portion of the site.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 3.14.2 Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner's own forces or of Other Contractors by cutting, patching, excavating or otherwise altering such construction. Contractor shall not cut or otherwise alter such construction by Other Contractors or by Owner's own forces except with written consent of Construction Manager, Owner and such Other Contractors; such consent shall not be unreasonably withheld. Contractor shall not unreasonably withhold from the Other Contractors or Owner Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 Contractor shall keep the premises and surrounding area free from accumulation of waste materials or debris caused by its Work or other related activities on site. At completion of the Work Contractor shall remove from and about the Project waste materials, debris, Contractor's tools, construction equipment, machinery and surplus materials.

§ 3.15.2 If Contractor fails to clean up as provided in the Contract Documents, Construction Manager may do so with Owner's approval and the cost thereof shall be charged to Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 Contractor shall provide Owner, Construction Manager and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES AND PATENTS

§ 3.17.1 Contractor shall pay all royalties and license fees in connection with the Work. Contractor shall defend suits or claims for infringement of patent rights and shall hold Owner, Construction Manager and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if Contractor has reason to believe that the required design, process or product is an infringement of a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 All indemnification provisions in the Contract Documents are supplemental to and part of the indemnification provisions in this Section 3.18. To the fullest extent permitted by law Contractor shall, at its expense, defend, indemnify and hold harmless Owner, and its affiliates, agents, invitees and employees, and their respective personnel, successors and assigns (collectively, the "Indemnified Parties") from and against claims, damages, losses, demands, liabilities and expenses, including but not limited to attorneys' and other professionals' fees, settlements and judgments (collectively, "Losses"), claimed by any third party in any claim, demand, suit or proceeding in connection with any of the following:

- .1 Any misrepresentation by Contractor or the breach by Contractor of its obligations or warranties to Owner under the Contract;
- .2 The death or bodily or personal injury of, or other legally enforceable damage incurred by, any agent, employee, customer, business invitee, or business visitor or other person caused by the breach of contract, breach of warranty, negligence, misconduct or any other acts or omissions of Contractor or its personnel or Subcontractors, Sub-subcontractors or materials and equipment suppliers;
- .3 The damage, loss or destruction of any real or personal property caused by the breach of contract, breach of warranty, negligence, misconduct or any other acts or omissions of Contractor or its personnel or Subcontractors, Sub-subcontractors or materials and equipment suppliers;
- .4 Liens, encumbrances and payment and other claims relating in any manner to the Work which are asserted by Contractor, any Subcontractor, Sub-subcontractors or materials and equipment suppliers, or anyone directly or indirectly engaged by any of them or for anyone for whose acts they may be responsible; Owner may withhold payment to satisfy such liens, encumbrances or payment and other claims and, upon the written request of Owner, Contractor shall bond off or otherwise satisfy any such liens, encumbrances and payment and other claims; and
- .5 Claims by Contractor or its personnel, affiliates or Subcontractors, Sub-subcontractors or materials and equipment suppliers relating to any benefits normally associated with employment with Owner, including insurance, pension, health, lease cars, compensation, tax withholdings, Medicare, and social security, and any claims relating to Contractor's failure to comply with, including without limitation any claims made by or relating to:
 - (a) Contractor's personnel, affiliates or Subcontractors, Sub-subcontractors or materials and equipment suppliers;
 - (b) the Wage and Hour Act;
 - (c) the Fair Labor Standards Act;
 - (d) the Retaliatory Employment Discrimination Act;
 - (e) the Employment Retirement Income Security Act;
 - (f) the Consolidated Omnibus Budget Reconciliation Act;
 - (g) the Age Discrimination in Employment Act;

- (h) Title VII of the Civil Rights Act of 1964;
- (i) Section 1981 of the Civil Rights Act as amended;
- (j) the Americans With Disabilities Act;
- (k) the Family and Medical Leave Act;
- (l) the Immigration Control and Reform Act of 1986 and/or
- (m) any other applicable federal, state or local statutes, laws, ordinances, rules, regulations or orders pertaining to immigration, discrimination, wrongful discharge (actual or constructive), breach of express or implied contract, worker's compensation, compensation (including payroll, withholding, employment taxation, social security, unemployment compensation, minimum wage, overtime, unpaid wages, vacation and/or sick leave pay), intentional and/or negligent infliction of emotional distress, defamation, and/or any other cause of action.

§3.18.2 Indemnification by Contractor with Respect to Intellectual Property.

- .1 Contractor will, at its expense, indemnify, defend and hold harmless the Owner Indemnitees from any third party claims made against Owner or any of its affiliates and their respective personnel alleging that any aspect of the Work infringes a third party's copyright, patent, trademark, trade secret or other intellectual property or proprietary right ("Intellectual Property Claim"). Owner shall notify Contractor promptly in writing and furnish Contractor with such information and assistance as Contractor may reasonably request to evaluate the Intellectual Property Claim. Contractor shall then, at its own expense and option, either
 - (a) settle the Intellectual Property Claim, or
 - (b) procure for Owner and its Affiliates, as applicable, the right to use the alleged infringing item of Work, or
 - (c) replace or modify the alleged infringing item of Work in order to avoid the Intellectual Property Claim, or
 - (d) remove the alleged infringing item of Work and refund any payments made by Owner and its Affiliates, as applicable, to Contractor with respect to such item of Work, less a reasonable amount directly proportionate to Owner's and its Affiliates', as applicable, actual usage of the infringing item of Work, or
 - (e) litigate the Intellectual Property Claim.

Prior to Contractor taking any of the foregoing responses, the parties shall meet to discuss the action or actions which Contractor proposes to take in response to the Intellectual Property Claim. If the parties are unable to agree upon the action or actions to take in response to the Intellectual Property Claim, Owner may, at its sole option and without liability, elect to terminate the Contract, or any part thereof, as to any alleged infringing item of Work upon five (5) days prior written notice to Contractor. Regardless of Contractor's response to the Intellectual Property Claim or Owner's election to terminate the Contract, or any part thereof, as to any alleged infringing item of Work, Contractor shall remain obligated to defend the Intellectual Property Claim and to pay any final judgments awarded against Contractor and/or Owner and its affiliates, as applicable, based upon the Intellectual Property Claim.

- .2 Contractor shall have no obligation to indemnify Owner against any third party claims made against Owner or any of its personnel or affiliates if it is finally determined that liability is the sole result of a Modification made to the Work which has not been approved by Contractor.

.3 All Contractor's indemnification obligations under the Contract Documents shall apply with respect to Contractor's Subcontractors, Sub-subcontractors, personnel and materials and equipment suppliers.

§3.18.3 Indemnification Procedures. The following procedures will apply to all claims for indemnification under this Article:

- .1 Promptly after receipt by Owner of written notice of the commencement or threatened commencement of any civil, criminal, administrative or investigative action or proceeding involving a claim for which an Owner Indemnitee may be entitled to indemnification, written notice of such claim will be conveyed to Contractor. However, the failure to so notify Contractor will not relieve that party of its obligations under the Contract.
- .2 The Indemnitees will have the right to determine who controls the defense in any negotiations or legal proceedings pertaining to a claim covered by this Section (notwithstanding that Contractor shall bear the cost of the defense for the Indemnitees). If the Indemnitees elect to control their own defense and permit Contractor to control its own defense, both parties may select their own legal counsel and experts; however, to the maximum extent possible permitted by the circumstances and ethical considerations, counsel for Contractor and counsel for the Indemnitees will work together to avoid duplication of effort or expense, in attorney fees or otherwise. In addition, Contractor and the Indemnitees will make good faith efforts to coordinate their activities so as to take consistent positions in the course of negotiations or legal proceedings.
- .3 If Contractor controls the defense, Contractor shall timely provide to Owner all information with respect to such defense, compromise or settlement as Owner may request. Contractor shall not assume any position or take any action in connection with such defense, compromise or settlement that would impose an obligation of any kind (other than the obligations under Section 3.18 hereof) or restrict the actions of Owner, it being understood that Contractor would be acting solely on its own behalf, for its own account and at its own risk.
- .4 Contractor will obtain the prior approval, which approval will not be unreasonably delayed or withheld, from Owner with respect to any proposed settlement of any claims before entering into any settlement of such claims or ceasing to defend such claims.
- .5 If Contractor does not participate in the defense of a claim covered by this Section, the Indemnitees will have the right to defend the claim in such manner as they may deem appropriate, at Contractor's cost and expense. Contractor will promptly reimburse the Indemnitees for all such costs and expenses upon demand of the Indemnitee(s) for which may be made periodically.
- .6 Notwithstanding anything to the contrary in the Order, no limitations on damages or remedies set forth in the Contract will apply to an Indemnifying Party's obligations to indemnify, defend and hold the Indemnitees harmless against Losses. Indemnity obligations shall survive the termination, cancellation or non-renewal of the Contract. Contractor's obligation to indemnify, defend and hold harmless shall apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except to the extent of (i) claims that arise solely as a result of the negligence or willful misconduct of Owner and (ii) third party claims made against Owner or any of its affiliates as set forth in Section 3.18.2.2 above. The indemnification obligations set forth in the Contract, including this Section, are independent of and in addition to any insurance and warranty obligations of Contractor.

§3.18.4 In claims against any Indemnified Party under this Section 3.18 by an employee of Contractor, a Subcontractor, Sub-subcontractor, equipment or materials supplier, or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor, Sub-subcontractor or equipment or materials supplier under workers' compensation acts, disability benefit acts or other employee benefit acts; nor shall this indemnification obligation be limited in any way by any

limitation on the amount or type of insurance coverage provided by Owner, Contractor or any Subcontractor, Sub-subcontractor or equipment or materials supplier.

§3.18.5 The obligations of Contractor under this Section 3.18 shall not extend to the liability of Construction Manager, Architect or their consultants or agents and employees of any of them arising, out of:

- .1 the preparation or approval of Contract Documents, maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications by Construction Manager, Architect, Subcontractor, Sub-subcontractor or equipment or materials suppliers; provided such giving or failure to give is the primary cause of the injury or damage; or
- .2 the giving of or the failure to give directions or instructions by Construction Manager, Architect or their consultants or agents and employees of any of them; provided such giving or failure to give is the primary cause of the injury or damage.

§3.18.6 Remedies Cumulative. All rights and remedies set forth in the Contract are in addition to rights and remedies available to Owner under the Contract, at law or in equity. Each of the rights and remedies reserved to Owner in the Contract shall be cumulative and the assertion of Owner of any right or remedy shall not preclude the assertion by Owner of any other rights or the seeking of any other remedies. All costs incurred in connection with any remedy, including all travel expenses and daily allowances as well as any and all attorneys' fees and costs shall be the obligation of Contractor.
Contractor shall not have any right of setoff.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means Architect or Architect's authorized representative.

§ 4.2 CONSTRUCTION MANAGER

§ 4.2.1 Construction Manager is the person or entity lawfully licensed to perform such services identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means Construction Manager or Construction Manager's authorized representative. If Owner does not engage a third party to perform duties of a construction manager, Owner may appoint one or more of its personnel to serve in that capacity.

§ 4.3 Duties, responsibilities and limitations of authority of Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of Owner, Construction Manager and Architect. Consent shall not be unreasonably withheld.

§ 4.4 In case of termination of employment of Construction Manager or Architect, Owner shall appoint a construction manager or architect and whose status under the Contract Documents shall be that of the former construction manager or architect, respectively.

§ 4.5 Disputes or claims arising in connection with Sections 4.3 and 4.4 shall be subject to arbitration in accordance with the Contract Documents.

§ 4.6 ADMINISTRATION OF THE CONTRACT

§ 4.6.1 Construction Manager and Architect will:

- .1 provide administration of the Contract as described in the Contract Documents, and will be Owner's representatives:
 - a) during construction;

- b) until final payment is due; and
- c) with Owner's concurrence, from time to time during the Warranty Period described in Section 3.5.1.

.2 Construction Manager and Architect will advise and consult with Owner and will have authority to act on behalf of Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

§ 4.6.2 Construction Manager will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will maintain a log of the Work approved, will keep Owner informed of the progress of the Work, and will endeavor to protect Owner against defects and deficiencies in the Work.

§ 4.6.3 Construction Manager will provide for coordination of the activities of Other Contractors and of Owner's own forces with the Work of Contractor, who shall cooperate with them. Contractor shall participate with Other Contractors and Construction Manager and Owner in reviewing their respective construction schedules when directed to do so. Contractor shall make any revisions to Contractor's Construction Schedule deemed necessary after a joint review and mutual agreement by Contractor and Construction Manager. The Contractor's Construction Schedule and the respective schedules of Other Contractors and Construction Manager shall constitute the schedules to be used by Contractor, Other Contractors and Construction Manager, respectively, until subsequently revised.

§ 4.6.4 Construction Manager will schedule and coordinate the activities of Contractor and Other Contractors in accordance with the latest approved Project Schedule. Any modifications of Contractor's Construction Schedule and activities required by the Construction Manager to coordinate with the Work of others shall not result in any claims against Construction Manager or the Owner.

§ 4.6.5 Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of such on-site observations, Architect will keep Owner informed of progress of the Work, and will endeavor to guard Owner against defects and deficiencies in the Work.

§ 4.6.6 Construction Manager, except to the extent required by Section 4.6.4, and Architect will not generally have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibility as provided in Section 3.3, and neither will be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents. Neither Construction Manager nor Architect will have control over or charge of or be responsible for acts or omissions of Contractor, Subcontractors, Sub-subcontractor, equipment or materials suppliers or employees, or of any other persons performing portions of the Work.

§ 4.6.7 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, Owner and Contractor shall communicate through Construction Manager, and shall contemporaneously provide the same communications to Architect. Communications by and with Architect's consultants shall be through Architect. Communications by and with Subcontractors, Sub-subcontractors and equipment and materials suppliers shall be through Contractor. Communications by and with Other Contractors shall be through Construction Manager and shall be contemporaneously provided to Architect.

§ 4.6.8 Construction Manager will review and certify all Applications for Payment by Contractor, including final payment. Construction Manager will assemble each of Contractor's Applications for Payment with similar Applications from Other Contractors into a Project Application and Project Certificate for Payment. After reviewing and certifying the amounts due Contractor and Other Contractors, Construction Manager will submit the Project Application and Project Certificate for Payment, along with the applicable Contractors' Applications and Certificates for Payment, to Architect.

§ 4.6.9 Based on Architect's observations and evaluations of Contractor's and Other Contractors' Applications for Payment, and the certifications of Construction Manager, Architect will review and certify the amounts due Contractor and will issue a Project Certificate for Payment.

§ 4.6.10 Architect and Owner will have authority to reject Work which does not conform to the Contract Documents. Whenever Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, Architect will have authority to require additional inspection or testing, in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed, but will take such action only after notifying Construction Manager. Subject to review by Architect, Construction Manager will have the authority to reject Work which does not conform to the Contract Documents. Whenever Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. The foregoing authority of Construction Manager will be subject to the provisions of Sections 4.6.18 through 4.6.20 inclusive, with respect to interpretations and decisions of Architect. However, Owner's, Architect's and Construction Manager's authority to act under this Section 4.6.10, and decisions made by any of them in good faith either to exercise or not to exercise such authority, shall not give rise to a duty or responsibility of Owner, Architect or Construction Manager to Contractor, Subcontractors, Sub-subcontractor, equipment and materials suppliers, their respective agents or employees, or other persons performing any of the Work.

§ 4.6.11 Construction Manager will receive from Contractor and review and approve all submittals such as Shop Drawings, Product Data and Samples, coordinate them with information received from Other Contractors, and transmit to Architect those recommended for approval. Construction Manager's actions will be taken with such reasonable promptness as to cause no delay in the Work of Contractor or in the activities of Other Contractors, Owner, or Architect.

§ 4.6.12 Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Architect's action will be taken with such reasonable promptness as to cause no delay in the Work of Contractor or in the activities of the Other Contractors, Owner, or Construction Manager, while allowing sufficient time in Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. Architect's review of Contractor's submittals shall not relieve Contractor of any obligations in accordance with the Contract Documents including without limitation under Sections 3.3, 3.5 and 3.12. Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences or procedures. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.6.13 Construction Manager may prepare Change Orders and Construction Change Directives.

§ 4.6.14 Following consultation with Construction Manager, Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7 and will have authority to order minor changes in the Work as provided in Section 7.4.

§ 4.6.15 [intentionally deleted]

§ 4.6.16 Construction Manager will assist Architect in conducting inspections to determine the dates of Substantial Completion and final completion, and will receive and forward to Architect and Owner written warranties and related documents required by the Contract and assembled by Contractor., including as required by Section 3.5.4. Construction Manager will forward to Architect a final Project Application and Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.6.17 If Owner and Architect agree, Architect will provide one or more Project representatives to assist in carrying out Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.6.18 Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents which pertain to Architect's services on written request of Construction Manager, Owner or Contractor. Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of Architect shall be furnished in compliance with this Section 4.6, then delay shall not be recognized on account of failure by Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.6.19 Such interpretations and decisions of Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.6.20 Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents, subject to Owner's written approval.

§ 4.7 CLAIMS AND DISPUTES

§ 4.7.1 Definition. A Claim includes any demand, assertion, request or other claim made with respect to any matter arising out of or related to the Contract, the Contract Documents or the Work. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.7.2 Intentionally Deleted.

§ 4.7.3 Time Limits on Claims. The parties shall make commercially reasonable efforts to make Claims within twenty-one (21) days of the occurrence of the event rising to the Claim, provided that Claims must be made within one (1) year after occurrence of the event giving rise to such Claim or after the claimant, exercising reasonable diligence, first knew or should have known of the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been resolved by Change Order will not be considered unless submitted in a timely manner as set forth herein.

§ 4.7.4 Continuing Contract Performance. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make payments of any amounts not in dispute in accordance with the Contract Documents.

§ 4.7.5 Waiver of Claims: Final Payment. The making of final payment shall not constitute a waiver of Claims by Owner.

§ 4.7.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after Owner has given notice of the decision. If Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract

Time, the adjustment shall be referred to Owner for initial determination, subject to further proceedings pursuant to Section 4.8.

§ 4.7.7 Claims for Additional Cost. If Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3. If Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from Architect, (2) an order by Owner to stop the Work where Contractor was not at fault, (3) a written order for a minor change in the Work issued by Architect, (4) failure of payment by Owner, (5) termination of the Contract by Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

§ 4.7.8 Claims for Additional Time.

§ 4.7.8.1 If Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 4.7.8.2 Within five (5) days from the commencement of any delay, Contractor shall submit to Owner's Representative, in writing, a notice of the delay (a "Delay Notice"). Such Delay Notice shall, at a minimum, describe the nature and cause of the delay. Contractor's failure to give such notice to Owner shall deprive Contractor of its ability to request an adjustment to the Contract Time or the Contract Sum. In the case of a continuing cause of delay, only one Delay Notice shall be necessary. The giving of such Delay Notice shall not of itself establish the validity of the cause of delay, of the extension of the time for completion or of an increase to the Contract Sum. Submission of reports and/or updates required at regularly scheduled meetings or as a part of a regularly submitted report shall not constitute such Delay Notice.

Within fifteen (15) days from the commencement of any delay, Contractor shall submit to Owner's Representative, in writing, a preliminary estimate of the impact of said delay on the Project Schedule and provide a recovery plan to mitigate the delay.

Within fifteen (15) days from the resolution of the delay, Contractor shall submit to Owner's Representative a claim for an adjustment to the Project Schedule and the Contractor's Construction Schedule which shall include all documentation supporting the claim. Such submittal shall include a detailed description of all changes in activity durations, logic, sequence, or otherwise in the Project Schedule and Contractor's Construction Schedule. Contractor will make all reasonable efforts to mitigate the impact of delays and resolve Contractor claims resulting from delays as quickly as possible. In no event shall Owner be required to extend the Contract Time or increase the Contract Sum for time periods or expenses incurred prior to its receipt of the Delay Notice.

Neither party shall be considered to be in default or in breach of its obligations under this Contract to the extent that performance of such obligations is prevented by any circumstance of Force Majeure arising after the Effective Date. "Force Majeure" shall mean, with respect to a party's obligations, any circumstances beyond the reasonable control of such party in performing its obligations and not resulting from the fault or negligence of such party, including but not limited to: Acts of God; floods; droughts; earthquakes; storms; abnormally unfavorable weather; pestilence; lightning or other natural catastrophes; fires; epidemics; wars; riots; civil disturbance or other civil disobedience; transportation accidents, rail car shortages or other transportation delays; and embargoes.

Upon the occurrence of any circumstance of Force Majeure, Contractor shall use its reasonable best efforts to continue to perform its obligations under this Contract. Contractor shall notify Owner of the steps it proposes to take, including any reasonable alternative means for performance which are not prevented by Force Majeure. In any such case, Contractor shall use all reasonable efforts to mitigate all such costs and impacts on all Project Schedules, including Contractor's Construction Schedule or the Contract Time. Contractor shall not be permitted to claim an event of Force Majeure, and no change for Contractor's benefit will arise, on account of the following:

- .1 vendor or supplier non-performance, except to the extent such non-performance is caused by an event of Force Majeure;
- .2 Contractor's non-payment of Taxes for which it is responsible;
- .3 customs procedures, except for material changes in such procedures after the Effective Date;
- .4 delay in applying for and/or pursuing, or failure to obtain or maintain, any government approval not constituting a change in the Applicable Laws for which it is responsible;
- .5 noncompliance with the Applicable Laws, except for changes thereof after the Effective Date;
- .6 normal unfavorable weather (excluding tornadoes, hurricanes and other catastrophic weather phenomena) and other Site-related conditions not constituting Owner's site risks;
- .7 delay in, or failure to, import, transport to, or store or house at the Project Site all necessary tools, equipment, materials and supplies and personnel to perform the Work, except to the extent such nonperformance may be caused by an event of Force Majeure;
- .8 the unavailability at the Project Site of all necessary water and other utilities;
- .9 failure to perform under this Contract by Contractor caused by its failure to engage qualified Subcontractors, to hire an adequate number of personnel or labor or to perform the work and its obligations in an efficient manner;
- .10 flaws in the Work requiring Contractor or others to redesign or re-engineer any portion of the Work; or
- .11 any other act of negligence or any willful or intentional acts or omissions of Contractor or its Subcontractors, Sub-subcontractors or materials or equipment suppliers.

§ 4.7.8.3 If unfavorable weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and such abnormal weather conditions had an adverse effect on the scheduled construction.

§ 4.7.9 Injury or Damage to Person or Property. In addition to complying with the provisions of Article 11 pertaining to insurance, if either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 4.7.7 or 4.7.8.

§ 4.8 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.8.1 Owner, Architect and Contractor agree to resolve all claims and disputes ("Claims") in accordance with this Section. Claims must be made by written notice specifying the existence and nature of the Claim provided within a reasonable time following the occurrence of the event giving rise to the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.8.2 Initial Meeting. Not less than ten (10) days following receipt of such notice, the Parties shall meet and attempt to resolve such Claim at the field level (the "Initial Meeting") through discussions between both parties' respective field representatives (the "Representatives").

§ 4.8.3 Second Meeting. If the Representatives cannot resolve the Claim within thirty (30) days after the Initial Meeting, then, upon the request of either party, the parties' managers, supervisors, or other designated executives (the "Executives") shall meet again and attempt to resolve such Claim (the "Second Meeting").

§ 4.8.4 Meeting Procedures. At least three (3) business days prior to any meetings between the parties, including the Representatives, the parties shall exchange any relevant information that will assist the parties in resolving the Claim. Either party may elect to be accompanied at any meeting by an attorney provided that the party intending to be accompanied by an attorney shall give the other party at least five (5) days' notice of such intention.

§ 4.8.5 Mediation. If the Claim is not resolved within fourteen (14) days after the Second Meeting, the parties shall submit the Claim to non-binding mediation. If the parties cannot agree on a mediator, the parties shall submit the Claim to the American Arbitration Association ("AAA") for mediation administered in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the AAA ("AAA Rules") then in effect. Not less than seven (7) days after the selection of the mediator, the parties and the mediator shall participate in a pre-mediation conference to determine the time and place of the mediation. All fees and expenses of the mediator shall be shared equally by the parties and each party shall submit to the mediator such information or position papers as the mediator may request to assist in resolving the Claim. The parties (i) will not attempt to subpoena or otherwise use as a witness any person who serves as a mediator and (ii) will assert no claims against the mediator as a result of the mediation.

§ 4.8.6 Arbitration. All Claims not settled or resolved in accordance with the settlement and mediation procedures set forth herein shall be resolved by binding arbitration in accordance with the AAA Rules and in accordance with this Section 4.8. Notwithstanding any other provision herein to the contrary, if a Claim is not settled or resolved within one hundred twenty (120) days after the Initial Meeting, either party may submit the Claim to binding arbitration in accordance with the AAA Rules and in accordance with this Section 4.8.

§ 4.8.7 Equitable Relief. Notwithstanding any other provision herein to the contrary, either party may, with respect to a Claim, apply to a court for equitable relief, including a temporary restraining order, preliminary injunction or other interlocutory or relief, provided that such application for equitable relief will not delay or adversely affect in any material respect the dates set by Owner for Substantial Completion or Final Completion of the Project. The Arbitration Panel (as defined below) shall have the authority to modify any court order granting such interlocutory relief and such court order shall remain in full force and effect until so modified. Any such court or Arbitration Panel order may be enforced in any court having jurisdiction thereof. Any court relief sought under this Section shall be brought in and subject to the exclusive venue and jurisdiction of the courts of Hamilton County, Tennessee or the U.S. District Court for the Eastern District of Tennessee, as applicable, provided that Owner may elect to seek such relief against Contractor in any court having jurisdiction over Contractor.

§ 4.8.8 Continuing Obligations. In the event of any dispute arising by or between the parties, each party shall continue to perform as required under the Contract notwithstanding the existence of such dispute. In the event of such a dispute, the Owner shall continue to pay the Contractor as provided in the Agreement, excepting only such amount as may be disputed.

§ 4.8.9 Arbitration Proceedings. The arbitration provisions under the Agreement, including their enforceability, shall be governed by the Federal Arbitration Act or the Tennessee Uniform Arbitration Act, as applicable ("Arbitration Acts"). All arbitration proceedings shall be conducted in Hamilton County, Tennessee, in the English language, in accordance with the AAA Rules and in accordance with this Section 4.8.

§ 4.8.10 Arbitrator Qualifications. Unless the parties otherwise agree in writing, the arbitration shall be conducted using a panel of three (3) arbitrators ("Arbitration Panel") who are selected by the parties in accordance with the AAA Rules from the AAA National Construction Panel and who are practicing attorneys who have experience with respect to large construction projects. If the procedures of the AAA Rules do not result in the selection by the parties of a panel of three (3) arbitrators, then each party shall appoint one (1) neutral arbitrator who meets the required qualifications, and the two (2) neutral arbitrators selected by the parties shall appoint a third neutral arbitrator who meets such qualifications. If either party does not appoint a neutral arbitrator within two (2) weeks of being notified that it is required to do so, the AAA will appoint an arbitrator for such party.

§ 4.8.11 Arbitration Award. The Arbitration Panel shall issue a written, reasoned award stating the bases of the award and including detailed findings of fact and conclusions of law. The award rendered by the Arbitration Panel shall be final, and judgment may be entered upon it and enforced without prejudice to the rights of either party to seek vacation of the award in accordance with the Arbitration Acts in any court having jurisdiction thereof.

§ 4.8.12 Arbitration Fees and Expenses; Attorneys' Fees. Fees and expenses in connection with the arbitration, including without limitation reasonable attorneys' fees and dispute resolution costs, in addition to any other damages or other amounts to which it may be entitled, shall be awarded to the prevailing party. The failure by one party to pay its share of arbitration fees and expenses in accordance with the AAA Rules shall constitute a waiver of such party's Claim or defense in the arbitration.

§ 4.8.13 Confidentiality. All arbitration proceedings and other information and matters relating to the arbitration shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction; provided that any such disclosure shall be to the most limited extent possible to accomplish such enforcement of the award and either party may seek a protective order in connection therewith. The parties agree to maintain such confidentiality.

§ 4.8.14 Statute of Limitations. In no event shall a demand for mediation or arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by applicable statutes of limitations or repose.

§ 4.8.15 Waiver of Joinder Objection. Contractor waives all objections to joinder of Contractor as a party to any mediation, arbitration or litigation related to the Contract in which Owner is joined with respect to which Contractor's conduct, Work or services have some relationship. Contractor also agrees to include in all contracts used or prepared by Contractor similar waivers on behalf of any and all individuals or entities with whom Contractor enters into a contract. Such contracts in which Contractor must include similar waivers include without limitation, contracts between Contractor and any individual or entity having a direct contract with Contractor for any Work or services under the Contract, and any general and supplemental conditions applicable to such contracts

§ 4.8.16 Discretionary Joinder. Either party may include by joinder individuals or entities in accordance with the AAA Rules.

§ 4.8.17 Waiver of Jury Trial. OWNER AND CONTRACTOR ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF OWNER AND CONTRACTOR, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE CONTRACT DOCUMENTS.

§ 4.8.18 Claims by Contractor. Any legal action or arbitration proceeding by Contractor must be commenced no later than one (1) year after the breach or other event giving rise to Contractor's claim occurs, or Contractor becomes aware of the existence (or facts and circumstances giving rise to the existence) of such claim, whichever occurs first.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include Other Contractors or subcontractors of Other Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Construction Manager for review by Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. Construction Manager will promptly reply to Contractor in writing stating whether or not Owner, Construction Manager or Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of Construction Manager to reply promptly shall constitute notice of no reasonable objection.

§ 5.2.2 Contractor shall not contract with a proposed person or entity to whom Owner, Construction Manager or Architect has made reasonable and timely objection.

§ 5.2.3 If Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another to whom Owner, Construction Manager or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 Contractor shall not change a Subcontractor, person or entity previously selected if Owner, Construction Manager or Architect makes reasonable objection to such change.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 Contractor shall at all times be responsible for the work and other activities of its Subcontractors, Sub-subcontractors and their respective equipment and materials suppliers. By appropriate agreement, written where legally required for validity, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor, by these Documents, assumes toward Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Each subcontract agreement shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Owner. Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors and equipment and materials suppliers as applicable. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors and equipment and materials suppliers as applicable. Notwithstanding the foregoing, the failure to supply such documents by any party in accordance with this Section shall not relieve the other party from being bound by such documents as provided herein.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by Contractor to Owner provided that:

- .1 assignment is effective only after termination of the Contract by Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which Owner accepts by notifying the Subcontractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

§ 5.5 PAYMENTS TO SUBCONTRACTORS BY CONTRACTOR

§ 5.5.1 Contractor shall pay each Subcontractor and equipment and materials suppliers as applicable, upon receipt of payment from Owner, an amount equal to the percentage of completion allowed to Contractor on account of such Subcontractor's Work, less the percentage retained from payments to Contractor. Contractor shall also

require each Subcontractor to make similar payments to its Sub-subcontractors and equipment and materials suppliers as applicable.

§ 5.6 PAYMENTS TO SUBCONTRACTORS BY OWNER

§ 5.6.1 If Owner fails to approve an Application for Payment for a cause which Owner determines is the fault of Contractor and not the fault of a particular Subcontractor or equipment or materials supplier, Owner may pay such Subcontractor or equipment or materials supplier directly, via joint check, less the amount to be retained under such Subcontractor's or equipment or materials supplier's Subcontract.

§ 5.6.2 Owner shall have no obligation to pay, or to see to the payment of, any monies to any Subcontractor or equipment or materials supplier. Nothing contained in Paragraph 5.6 shall be deemed to create any contractual relationship between Owner and any Subcontractor (including such Subcontractor's equipment and materials suppliers) or to create any rights in any Subcontractor (including such Subcontractor's equipment and materials suppliers) against Owner.

§ 5.6.3 Contractor shall promptly advise Owner of any claim or demand by a Subcontractor claiming that any amount due to such Subcontractor, or claiming any default by Contractor or its Subcontractors in any of its obligations to Contractor or a Subcontractor. For purposes of this §5.6.3, "Subcontractor" shall include Sub-Subcontractors, and equipment and materials suppliers, as applicable.

§ 5.6.4 Contractor shall make payment in accordance with the relevant subcontract or supply agreement to all persons furnishing labor, equipment or material and shall cause its Subcontractors and equipment and materials suppliers, and materialmen to also make such prompt payment. In all cases of non-payment, without cause, by Contractor or any Subcontractor, equipment or materials supplier or materialmen of any sum or sums of money due in connection with the Project, Owner is hereby authorized to pay such sum or sums directly to the Subcontractor, equipment and materials supplier or materialmen, but only after Owner has provided written notice to Contractor of its intent to pay and Contractor has either failed to cure or has failed to take actions to cover any such deficiency including without limitation by furnishing a bond to Owner sufficient to cover any such deficiency or otherwise satisfactory to Owner.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD OTHER CONTRACTS

§ 6.1.1 Owner reserves the right to perform construction or operations related to the Project with Owner's own forces, which include persons or entities under separate contracts not administered by Construction Manager. Owner further reserves the right to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract similar to these including those portions related to insurance and waiver of subrogation. If Contractor claims that delay or additional cost is involved because of such action by Owner, Contractor shall make such Claim as provided elsewhere in the Contract Documents.

§ 6.1.2 When Owner performs construction or operations with Owner's own forces including persons or entities under separate contracts not administered by Construction Manager, Owner shall provide for coordination of such forces with the Work of Contractor, who shall cooperate with them.

§ 6.1.3 (intentionally deleted)

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 Contractor shall afford Owner's own forces, Construction Manager and Other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall coordinate Contractor's Work and other activities with such other parties as required by the Contract Documents.

§ 6.2.2 If part of Contractor's Work depends for proper execution or results upon construction or operations by Owner's own forces or Other Contractors, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Construction Manager and Architect any apparent discrepancies or defects in such other

construction that would render it unsuitable for such proper execution and results. Failure of Contractor so to report shall constitute an acknowledgment by Contractor that Owner's own forces or Other Contractors' completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

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

§ 6.2.4 Contractor shall promptly remedy damage caused by Contractor, its Subcontractors, Sub-subcontractors or equipment and materials suppliers to completed construction or partially completed construction or to property of Owner or Other Contractors as provided in Section 10.2.5.

§ 6.2.5 Claims and other disputes and matters in question between Contractor and Other Contractors shall be subject to the provisions of Section 4.7 provided the Other Contractors have similar obligations.

§ 6.2.6 Other Contractors shall have the same responsibilities for cutting and patching as are described for Contractor in Section 3.14.

§ 6.2.7 Contractor agrees to cooperate with others employed by Owner in the performance of the Work and to employ labor which will work in harmony with the same or other trades engaged in the Work.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among Contractor, Other Contractors and Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.15, Owner may clean up and allocate the cost among those responsible as Construction Manager, in consultation with Architect, determines to be just.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 CHANGES

§ 7.1.1 Changes in the Work or Contract Documents may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

- .1 A Change Order shall be based upon agreement among Owner, Construction Manager, Architect and Contractor;
- .2 A Construction Change Directive requires agreement by Owner and Construction Manager and/or Architect and may or may not be agreed to by Contractor;
- .3 An order for a minor change in the Work may be issued by Architect or Owner.
- .4 No Change Order involving an adjustment in the Contract Sum or an extension of the Contract Time shall in any event be issued, except with the written approval of Owner, and Contractor shall not be entitled to reimbursement for increased costs resulting from any change in the Work made at the request of any other party unless so approved by Owner in writing.

§ 7.1.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.3 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted. Unit Prices may be proposed as a basis for pricing

Change Orders or Construction Change Directives, but shall be subject to further negotiations between Owner and Contractor, including as provided in Sections 7.3.3 and 7.3.6 hereof.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by Construction Manager and signed by Owner and Contractor, stating their agreement upon all of the following:

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

§ 7.2.2 Change Documentation. Within five (5) days after receiving a request from Owner for a Change, Contractor will prepare and provide to Owner a document summarizing the effect, if any, of the proposed Change on

- .1 the scope of Work;
- .2 Contractor's and Owner's obligations under the Contract; and
- .3 the budget or price for the Change.

In addition, Contractor will inform Owner in such document regarding any other business impact Contractor believes to be relevant to Owner's evaluation of the proposed Change. Within ten (10) days after receiving such information, Owner will confirm or withdraw the request for the Change. In the event that Contractor initiates the request for Change, it shall submit to Owner along with its request the information set forth above. Owner shall have ten (10) days after receipt of the request for Change to approve or reject the request.

§ 7.2.3 Change Process. All Changes shall be requested using the following process:

- .1 Party will specify the Change.
- .2 Contractor will provide the applicable quotes, providing one (1) quote if the Change amount is less than \$10,000, three (3) quotes if the Change amount is between \$10,001 and \$70,000, and a Request for Proposal/Quote if the Change amount is greater than \$70,000.
- .3 Contractor submits Change Documentation to Owner for review.
- .4 Owner either approves or rejects the quote and provides meeting minutes and issues a Change Order.
- .5 Upon approval by Owner, Contractor accepts the Changes and executes and accepts the Change Order upon approval

§ 7.2.4 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.2.5 If Owner requests a proposal for a change in the Work from Contractor, Contractor shall, at no additional cost to Owner, initially provide Owner with a good faith estimate of the costs and time involved to accomplish the changes requested. Such estimate is for general information purposes to assist Owner in determining whether to proceed with a formal Change Order and the estimates are not binding on Contractor.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by Owner or Construction Manager and signed by the Owner and Construction Manager or Architect, as applicable, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon, subject to the parties' further negotiation;
- .3 cost to be determined by the Owner's Purchasing department after the Construction Department has accepted the quantities of the submitted change order by the contractor. The VW Construction group will approve the Change order for scope only, but no pricing submitted by the contractor will be considered accepted by VW until the VW Purchasing department has reviewed and negotiated the cost submitted with the contractor, plus a mutually acceptable fixed or percentage fee; A signed change order by the Construction group is for approval of the scope only and does not approve the cost submitted for the change order; or
- .4 as provided in Section 7.3.6.

§ 7.3.4 Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise Owner, Construction Manager and Architect of Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.5 A Construction Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded and enforceable as a Change Order.

§ 7.3.6 If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by Owner and Construction Manager on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit to be agreed upon by Owner and Contractor prior to conducting any related Work. In such case, and also under Section 7.3.3.3, Contractor shall keep and present, in such form as Owner and Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

Contractor shall promptly after receipt of a Construction Change Directive advise Owner if Contractor believes that the Work so requested, or the cumulative effect of such Construction Change Directive and any prior requests, may require an adjustment in the Contract Sum, which advice shall include without limitation a written estimate of any increase or decrease in costs which will result from the proposed change. To the maximum extent possible, the estimate shall indicate the quantity and unit price of each item of materials and the number of hours of work and hourly rate for each class of labor, as well as the description and amounts of all other costs and sources of delay unless a not to exceed price is provided.

§ 7.3.7 The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by Owner and Construction Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, Architect will make an interim determination of cost solely for purposes of monthly certification for payment for such costs. Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 4.

§ 7.3.9 When Owner and Contractor agree with the determination made by Owner and Construction Manager concerning the adjustments in the Contract Sum and the Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately when issued through Owner or Construction Manager and shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through Owner or Construction Manager and shall be binding on Owner and Contractor. Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time allotted in the Contract Documents for Final Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Contract. The date shall not be postponed by the failure to act of Contractor or of persons or entities for whom Contractor is responsible.

§ 8.1.3 The date of Substantial Completion is the date certified by Architect or Construction Manager in accordance with Section 9.8.

§ 8.1.4 The date of Final Completion is the date certified by Architect and Construction Manager in accordance with Section 9.10.

§ 8.1.5 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 Contractor shall not, except by agreement or instruction of Owner in writing, commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by Contractor or prior to the filing of record of any payment bond required by Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance or filing of record of any such bond. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by Owner, Contractor shall notify Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 Subject to the provisions of 4.7.8 hereof, if Contractor is delayed, obstructed or hindered at any time in the progress of the Work by any act or neglect of Owner or by any Other Contractor, or by changes ordered in the scope of the Work, or by Force Majeure, then the duration set forth in the Project Schedule may be extended as agreed to by Owner and Contractor. However, to the fullest extent permitted by Applicable Laws, and notwithstanding any other provision in the Contract Documents, Owner, its agents and employees shall not be held responsible for any loss or damage, whether direct or indirect, sustained by Contractor, or additional costs incurred by Contractor, through delay caused by abnormally unfavorable weather conditions, or by any other cause beyond Owner's control, and Contractor agrees to mitigate in good faith any damages, and further agrees Contractor's sole remedy therefor shall be a request for an extension of time. Contractor agrees to attempt in good faith and in accordance with the Contract Documents to finish the project within the Contract Time without any additional costs to Owner because of including strikes, work stoppages, picketing, labor disputes, and/or boycotts or other Force Majeure, wherever occurring, but in no event will Contractor be required to violate any Applicable Laws or existing contract.

No delay, obstruction, interference, hindrance, or disruption, from whatever source or cause, in the progress of the Work shall be a basis for an extension of the Contract Time or an interim Milestone Date unless the delay, obstruction, interference, hindrance, or disruption is an event of Force Majeure and directly affects the overall completion of the Work, as reflected in the updated and accepted Contractor's Construction Schedule. Contractor expressly agrees that Owner shall receive the initial benefit of any float time, and delays to construction activities which are not on the critical path or do not otherwise affect the overall completion of the Work shall not entitle Contractor to an extension of the Contract Time or an interim Milestone Date.

§ 8.3.2 No extension of time will be granted for any of the causes for which extensions are granted unless Contractor demonstrates to the satisfaction of Owner that Contractor has made every reasonable effort to complete all Work under the Contract not later than the date prescribed, or as soon as possible thereafter, notwithstanding delay in the Work due to any such cause.

§ 8.3.3 Even though Contractor has no right to an extension of time for completion, Owner may in the exercise of its sole discretion extend the Contract Time at the request of Contractor if it determines such discretionary extension to be in the best interest of Owner.

§ 8.3.4 Should Owner be prevented or enjoined from proceeding with Work either before or after the start of construction by reason of any arbitration, litigation or other reason beyond its control, Contractor shall not be entitled to make or assert any claim for damage by reason of such delay.; but time for completion of the Work will be extended to such reasonable time as Owner may in its sole discretion determine and will compensate Contractor for time lost by such delay, and/or adjust the Contract Sum for such delay. Any such determinations will be set forth in writing.

§ 8.3.5 Contractor shall assure that all of its Subcontractors and equipment and materials suppliers are bound to a contractual provision providing that they are entitled to no additional compensation or damages on account of delays arising from any cause and shall indemnify Owner from any claims arising from their failure to do so; provided that if the Work has been suspended for more than sixty (60) days, the Subcontractor's compensation may be equitably adjusted.

§ 8.3.6 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

§ 9.1.1 The Contract Sum is stated in the Contract and, including authorized adjustments, is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, Contractor shall submit to Owner and Architect, through the Construction Manager, a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner, Construction Manager and Architect may require. This schedule, unless objected to by Owner, Construction Manager or Architect, shall be used as a basis for reviewing Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least fifteen (15) days before the date established for each progress payment, Contractor shall submit to the Construction Manager an itemized Application for Payment for Work completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating Contractor's right to payment as Owner, Construction Manager or Architect may require, including without limitation copies of requisitions from Subcontractors, Sub-subcontractors and equipment and materials suppliers.

§ 9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

§ 9.3.1.2 Such applications may not include requests for payment of amounts Contractor does not intend to pay to a Subcontractor, Sub-subcontractor or any of their respective equipment or materials suppliers because of a dispute or other reason or for sums in dispute between Contractor and Owner.

§ 9.3.1.3 Each application for payment shall be accompanied by partial lien waivers, in form provided by or otherwise satisfactory to Owner, for previous payments and such other documentation from Subcontractors, Sub-subcontractors and equipment and their respective equipment or materials suppliers as may be reasonably required by Owner, Architect or Construction Manager to establish the absence of any mechanics liens or other statutory liens.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by Contractor with procedures satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, Sub-subcontractors, equipment and material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to Owner, Architect and Construction Manager:

- .1 a duly executed and acknowledged sworn statement showing all Subcontractors and equipment and materials suppliers with whom Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the requested progress payment and the amount to be paid to Contractor from such progress payment, together with similar sworn statements from all Subcontractors and equipment and materials suppliers, where available, and, where appropriate, from Sub- subcontractors and their equipment and materials suppliers (this may be provided with AIA forms G702 and G703); and
- .2 duly executed waivers of mechanics' and material men's liens establishing payment or satisfaction of all such obligations.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 Construction Manager will assemble a Project Application for Payment by combining Contractor's applications with similar applications for progress payments from Other Contractors and, after certifying the amounts due on such applications, forward them to Architect within seven (7) days.

§ 9.4.2 Within seven (7) days after Architect's receipt of the Project Application for Payment, Construction Manager and Architect will either issue to Owner a Project Certificate for Payment, with a copy to Contractor, for such amount as Construction Manager and Architect determine is properly due, or notify Contractor and Owner in writing of Construction Manager's and Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Such notification will be forwarded to Contractor by Construction Manager.

§ 9.4.3 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will constitute representations made separately by Construction Manager and Architect to Owner, based on their individual observations at the site and the data comprising the Application for Payment submitted by Contractor, that the Work has progressed to the point indicated and that, to the best of Construction Manager's and Architect's knowledge, information and belief, quality and progress of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by Owner, Construction Manager or Architect. The issuance of a separate Certificate for Payment or a Project Certificate for Payment will further constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and equipment and material suppliers and other data requested by Owner to substantiate Contractor's right to payment or (4) made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 Construction Manager or Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect Owner, if in Construction Manager's or Architect's opinion the representations to Owner required by Section 9.4.3 cannot be made. If Construction Manager or Architect is unable to certify payment in the amount of the Application, Construction Manager or Architect will notify Contractor and Owner as provided in Section 9.4.2. If Contractor, Construction Manager and Architect cannot agree on a revised amount, Construction Manager and Architect will promptly issue a Certificate for Payment for the amount for which Construction Manager and Architect are able to make such representations to Owner. Construction Manager or Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in Construction Manager's or Architect's opinion to protect Owner from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of Contractor to make payments properly to Subcontractors or equipment and materials supplier for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If Contractor disputes any determination by Architect and Owner's representative with respect to any Certificate for Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work, provided all undisputed amounts are paid. If Architect and/or Construction Manager declines to certify to payment and withholds its certificate for any reason, Architect and/or Construction Manager will promptly notify Owner and Contractor of the reasons for doing so.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After Construction Manager and Architect have issued a Project Certificate for Payment, Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify Construction Manager and Architect.

§ 9.6.2 Contractor shall promptly pay each Subcontractor, upon receipt of payment from Owner, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such Subcontractor's portion of the Work. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

§ 9.6.3 Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 Neither Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor or equipment or materials supplier except as may otherwise be required by law.

§ 9.6.5 Payment to equipment and material suppliers, whether of Contractor, a Subcontractor or Sub-subcontractor, shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Regardless of whether Contractor provides Owner with a payment bond in the full penal sum of the Contract Sum, payments received by Contractor for Work properly performed by Subcontractors and equipment

and materials suppliers shall be held in trust by Contractor for those Subcontractors or equipment and materials suppliers who performed Work or furnished materials, or both, under contract with Contractor for which payment was made by Owner. Nothing contained herein shall create any fiduciary liability or tort liability on the part of Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against Contractor for breach of the requirements of this provision.

§ 9.6.8 When a Subcontractor completes its portion of the Work and Owner makes payment in full on account of such portion of the Work, Contractor shall promptly submit a complete Final Release and Waiver of Liens from said Subcontractor on forms provided by or acceptable to Owner.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If, through no fault of Contractor, 1) Construction Manager and Architect do not issue a Project Certificate for Payment within fourteen days (14) after Construction Manager's receipt of Contractor's Application for Payment or 2) Owner does not pay Contractor within seven (7) days after the date established in the Contract Documents the undisputed amount certified by Construction Manager and Architect or awarded by arbitration, then Contractor may, upon seven (7) additional days' written notice to Owner, Construction Manager and Architect, stop the Work until payment of the undisputed amount owing has been received. The Contract Time shall be extended appropriately in accordance with Section 4.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so Owner can occupy and utilize the Work for its intended use.

§ 9.8.1.1 Substantial Completion shall not be deemed to occur, and the Work will not be considered suitable for Substantial Completion review, until all Project systems included in the Work are operational as designed and scheduled; all designated or required governmental inspections and certifications have been made and posted; a final certificate of occupancy with respect to all portions of the Work has been issued; designated instruction of Owner's personnel in the operation of all systems have been completed; all final finishes in accordance with the Contract Documents are in place; the Project is available to Owner for occupancy for use intended, subject to agreed correction and completion of Punch List items; and Contractor has submitted to Owner for review and acceptance a certificate which states that the Work has been substantially completed in accordance with the Contract Documents, all equipment, system and material warranty and guarantee certificates (including Contractors' general ten (10) year warranty and guarantee); all operation and maintenance manuals, all as-built construction drawings, all building keys and all Subcontractor, Sub-Subcontractor and Contractor, including their respective equipment and materials suppliers, waiver of lien certificates accurately reflecting all payment made up to Substantial Completion.

§ 9.8.2 When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Contractor and Construction Manager shall jointly prepare and submit to Architect a comprehensive list of items to be completed or corrected (the "Punch List"). Contractor shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on such Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Punch List, Architect, assisted by Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If Architect's inspection discloses any item, whether or not included on the Punch List, which is not in accordance with Contract Documents, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Architect. Contractor shall then submit a request for another inspection by Architect, assisted by Construction Manager, to determine Substantial Completion. Any items discovered by Owner or Architect during the inspection which are not on the Punch List but should be included thereon shall be added by Architect and an updated Punch List will be provided to Contractor.

§ 9.8.3 Contractor will complete items on the Punch List promptly after receipt of approval of the Punch List from Owner or receipt of an updated Punch List. If Contractor fails to complete all items of the Punch List within thirty (30) days, Owner will reserve the right, without further notice to Contractor, to have the remaining

Work completed by any reasonable means, and the actual cost of such Punch List items will be deducted from the final payment due to Contractor.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, Architect or Construction Manager will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or designated portion thereof, plus one hundred eighty (180) days of uninterrupted performance or use unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate and Owner shall be provided a list of warranties which take effect.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion substantially complete, Contractor and Construction Manager shall jointly prepare and submit a list to Architect as provided under Section 9.8.2. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between Owner and Contractor or, if no agreement is reached, by decision of Architect after consultation with Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, Owner, Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon completion of the Work, Contractor shall forward to Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to Construction Manager a final Contractor's Application for Payment. Upon receipt, Construction Manager will forward the notice and Application to Architect who will promptly make such inspection. When Architect, based on the recommendation of Construction Manager, finds the Work acceptable under the Contract Documents and the Contract fully performed, Construction Manager and Architect will promptly issue a final Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due Contractor and noted in said final Certificate is due and payable. Construction Manager's and Architect's final Certificate for Payment will constitute a further representation that, to the best of their knowledge, information and belief, conditions listed in Section 9.10.2 as precedent to Contractor's being entitled to final payment have been fulfilled, provided that such representation does not change Contractor's obligations in accordance with the Contract Documents.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until ninety (90) days after Contractor submits to Architect and Owner through Construction Manager:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner;
- .3 a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .4 consent of surety, if any, to final payment;
- .5 if required by Owner, other data establishing payment or satisfaction of obligations including without limitation receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner;
- .6 a final sworn statement and final lien waiver, in form and substance provided by or otherwise acceptable to Owner, from Contractor duly executed and acknowledged showing all Subcontractors, Sub-subcontractors and their respective equipment and materials suppliers to be fully paid, and similar final sworn statements and final lien waiver from Subcontractors and, where appropriate, from Sub-subcontractors, and their respective equipment and materials suppliers;
- .7 proof of compliance with Section 13.5.4;
- .8 an assignment of all warranties as required by the Contract Documents;
- .9 a permanent certificate of occupancy from the municipality;
- .10 a marked set of Record Drawings reflecting "as-built" conditions with record information as set forth in the Contract Documents;
- .11 reproducible drawings reflecting the location of any concealed utilities, mechanical or electrical systems and components; and
- .12 to the extent not previously supplied, a list of the names, addresses and telephone numbers of all Subcontractors, Sub-subcontractors and equipment and materials suppliers and of any persons providing warranties.

If a Subcontractor, Sub-subcontractors or one of their respective equipment and materials suppliers refuses to furnish a release or waiver required by Owner, Contractor shall take all actions necessary to obtain such release or waiver including without limitation furnishing a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, and is not bonded over as provided in the previous sentence, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Architect through Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. The making of final payment shall not constitute a waiver of Claims by Owner.

§ 9.10.4 Acceptance of final payment by Contractor, a Subcontractor or equipment or materials supplier shall constitute a waiver of Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall submit Contractor's safety program to Owner and Construction Manager for review and coordination with the safety programs of Other Contractors.

§ 10.1.2 In the event Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, Contractor shall immediately stop Work in the area affected and report the condition to Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of Owner and Contractor, or in accordance with final determination by Architect on which arbitration has not been demanded, or by arbitration under Article 4.

§ 10.1.3 Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

§ 10.1.4 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself, but only to the extent caused in whole or in part by negligent acts or omissions of Owner, anyone directly or indirectly employed by Owner or anyone for whose acts Owner may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 10.1.4.

§ 10.1.5 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner, Construction Manager and Architect in writing. Owner, Contractor, Construction Manager and Architect shall then proceed in the same manner described in Section 10.1.2.

§ 10.1.6 Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, Owner shall furnish in writing to Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. Contractor, Construction Manager and Architect will promptly reply to Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by Owner. If Contractor, Construction Manager or Architect has an objection to a person or entity proposed by Owner, Owner shall propose another to whom Contractor, Construction Manager and Architect have no reasonable objection.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 Contractor shall be responsible for and shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Contractor or Contractor's Subcontractors or Sub-subcontractors or their equipment and materials suppliers;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction or operations by Owner or Other Contractors.

§ 10.2.2 Contractor shall give notices and comply with Applicable Laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use for storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by Contractor, a Subcontractor, a Sub-subcontractor, an equipment or materials supplier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The foregoing obligations of Contractor are in addition to Contractor's obligations under Section 3.18.

§ 10.2.6 Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to Owner, Construction Manager and Architect.

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

§ 10.3 EMERGENCIES

§ 10.3.1 In an emergency affecting safety or persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by Contractor on account of an emergency shall be determined as provided in Section 4.7 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect Contractor from claims set forth below which may arise out of or result from Contractor's operations under the Contract and for which Contractor may be legally liable, whether such operations be by Contractor or by a Subcontractor, Sub-subcontractor, equipment or materials supplier or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by Contractor, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 claims involving contractual liability insurance applicable to Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Contractor shall purchase and maintain insurance with coverages and amounts substantially equal to those specified in the Contract Documents or as may otherwise be set forth in writing by Owner and provided to Contractor.

§ 11.1.3 Certificates of insurance acceptable to Owner shall be submitted to Construction Manager for transmittal to Owner with a copy to Architect prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least ninety (90) days' prior written notice has been given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage shall be furnished by Contractor with reasonable promptness in accordance with Contractor's information and belief.

§ 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 Owner shall be responsible for purchasing and maintaining Owner's usual liability insurance. Optionally, Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is earlier. This insurance shall include interests of Owner, Contractor, Subcontractors and Sub-subcontractors in the Work.

§ 11.3.1.1 Property insurance shall be on an "all-risk" policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, Owner shall so inform Contractor in writing prior to commencement of the Work. Contractor may then obtain insurance which will protect the interests of Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to Owner. If Contractor is damaged by the failure or neglect of Owner to purchase or maintain insurance as described above, without so notifying Contractor, then Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, Contractor shall pay costs not covered because of such deductibles. If Owner or insurer increases the required minimum deductibles above the amounts so identified or if Owner elects to purchase this insurance with voluntary deductible amounts, Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

§ 11.3.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of Owner at the value established in the approval, and also portions of the Work in transit.

§ 11.3.1.5 The insurance required by this Section 11.3 is not intended to cover machinery, tools or equipment owned or rented by Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. Contractor shall, at Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment which shall be subject to the provisions of Section 11.3.7.

§ 11.3.2 Boiler and Machinery Insurance. Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by Owner; this insurance shall include interests of Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and Owner and Contractor shall be named insureds.

§ 11.3.3 Loss of Use Insurance. Owner, at Owner's option, may purchase and maintain such insurance as will insure Owner against loss of use of Owner's property due to fire or other hazards, however caused.

§ 11.3.4 If Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, Owner shall, if possible, include such insurance, and the cost thereof shall be charged to Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, Owner shall file with Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least ninety (90) days' prior written notice has been given to Contractor.

§ 11.3.7 Waivers of Subrogation. Owner and Contractor waive all rights against each other and against Construction Manager, Architect, Owner's Other Contractors and own forces described in Article 6, if any, and the Subcontractors, Sub-subcontractors, equipment and materials suppliers, consultants, agents and employees of any of them, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as Owner and Contractor may have to the proceeds of such insurance held by Owner as fiduciary. Owner or Contractor, as appropriate, shall require of Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's Other Contractors described in Article 6, if any, and the Subcontractors, Sub-subcontractors, equipment and materials suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under Owner's property insurance shall be adjusted by Owner as fiduciary and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. Contractor shall pay Subcontractors and equipment and materials suppliers their just shares of insurance proceeds received by Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors and equipment and materials suppliers in similar manner.

§ 11.3.9 If required in writing by a party in interest, Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. Owner shall deposit in a separate account proceeds so received, which Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.9. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

§ 11.3.10 Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to Owner's exercise of this power; if such objection be made, arbitrators shall be chosen as provided in Section 4.9. Owner as fiduciary shall, in that case, make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 11.3.11 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 Owner shall have the right to require Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. If Owner requires a payment bond, Contractor agrees that the bond shall be in form and substance satisfactory to Owner and no Work shall commence prior to filing of record of such payment bond in accordance with Section 8.2.2.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to Owner's, Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either, be uncovered for their observation and be replaced at Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which Owner, Construction Manager or Architect has not specifically requested to observe prior to its being covered, Construction Manager or Architect may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs unless the condition was caused by Owner or one of the Other Contractors in which event Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 Contractor shall promptly, but in no event later than ten (10) days from Owner's written notice thereof unless a longer period is agreed to in writing by Owner, correct Work rejected by Owner, Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for Construction Manager's and Architect's services and expenses made necessary thereby.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to and in no way limiting the Contractor's obligations or the Warranty Period set forth in Section 3.5 or Section 9.8.4, if, within five (5) years after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 3.5 or 9.8.4, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so unless Owner has previously given Contractor a written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition. If Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from Owner or Architect, Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The five (5) year period for correction of Work shall be extended with respect to portions of Work first performed after Final Completion by the period of time between Substantial Completion and the actual performance of the Work. The five (5) year period for correction of Work shall not be extended by corrective Work performed by Contractor pursuant to this Section 12.2.

§ 12.2.3 Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

§ 12.2.4 If Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct it in accordance with Section 2.4. If Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from Architect issued through Construction Manager, Owner may remove it and store the salvable materials or equipment at Contractor's expense. If Contractor does not pay costs of such removal and storage within ten (10) days after written notice, Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by Contractor, including compensation for Construction Manager's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Owner.

§ 12.2.5 Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Owner or Other Contractors caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.6 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Establishment of the time period of five (5) years as described in Section 12.2.2 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW; APPLICABLE LAWS

§ 13.1.1 The Contract shall be governed by the law of the place where the Project is located.

§ 13.1.2 Contractor shall at all times comply with any and all federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders pertaining to the Work, including without limitation those relating to environmental matters, hiring, wages, hours and conditions of employment, immigration, worker documentation and permits, international prohibitions on child labor, Subcontractor and equipment and materials supplier selection, discrimination, occupational health or safety, motor vehicle safety and data and information security (collectively, "Applicable Laws"). The Contract incorporates by reference all clauses required by these laws.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, 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 as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Notwithstanding any other provision herein, Owner may, without the written consent of Contractor, assign the Contract as a whole to an affiliated entity which controls, is controlled by, or is under common control with Owner, including without limitation Volkswagen Group of America, Inc.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered or sent by electronic, facsimile, registered or certified mail to the last business address known to the party giving notice. Such written notice shall be in accordance with Section 7.18 of the Contract between Owner and Contractor.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity.

§ 13.4.2 No action or failure to act by Owner, Construction Manager, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Contractor shall cooperate with and make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Contractor shall give

Owner, Construction Manager and Architect timely notice of when and where tests and inspections are to be made so Owner, Construction Manager and Architect may observe such procedures. Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 13.5.2 If Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, Construction Manager and Architect will, upon written authorization from Owner, instruct Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to Owner, and Contractor shall cooperate and give timely notice to Owner, Construction Manager and Architect of when and where tests and inspections are to be made so Owner, Construction Manager and Architect may observe such procedures. Owner shall bear such costs except as provided in Section 13.5.3.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for Construction Manager's and Architect's services and expenses.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to Construction Manager for transmittal to Architect.

§ 13.5.5 If Owner, Construction Manager and/or Architect are to observe tests, inspections or approvals required by the Contract Documents, Owner, Construction Manager and/or Architect, as applicable, will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents of such portions of the Contract Sum as are not in dispute between Owner and Contractor shall bear interest from the date payment is due at the United States government Federal Funds Effective Rate.

§ 13.7 Intentionally Deleted.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY CONTRACTOR

§ 14.1.1 Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of Contractor or a Subcontractor, Sub-subcontractor or their respective equipment and materials suppliers, agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, for any of the following reasons: issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; an act of government, such as a declaration of national emergency which requires all Work to be stopped; because Architect and/or Construction Manager has not issued a Certificate for Payment and has not notified Contractor of the reason for withholding certification as provided in Section 9.4.1, or because Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or Owner has failed to furnish to Contractor promptly, upon Contractor's request, reasonable evidence as required by the Contract Documents.

§ 14.1.2 Contractor may terminate the Contract if, through no act or fault of Contractor or a Subcontractor, Sub-subcontractor, equipment or materials supplier, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, repeated suspensions, delays or interruptions of the entire Work by Owner as described in Section 14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred eighty (180) days in any three hundred sixty-five (365) day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, Contractor may, upon seven (7) days' written notice to Owner and Architect, terminate the Contract and recover from Owner payment for Work completed in accordance with the Contract Documents.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of Contractor or a Subcontractor, Sub-subcontractor, equipment or materials supplier, or their agents or employees or any other persons performing portions of the Work under contract with Contractor because Owner has persistently failed to fulfill Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, Contractor may, terminate the Contract and recover from Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY OWNER FOR CAUSE

§ 14.2.1 Owner may terminate the Contract if Contractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or equipment and materials suppliers for labor, equipment or materials in accordance with the respective agreements between Contractor and the Subcontractors or equipment and materials supplier, as applicable, to the extent that Contractor has received payment from Owner for same;
- .3 disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 files a petition under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against Contractor without his consent and is not dismissed within sixty (60) days;
- .6 if Contractor becomes insolvent, or if Contractor consents to the appointment of a receiver, trustee, liquidator, custodian or the like of Contractor or of all or any substantial portion of its assets, or if a receiver, trustee, liquidator, custodian or the like is appointed with respect to the Contractor or takes possession of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days of the appointment, or if Contractor makes an assignment for the benefit of creditors; or
- .7 if Contractor falls behind schedule and remains behind schedule for seven (7) consecutive days, or fourteen (14) days in the aggregate, after written notice from Owner that it is behind schedule.

§ 14.2.2 When any of the above reasons exist, Owner, may without prejudice to any other rights or remedies of Owner and after giving Contractor and Contractor's surety, if any, seven (7) days' written notice, terminate employment of Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon required for the Project;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method Owner may deem expedient. Upon request of Contractor, Owner shall furnish to Contractor a detailed accounting of the costs incurred by Owner in finishing the Work.

§ 14.2.3 When Owner terminates the Contract for one of the reasons stated in Section 14.2.1, Contractor shall not be entitled to receive payment for Work completed at the time of termination.

§ 14.2.4 If the costs of finishing the Work, including compensation for Architect's services and expenses made necessary thereby, and other damages incurred by Owner and not expressly waived, exceed the unpaid balance, Contractor shall pay the difference to Owner. The amount to be paid to Contractor or Owner, as the case may be, shall be certified by Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY OWNER WITHOUT CAUSE

§ 14.3.1 Owner may, without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor (including its Subcontractor, Sub-subcontractor and their respective equipment and materials suppliers) is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY OWNER WITHOUT CAUSE

§ 14.4.1 Owner may, at any time, terminate the Contract for Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from Owner of such termination for Owner's convenience, Contractor shall:

- .1 cease operations as directed by Owner in the notice;
- .2 take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for Owner's convenience, Contractor shall be entitled to receive payment for Work performed in accordance with the Contract Documents and reasonable costs incurred by reason of such termination upon satisfactory evidence of such costs to Owner.

§ 14.4.4 Upon such termination, Contractor hereby waives any claims for damages, other than for the costs provided for in Section 14.4.3, and shall indemnify, defend and hold harmless Owner for any claims for damages, including with regard to Contractor's failure to pay, made by Contractor's Subcontractors, Sub-subcontractors, and their respective equipment and materials supplier. Those provisions of the Contract and the Contract Documents which survive the final completion shall remain in full force and effect after such termination, to the extent applicable to the Work completed by Contractor.

§ 14.4.5 Thereafter Contractor shall perform only such Work as may be necessary to preserve and protect Work already in progress and to protect materials and equipment on the site or in transit to the site, all of which shall be done promptly and diligently.

§ 14.5 OBLIGATIONS UPON TERMINATION

§ 14.5.1 In the event of any termination of the Contract:

§ 14.5.1.1 Contractor shall execute and deliver all such documents and take all such steps, including the assignment of Contractor's contractual rights under subcontracts and all other agreements, as Owner may reasonably request for

the purpose of fully vesting Owner with the rights and benefits of Contractor with respect to the Project that Owner shall have elected (or be required under this Contract) to assume responsibility;

§ 14.5.1.2 The parties shall remain responsible for all of their respective obligations and liabilities accrued or based upon events occurring prior to the date of termination, and those obligations and liabilities shall survive the termination;

§ 14.5.1.3 To the extent reasonably applicable, Contractor's compliance with the documentary requirements for final payment set forth in Article 9 shall be a condition precedent to Contractor's receipt of payment and termination costs hereunder;

§ 14.5.1.4 Contractor shall cooperate with Owner to minimize any interruption or delay in Owner's operations with respect to the Project, and if requested by Owner, Contractor shall provide reasonable transition assistance services to Owner upon terms to be mutually agreed upon by the parties.

VOLKSWAGEN GROUP OF AMERICA, INC.

STAPLES CONSTRUCTION COMPANY, INC.

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)