



## **EXHIBIT "K"**

# **TERMS AND CONDITIONS OF THE AGREEMENT**

### **1.0 THE AGREEMENT**

This Agreement, made by and between A/Z Corporation and Trade Contractor shall consist of the Exhibits, Attachments and Schedules of this Agreement; the Contract between the Owner and A/Z, including all of the Terms and Conditions of said Contract between the Owner and A/Z; any and all Plans, Specifications, Addenda, Amendments, Bulletins, Supplements, Change Orders, Work Authorizations and other modifications issued thereto prior to the date of this Agreement and any other documents forming the Contract between the Owner and A/Z (collectively referred to as the "Contract Documents").

The parties hereto expressly understand and agree that all of the above documents are material and integral parts of this Agreement and are incorporated herein by reference as if the same were fully set forth herein. This Agreement is intended to be read as a whole and any Work required by one part and not mentioned in another shall be executed to the same extent as though the same were required by all. In the event of any conflict or ambiguity between one or more provisions of this Agreement, the provision imposing the more demanding term, condition, duty or standard regarding the performance of Trade Contractor shall take precedence and govern.

Trade Contractor, to the extent of the Work to be performed, agrees to be bound to A/Z by the terms of the Contract Documents and to assume toward A/Z all the obligations and responsibilities which A/Z by the Contract Documents including without limitation the Owner and A/Z Contract assumes toward the Owner. Trade Contractor shall enter into similar agreements with its subcontractors.

Trade Contractor warrants and represents that it has, or has been provided, a full opportunity to adequately review, copy or examine each and every part, subpart, Exhibit, Attachment and Schedule of this Agreement prior to its acknowledgement, acceptance and signing of the same.

Trade Contractor has satisfied itself as to the requirements of the Work and acknowledges and agrees that the amount of this Agreement includes all costs, profit and overhead for said requirements including, but not limited to, labor, material and cost escalation; and that it enters into this Agreement without having been induced wholly or in part by any promises, representations or statements by or on behalf of the Owner, A/Z or any other party, other than those promises, representations or statements expressly set forth in this Agreement.

### **2.0 THE WORK**

#### **2.1 Inclusive of All Requirements**

Trade Contractor shall strictly comply with all requirements of this Agreement in the performance of the Work and agrees that the Work includes the provision of all labor, materials, equipment, tools, components, systems, supervision and other necessary and incidental services and items to make the Work complete, functional and operational and that the Work shall be performed in a skillful and workmanlike manner as a trade contractor conducting substantially the same Work in the same geographical region as Trade Contractor is situated.



## **2.2 Warranty Regarding Material and Workmanship**

Trade Contractor warrants and represents that all product used in relation to the Work shall be as specified for the Work and that the same shall be fit and appropriate for the particular purpose for which it is used in connection with the Work.

Trade Contractor represents and acknowledges that it is a merchant of the goods, services and materials involved, used or the subject of this Agreement and that it is and holds itself out to be an expert with regard to said goods, services and materials as the same pertain to the Work. Trade Contractor acknowledges that as a result of its execution of this Agreement, it has affirmative knowledge of the potential use of the goods, services and materials that are the subject of this Agreement. Trade Contractor represents that the goods, services and materials provided hereunder will be, and in fact are, fit for the ordinary purpose for which such goods, services and materials are used, as the same are used in the trade in which Trade Contractor is engaged.

Trade Contractor represents that it has reason to know the particular purpose for which the goods, services and materials used hereunder are required or will be used for and that A/Z and the Owner are relying in fact on Trade Contractor's skill and judgment to select, provide and install the aforementioned goods, services and materials that are suitable for the purposes contemplated hereunder. Unless specifically excluded or modified herein, Trade Contractor agrees, represents and affirms that there shall be an implied warranty that the goods, services and materials furnished in connection with this Agreement shall be fit for the purpose that they are provided for.

Trade Contractor does acknowledge, represent and agree that the Work shall be executed by duly qualified, safe, careful and efficient workers in strict conformity with the best industry standards and practices of a trade contractor conducting substantially the same Work in the same geographical region as Trade Contractor.

Trade Contractor warrants and represents that the goods, services, materials and the Work provided hereunder shall be free from fault in design, material and workmanship and that the same shall be of sufficient capacity and fit for the purpose for which they are intended.

## **2.3 Owner's Rules and Regulations**

Trade Contractor shall abide by and enforce the rules and regulations of the Owner and A/Z regarding construction operations and other on site personnel and activity rules and regulations.

## **2.4 Protection of the Work**

Trade Contractor shall continuously maintain adequate protection of the Work from damage and shall protect the property of the Owner and A/Z as well as any adjacent and abutting properties from damage, injury or loss arising from or in connection with the Work. Trade Contractor shall make good any such damage, injury or loss that arises out of or is connected to any negligence, affirmative act or omission of Trade Contractor. Should the Work include the installation, erection or other handling of materials and equipment furnished by others, Trade Contractor shall be responsible for the protection of said materials and equipment to the extent provided above regarding the Work.



## **2.5 Housekeeping**

Trade Contractor shall at all times keep the Project site and its vicinity free from the accumulation of debris, waste materials and rubbish caused by its operations. Trade Contractor shall maintain a broom clean condition at all times and shall use all means and methods to control dust and debris from migrating from the Work area into abutting or adjacent areas during the course of the Work. During the course of the Work and at the completion of the Work, Trade Contractor shall remove all debris, waste materials and rubbish from and around the Project site and lawfully dispose all such debris, waste material and rubbish off site or to on site dumpsters all as directed by A/Z. Such clean up and disposal shall be performed in a manner that does not delay, hinder or disrupt the progress of the Project or the work of others. Paving debris, concrete materials, soils, plant materials and hazardous materials and their containers will not be permitted in on site dumpsters and must be disposed off site by Trade Contractor in accordance with all applicable Federal, State and local laws, ordinances, statutes rules, regulations and codes. If Trade Contractor fails to adhere to the requirements stated herein for proper housekeeping within twenty four (24) hours of receipt of written notice from A/Z to properly correct the deficiency, then A/Z may, at its discretion, clean and remove any such debris, waste materials and rubbish by the most expeditious means possible and charge the cost thereof, including overhead and profit, to Trade Contractor.

## **2.6 Inspections and Tests**

A/Z and the Owner shall at all times have access to the Work whenever it is in preparation or in progress and Trade Contractor shall provide proper facilities for such access and for inspection. Inspection by A/Z will be made within a reasonable period of time, and, where practical, at the source of supply. If any portion of the Work should be covered or otherwise made inaccessible without the written approval of A/Z and the Owner, it must, if requested by A/Z or the Owner, be uncovered and made accessible for examination at Trade Contractor's sole expense. If the Contract Documents or any laws, ordinances or any public authority requires any portion of the Work to be specifically tested or approved, Trade Contractor shall arrange for any independent third party inspections, pay all costs involved and shall give A/Z a minimum of forty eight (48) hours notice of its readiness for said inspection. The required certificates of inspection and test reports shall be secured by Trade Contractor and submitted to A/Z.

## **2.7 Temporary Facilities**

Trade Contractor shall provide all temporary offices, structures, sheds, storage facilities and other temporary structures or facilities required for the Work complete with all necessary utility connections and services including, without limitation, gas, telephone, electricity and water. Trade Contractor shall maintain temporary structures and facilities in a safe and orderly condition in accordance with all applicable Federal, State and local laws, ordinances, rules and regulations. All temporary structures and facilities provided by Trade Contractor shall be located and removed as directed by A/Z, but in no event later than completion of the Work.

## **2.8 Layout and Field Measurements**

Trade Contractor shall provide all layout and field measurements and other verifications required for the performance of the Work and shall be responsible for their accuracy. Before commencing the Work, Trade Contractor shall accurately check and verify all previous and surrounding work done by others and determine the correctness of the same. The failure of Trade Contractor to detect and disclose any existing discrepancies or non-conformities and report the same to A/Z in writing, before commencing the Work, shall be deemed a release and waiver of A/Z from any and all resulting damages, costs and expenses arising out of or in connection with such discrepancies and non-conformities that should have been



discovered by Trade Contractor. Notwithstanding dimensions given in any document comprising this Agreement, it shall be the obligation and responsibility of Trade Contractor to take such measurements as will ensure the proper matching and fitting of the Work with contiguous work.

## **2.9 Cutting, Fitting and Patching**

Notwithstanding anything to the contrary contained in any Contract Document, Trade Contractor shall do all cutting, fitting and patching required in the performance of the Work that may be necessary to make its several parts come together properly and to properly fit the same to receive or to be received by the work of others as required, needed or necessary for the completed structure. Trade Contractor shall not cut or alter in any manner the work of any other without the prior written express consent of A/Z.

## **2.10 Storage**

Trade Contractor shall be responsible for the delivery, receipt, unloading, storage, warehousing, protection, insurance and all other risks of loss relative to any materials or equipment it is to furnish, install provide or have provided to it under this Agreement. All materials and equipment when stored on the Project site shall be stored in locations determined by A/Z and shall comply with the requirements of A/Z's "Nothing Hits the Ground" Policy for Lean Construction, whereby Trade Contractor shall store all material associated with its work hereunder upon racks, pallets, or wheels, allowing for easy mobility.

## **2.11 Responsibility of the Work**

Trade Contractor shall conduct the Work at its sole risk and assume full responsibility for all Work performed by it until completion and final payment. In the event this Agreement or any document comprising this Agreement provides that Trade Contractor shall utilize materials or equipment furnished by others for erection or installation, Trade Contractor shall unload and store said materials and equipment at no additional cost to A/Z and shall furnish signed delivery tickets for the items received. Any loss or damage sustained to said materials and equipment until final payment shall be made good by Trade Contractor at no cost to the Owner or A/Z.

## **2.12 Use of Premises by Trade Contractor**

Trade Contractor shall confine its materials, equipment, machinery, tools, apparatus, its operations and its personnel to limits indicated by law, ordinances, permits or the direction of A/Z and shall not unreasonably encumber or cause the same to impeded access to the premises. Trade Contractor shall not load or permit any part of the structure to be loaded with weight that will endanger its safety.

## **2.13 Mutual Responsibility of Trade Contractor**

Should Trade Contractor cause damage or loss to the work, materials, equipment or property of A/Z, other trade contractors, the Owner, the Owner's separate contractors or the Architect, or should Trade Contractor by any act or omission, or by defective or ill-timed Work, or by its failure to perform any of its obligations under this Agreement, or cause damage to A/Z, other trade contractors, the Owner, the Owner's separate contractors or the Architect, then Trade Contractor shall be responsible to make good such damage or loss at its sole cost and expense. To the fullest extent permitted by law, Trade Contractor shall defend, indemnify and hold harmless A/Z, other trade contractors, the Owner, the Owner's separate contractors and the Architect from and against any claim, liability, damage, action or proceeding, whether formal or informal, which may be brought against any of them arising out of or relating to any such damage caused or alleged to have been caused by or on account of Trade Contractor's acts or omissions.



## 2.14 Contract Documents

Trade Contractor shall obtain the Contract Documents from A/Z for the execution of the Work. The Contract Documents and any copies thereof shall remain the property of the party that created or furnished them and the same shall not be copied, reproduced, transmitted, published or disseminated for use in any other work performed by Trade Contractor. The aforementioned Contract Documents shall be returned by Trade Contractor to A/Z prior to its application for final payment. Trade Contractor acknowledges and agrees to be bound by and perform the Work in accordance with the Contract Documents as amended from time to time and shall make no deviation therefrom without the express written consent of A/Z.

## 2.15 Record Drawings

Trade Contractor shall keep at the site of the Work a record set of drawings that shall be kept current by marking the drawings in detail to indicate any amendments, changes, field adjustments or deviations from the Issued for Construction set of drawings. Said obligation shall require that such drawings be updated on a daily basis to reflect the present condition of the Work at site. Trade Contractor shall note any underground obstructions, unusual conditions, dimensional corrections and adjustments, joint deviations and locations of all tests taken cross referenced to the test records. Trade Contractor shall update and notate the aforementioned drawings with any and all details that would reflect or incorporate "as built" or "as installed" conditions. Trade Contractor agrees to deliver a copy of said drawings to A/Z upon performing said updates and does acknowledge and agree that compliance with the foregoing shall be a condition precedent to obtaining any progress or final payments hereunder. Failure to comply with the foregoing provisions shall be deemed a material breach of the Agreement.

## 3.0 SCHEDULE OF WORK

### 3.1 Progress and Performance

Trade Contractor shall commence the Work in accordance with the Project Schedule immediately upon receipt of verbal or written notice to proceed from A/Z and shall, in a prompt, timely and diligent manner, prosecute the Work and the parts thereof efficiently and at a rate so as not to cause delay in the progress of the work of A/Z, other trade contractors, the Owner or the Owner's separate contractors. Trade Contractor shall cooperate with A/Z, other trade contractors, the Owner and the Owner's separate contractors to prevent or mitigate delays or interferences with regard to the completion of any part or whole of the Work or the Project. Trade Contractor acknowledges and agrees that the performance and completion of the Work in accordance with the Project Schedule as the same may be revised and amended from time to time by A/Z, in A/Z's sole discretion, are all essential and material conditions of this Agreement. Trade Contractor acknowledges and agrees that time is of the essence with regard to the performance of the Work.

Trade Contractor acknowledges and agrees that its failure to perform and complete the Work and the parts thereof, consistent to and in accordance with the Project Schedule shall constitute a material breach of this Agreement. Trade Contractor shall submit to A/Z a detailed schedule for performance of the Work and the parts thereof, in a form acceptable to A/Z, with the same indicating at a minimum the anticipated sequence of the Work, durations in days and labor hours for the parts thereof and all equipment and resources required for all identified activities. Said schedule shall name and identify any and all long lead time items necessary for the performance of the Work and identify the time required to support the Project Schedule. A/Z shall be entitled, in its sole discretion, to direct Trade Contractor to make modifications and revisions to



said schedule and Trade Contractor agrees that it shall not be entitled to any financial adjustment to this Agreement arising out of or relating to any such modifications and revisions so directed by A/Z.

### **3.2 Failure to Perform**

If A/Z determines that Trade Contractor has fallen behind in the progress of the Work or is in danger of falling behind in the progress of the Work at its then rate of progress or is responsible for any Project Schedule delays, A/Z may, upon written notice, direct Trade Contractor to take any and all steps necessary to improve the rate of progress of the Work including, without limitation, requiring Trade Contractor to increase its labor force, increase the number of work shifts or overtime work hours, increase its number of work days including weekends and to provide additional materials and equipment. Within forty eight (48) hours of Trade Contractor's receipt of such written notice from A/Z, Trade Contractor shall submit to A/Z its written plan of action to correct said deficiencies which shall consist of, at a minimum, a schedule, a resource allocation plan and a Project specific safety assessment that shall together demonstrate the manner by which Trade Contractor will implement the appropriate measures to attain the required rate of progress while maintaining a safe and injury free work environment.

Upon approval of the plan of action by A/Z, Trade Contractor shall immediately implement said plan of action. If A/Z determines that Trade Contractor's plan of action will not attain the required rate of progress, Trade Contractor shall immediately implement any actions that A/Z, in its sole discretion, deems necessary and shall perform the Work accordingly without additional cost to A/Z or the Owner. If Trade Contractor fails to submit a plan of action, or fails to implement the plan of action as required, or fails to perform the Work in accordance with directives from A/Z in the event Trade Contractor's plan of action is not approved by A/Z, then such failure shall become a material breach of this Agreement, and A/Z may impose all of its rights and remedies under Article 11 herein against Trade Contractor.

Trade Contractor shall at all times comply with any written directives issued by A/Z subject to Trade Contractor's rights under Paragraph 9.2 and Article 10 herein. Unless specifically directed by A/Z, Trade Contractor shall continue at all times to diligently prosecute the Work pending the resolution of any claim or other dispute arising out of or relating to this Agreement or any others between Trade Contractor and A/Z, including the alleged breach thereof.

### **3.3 Force Majeure**

If Trade Contractor is delayed at any time in the progress of the Work by occurrences beyond the control, fault or negligence of Trade Contractor and which, by the exercise of reasonable diligence, Trade Contractor is unable to prevent or provide against, including but not limited to industry wide labor disputes other than those caused by or the direct result of Trade Contractor or its subcontractors, fire, unusual delays in deliveries not readily or reasonably anticipated, unavoidable casualties or by other occurrences that A/Z, in its sole determination, subject to the Owner's approval, determines may justify the delay, then A/Z may grant to Trade Contractor an appropriate extension of time regarding its performance hereunder, consistent with the terms and conditions of this Paragraph 3.3.

Provided that Trade Contractor is in compliance with the obligations of this Agreement, the time to complete the whole or portions of the Work shall be extended by an appropriate mechanism hereunder and said extension shall be for the length of time actually and directly caused by such occurrence, as determined by A/Z and the Owner. Trade Contractor shall, in such event, cooperate in good faith with A/Z and the Owner to minimize and mitigate the impact of any such occurrence and do any and all things reasonable under the circumstances then and there existing to achieve its completion of the Work within the specified time frame for the Work allocated in the Project Schedule.



### **3.4 Acceleration**

If, in order to expedite the completion of the Project, A/Z directs Trade Contractor in writing to work overtime, a second or third shift, increase its work force, or work on Saturdays, Sundays or legal holidays (hereinafter collectively referred to as "Overtime", for reasons other than Trade Contractor's failure to perform hereunder, Trade Contractor shall work such Overtime. It is understood and agreed by Trade Contractor that A/Z will pay Trade Contractor only the premium portion of the Overtime, the differential between the actual straight time rate and the Overtime rate. Written time slips covering Overtime Work must be submitted on a daily basis and verification of time approved by an authorized representative of A/Z as a condition precedent to payment to Trade Contractor for such Overtime. No overhead or profit is to be charged by or allowed to Trade Contractor for Overtime under any circumstances.

## **4.0 PAYMENT**

### **4.1 Schedule of Values**

Within ten (10) business days of the date of this Agreement and prior to submitting any application for payment, Trade Contractor shall submit to A/Z for approval, Trade Contractor's itemized schedule of values that allocates the total amount of this Agreement to the various portions of the Work. Once approved, Trade Contractor shall use the schedule of values as the basis for its periodic progress payments.

### **4.2 Progress Payments**

Notwithstanding the payment provisions contained in the Contract between the Owner and A/Z or any other Contract Document to the contrary, progress payments shall be due Trade Contractor in the amount of the Work in place less (a) all previous payments to Trade Contractor under this Agreement; (b) all charges for materials and services furnished by A/Z to Trade Contractor; (c) retainage at a rate as specified within the contract documents; and (d) all other sums that A/Z shall be entitled to retain or deduct hereunder and that A/Z and the Owner have approved for payment and, unless expressly prohibited by law, for which the Owner has actually paid A/Z, such payment by the Owner to A/Z being an express condition precedent to the obligation of A/Z to pay Trade Contractor.

Without exception, all requests for progress payments shall be made by Trade Contractor on the form supplied to Trade Contractor by A/Z and shall include a completed subcontractor and supplier list indicating all required information for each and every subcontractor and supplier that has furnished labor or materials for the Work with the same being duly submitted on the form provided by A/Z to Trade Contractor.

### **4.3 Materials Stored Off Site**

If the Contract between the Owner and A/Z specifically provides for payment to be made on account of materials not incorporated into the Work but delivered to and suitably stored at an off site location approved and accepted by A/Z and the Owner in advance, then payments shall be made, if at all, in strict accordance with the requirements and conditions of this Agreement and the Contract between A/Z and the Owner, with an appropriate amount being withheld to ensure the timely and safe delivery of such materials to the Project site and subsequent incorporation onto the Work.

Approval of payment for such stored items shall be based on submission by Trade Contractor of documentation, which shall include: (a) an itemized inventory listing of the stored materials; (b) submission



of a bill of sale naming A/Z and the Owner as Payees thereunder and setting forth a complete list of stored items and their current value; (c) valid invoices for the material in storage; (d) a valid executed lien waiver from all suppliers that have furnished materials being stored; (e) a properly executed bailment agreement wherein Trade Contractor assents and agrees that the stored materials shall be held in trust on behalf of A/Z and the Owner for their incorporation into the Work identified herein; and (f) a separate Certificate of Insurance, satisfactory to A/Z and the Owner, that shall fully protect the interests of A/Z and the Owner in such materials including transport and incorporation of the same to and into the Project site, with the foregoing being inclusive of a separate stored materials rider as applicable. No interpretation of this Paragraph 4.3 shall yield a result whereby the risk of loss in the stored materials would pass to the interest and detriment of A/Z and the Owner until and unless such materials shall be incorporated into the Work hereunder and accepted by A/Z and the Owner. This Paragraph 4.3 shall be reformed as needed by any judicial decision maker in a court of competent jurisdiction so as to give maximum effect to the intent set forth herein.

#### **4.4 Timing of Payments**

**4.4.1** Trade Contractor shall submit monthly applications for progress payments and shall provide appropriate and accurate lien and claim releases in accordance with Paragraph 4.6 herein. The same shall be submitted on such forms provided to Trade Contractor by A/Z no later than the twenty fifth (25<sup>th</sup>) day of each month, or as specified within the Bid Package, or on such earlier day as set forth within the Contract Documents, for the Work performed up to, and including, the last day of the pay period. The application shall indicate the Work completed and, to the extent allowed under Paragraph 4.3, identify those materials suitably stored during the preceding payment period. Within 22 days of submission, A/Z shall either approve or reject the application, in whole or in part. Failure to comply with the aforementioned conditions may prevent Trade Contractor from receiving progress payment for that pay period. Notwithstanding any provisions in this Agreement or the Contract between the Owner and A/Z, progress payments will be made by A/Z to Trade Contractor within ten (10) business days of the actual receipt by A/Z of payment from the Owner for the Work, or as otherwise provided by law. Trade Contractor, in strict accordance with CT GEN STAT Section 42-158j(a)(3), shall pay any amounts due any of its subcontractors or suppliers, whether for labor performed or materials furnished, not later than thirty days after the date Trade Contractor receives payment from A/Z encompassing labor performed or materials furnished by Trade Contractor.

**4.4.2** Unless contrary to the law of the jurisdiction in which the Work is performed, the parties expressly agree that the receipt of payment by A/Z from the Owner for the Work is a condition precedent to the obligation of A/Z to pay Trade Contractor under this Agreement and Trade Contractor expressly waives all rights of action against A/Z, its Surety and the Owner until said monies are actually received by A/Z from the Owner.

**4.4.3** In accordance with Massachusetts General Law Chapter 149 Section 29e, A/Z shall not be obligated to pay the Trade Contractor in accordance with section 4.4.2:

- 1) to the extent of amounts not received from the third person because the person performing the construction failed to perform under its contract and failed to cure the non-performance within the time required by the contract after receipt of written notice as provided in the contract or, in the case of a contract lacking a cure and notice provision, failed to cure the non-performance within 14 days after receipt of written notice of the failure to perform; or
- 2) to the extent of amounts not received from the third person because the third person is insolvent or becomes insolvent within 90 days after the date of submission of the





requisition for which payment is sought; provided, however, that the person seeking to enforce the payment condition a) filed a notice of contract under chapter 254 and in the case of a person having no direct contractual relationship with the original contractor, also sent a notice of identification within the time required under said chapter 254, prior to the person's submission of the first application for payment after commencement of performance at the project site and did not dissolve the lien created by the filing of such notice of contract; and b) within the time periods allowed by said chapter 254 files a statement of amount due and commenced or commences a civil action to enforce the lien; and c) pursues all reasonable legal remedies to obtain payment from the person with whom the person had a direct contract unless and until there is a reasonable likelihood the action shall not result in obtaining payment.

#### **4.5 Right to Withhold Payment**

Payment hereunder is subject to A/Z withholding, in its reasonable discretion, an amount necessary to protect and insure itself against any actual or potential liability, claim or demand directly or indirectly relating to this Agreement or the Work. A/Z may, without limitation and in its sole discretion (a) withhold payment due hereunder to assure payment of Trade Contractor's unpaid obligations; (b) demand as a condition precedent to payment that each unpaid obligation of Trade Contractor be satisfied and that an affidavit be furnished from each party to whom Trade Contractor owes money indicating that no other monies are due and owing to them except for the designated amount covered by the particular payment in question; (c) pay any and all persons or entities, including but not limited to, any labor organization or pension, welfare or similar fund, that has not received payment due from Trade Contractor in connection with this Agreement, whether or not a lien or bond claim has been filed; or (d) make payment in the form of joint checks payable to Trade Contractor and any unpaid subcontractor, independent contractor or supplier or at the option of A/Z, single party checks made payable to Trade Contractor's subcontractors, independent contractors or suppliers. Notwithstanding the foregoing, Trade Contractor's subcontractors, independent contractors and suppliers are not third party beneficiaries of this Agreement and A/Z has no obligation to retain monies on their behalf. If A/Z or its Surety are required to pay or indemnify any person or entity by reason of any of the foregoing, Trade Contractor and its Surety, if any, shall immediately reimburse A/Z and its Surety for the full amount of such costs and expenses, including reasonable attorneys' fees and consultants' fees, and interest thereon at the Prime Rate then published in the Wall Street Journal. Trade Contractor and its Surety, if any, shall also immediately reimburse A/Z for any amounts paid under the payment bond of A/Z in connection with this Agreement and any other payments made by A/Z and its Surety relating to a failure of Trade Contractor to make payment, and Trade Contractor shall, to the fullest extent permitted by law, defend, indemnify and hold harmless A/Z and its Surety from any other claims and costs associated therewith, including reasonable attorneys' fees and consultants' fees and interest as previously specified herein.

#### **4.6 Partial Lien Releases and Waivers, Affidavits and Certified Payrolls**

As part of each application for progress payment, Trade Contractor shall provide, without exception, on the form provided to Trade Contractor by A/Z, Trade Contractor's Affidavit of Payment and Partial Waiver and Release of Rights and waivers and affidavits from its subcontractors, independent contractors and suppliers for Work and stored materials included in all prior and current monthly payments to Trade Contractor. It is expressly agreed that receipt by A/Z of such releases, waivers, affidavits, certified payroll reports and identification of trustees shall be a condition precedent to payment by A/Z and its Surety to Trade Contractor hereunder, notwithstanding any obligations imposed upon A/Z by the Owner under the payment provisions of the Contract between the Owner and A/Z.



Trade Contractor warrants that all documents required hereunder shall be executed by a duly authorized official of the appropriate party and shall be submitted in accordance with the conditions contained hereunder and in the specified time frames. It is expressly understood by Trade Contractor that its failure to comply with the terms and conditions herein may result in the withholding of the issuance of the progress payment applied for until compliance has been ascertained.

#### **4.7 Payment Not Acceptance**

No payment, including the final payment, shall be evidence of satisfactory performance of the Work, either in whole or in part, and no payment shall be construed to constitute or imply acceptance of defective or incomplete Work. Trade Contractor shall remain fully responsible and liable for its performance being in strict accordance with this Agreement.

#### **4.8 Transfer of Title**

All title, rights and interests in the materials and in the Work covered by progress payments received by Trade Contractor shall become the property of A/Z or, if the Contract between the Owner and A/Z so provides, the property of the Owner immediately upon the performance, furnishing or creation thereof. Notwithstanding the foregoing, this provision shall not prejudice or diminish Trade Contractor's sole responsibility and liability for all such materials and Work until final acceptance by the Owner or under applicable warranties or other legal or contractual obligations relating to latent defects.

#### **4.9 Final Payment**

Final payment, subject to withholdings permitted herein, shall be made by A/Z to Trade Contractor only after each of the following express conditions precedent to final payment have been fully satisfied (a) the Work, including any close out requirements including, without limitation, such items as operation and maintenance manuals, as-built drawings and warranties; (b) submission by Trade Contractor to A/Z of written evidence, satisfactory to A/Z and the Owner, that Trade Contractor has satisfied all payrolls, bills for labor, materials and equipment and all known indebtedness arising out of or related to this Agreement including all applicable taxes and labor related costs; (c) written consent of Trade Contractor's Surety, if any, to final payment; (d) the entire Project is certified in writing as complete by the Owner; (e) Trade Contractor has submitted a final waiver and release of all lien and claim rights against A/Z and the Owner; and (f) A/Z has received payment in full, including all retained amounts from the Owner for the Work. Trade Contractor expressly waives all rights of action against A/Z, its Surety and the Owner for final payment until all the aforementioned conditions precedent to final payment herein are fully satisfied. Without exception, all requests for final payment shall be made by Trade Contractor on the form supplied to Trade Contractor by A/Z.

### **5.0 LABOR AND SUPERVISION**

#### **5.1 Labor**

Trade Contractor shall engage a sufficient number of authorized skilled workers to perform the Work promptly, safely, diligently and in accordance with the requirements of this Agreement and the Project Schedule, as the same may be amended from time to time. If requested by A/Z, Trade Contractor shall furnish to A/Z copies of policies regarding the furnishing of labor, including, without limitation copies of all wage agreements and working rules and regulations affecting the Work. Trade Contractor agrees to indemnify A/Z and the Owner for any legal fees, public relations costs, work stoppages and any damages resulting from Trade Contractor's employment of any unauthorized workers.



## **5.2 Supervision**

Trade Contractor shall engage a sufficient number of competent supervisory personnel as are necessary to perform the Work in accordance with the requirements of this Agreement. Trade Contractor shall have a competent superintendent continuously on the Project site during hours of the Work and readily available on call. Said superintendent shall be fully knowledgeable of the Work and shall have the direct authority to administer this Agreement on behalf of Trade Contractor.

Trade Contractor agrees not to change the superintendent without the written consent of A/Z, which consent shall not be unreasonably withheld. In the event that A/Z, in its sole reasonable discretion, decides that the aforementioned superintendent is not competent with the discharge of its duties related to the performance of the Work, A/Z shall make written application to Trade Contractor for the removal and replacement of the same. Trade Contractor shall replace said superintendent with another individual deemed to be satisfactory to A/Z and the Owner within twenty four (24) hours of receipt of such application.

## **5.3 Trade Contractor Labor Relations**

Trade Contractor shall be responsible for all labor relations matters relating to the performance of the Work and shall at all times maintain harmony among the personnel employed by it, its subcontractors and any independent contractors and suppliers used in connection with the Project, as well as personnel of A/Z, its other trade contractors, the Owner and its separate contractors. Trade Contractor shall at all times use all reasonable efforts and judgment as a skilled and experienced trade contractor to adopt and implement policies and practices designed to avoid work stoppages, slow-downs, disputes and strikes.

Trade Contractor shall notify A/Z as promptly as possible of any actual or potential labor dispute that may affect the Work. If a labor condition threatens the timely completion of any portion of the Work and Trade Contractor fails to give satisfactory written assurances of its ability to complete the Work in a timely manner, or Trade Contractor fails to employ labor that is compatible and in harmony with other labor so employed on the Project, or Trade Contractor fails to continue to perform the Work without interruption or delay during a strike, picket, walk-out, other work stoppage or slow-down caused by a labor dispute, A/Z may exercise any and all of its rights and remedies under Article 11 or any other portion of this Agreement against Trade Contractor.

## **5.4 Removal of Workers**

If A/Z notifies Trade Contractor in writing that any employee or agent of Trade Contractor, its subcontractors or independent contractors is incompetent, disorderly or otherwise unsatisfactory, such person shall be removed immediately from the Project at Trade Contractor's sole expense and such person shall not thereafter be employed in the performance of the Work.

## **5.5 Affirmative Action and Non-discrimination**

Trade Contractor shall comply with the affirmative action programs of A/Z and the Owner and shall comply with all equal employment opportunity requirements and shall not, under any circumstance, discriminate against any person because of race, creed, color, age, sex, national origin, handicap, marital status or sexual orientation.



At all times while operating under the terms of this Agreement, Trade Contractor agrees to comply with all applicable Federal and State employment laws, including, but not limited to, all equal employment opportunity rules, regulations and requirements of Executive Order 11246, as amended, the Civil Rights Act of 1964, as amended, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, the Rehabilitation Act of 1973, Section 402, as amended and the Immigration Reform Act of 1986, Section 503, as amended. Any clause required to be set forth by such laws shall be deemed incorporated herein by reference. Trade Contractor agrees to indemnify and hold harmless A/Z and the Owner from all costs, expenses, attorneys' fees, fines, judgments and penalties incurred as a result of Trade Contractor's failure to comply with the foregoing.

## **5.6 Diverse Business Utilization**

It is the policy of A/Z that Small Disadvantaged Business Concerns, Minority Owned Small Business Concerns, Woman Owned Small Business Concerns, Veteran Owned Small Business Concerns, Veteran Owned Business Concerns, Service Disabled Veteran Owned Business Concerns, and HUBZone Small Business Concerns shall have the maximum opportunity to participate in A/Z Projects. Trade Contractor agrees to carry out this policy in the awarding of subcontracts and purchase orders to the fullest extent consistent with efficient contract performance. Trade Contractor further agrees to cooperate with A/Z in the compilation of data and statistics regarding the utilization of such Small Diverse Business Concerns.

## **5.7 Harassment and Offensive Behavior**

Trade Contractor, its subcontractors, and its independent contractors shall not engage in any harassment or offensive behavior in connection with the performance of the Work. Trade Contractor shall immediately address any claim of harassment or offensive behavior involving it, its subcontractors or independent contractors. Trade Contractor shall properly discipline any person determined to have engaged in such conduct with said discipline including dismissal or removal from the Project. Trade Contractor shall use its best efforts to ensure that such conduct does not reoccur. Trade Contractor agrees to indemnify and hold harmless A/Z and the Owner from all costs, expenses, attorneys' fees, fines, judgments and penalties incurred as a result of Trade Contractor's failure to comply with the foregoing.

## **5.8 Drug and Alcohol Policy**

Trade Contractor and A/Z are committed to providing and maintaining a work environment free from the problems associated with the use of illegal drugs, the abuse of or addiction to prescription drugs and the consumption of alcohol during the course of the work day including, but not limited to, the consumption of such substances during a worker's lunch or break periods. Trade Contractor represents and warrants that it currently has a Drug and Alcohol Policy in effect and that it conducts an appropriate pre-employment screening of new employees in connection with its Drug and Alcohol Policy.

Trade Contractor agrees that while performing the Work, Trade Contractor: (a) shall not allow or permit the use, manufacture, transfer, receipt, possession, purchase or sale of illegal drugs, alcohol or prescription drugs, except as may be permitted below, by anyone employed or connected with Trade Contractor in any manner; and, (b) shall not allow or permit any one employed or connected with Trade Contractor in any manner to be under the influence of illegal drugs, alcohol or prescription drugs, except as may be permitted below.

Trade Contractor agrees that this policy shall apply to all forms of alcohol and drugs except for those drugs that are used in direct connection with a valid prescription written for the user and taken as directed under the supervision of a licensed medical physician within the jurisdiction on which the worker resides. The



legal use of prescribed medicines shall only be permitted if the same do not impair a worker's ability to perform the essential functions of the job effectively and in a safe manner that will not endanger the health and safety of any personnel in the work environment regardless for whom any such personnel may be employed.

Trade Contractor agrees to immediately remove any worker from the Project site who violates this policy and shall indemnify and hold harmless A/Z and the Owner from any and all damages and claims whatsoever arising out of or resulting from any acts or omissions caused by said employee. Trade Contractor shall immediately remove, and shall allow A/Z to immediately remove, any Trade Contractor employee or other representative whom A/Z reasonably suspects (a) to be in violation of this policy; (b) may refuse to comply with the requirements of this policy; or, (c) may violate the provisions of this policy. Trade Contractor agrees that by violating this policy, this Agreement may be terminated for cause as set forth in Paragraph 11.1 hereof and remains liable for damages as set forth above.

Trade Contractor agrees and acknowledges that substance abuse that: (a) results in conduct adversely affecting the reputation of A/Z or the Owner; (b) compromises Trade Contractor's performance hereunder; or, (c) endangers the health and safety of personnel at the Project site shall be grounds for termination of this Agreement for cause as set forth in Paragraph 11.1 hereof. Trade Contractor shall require adherence to this Paragraph 5.7 in all agreements it may form with any subcontractor or independent contractor with regard to the Work.

## **6.0 COORDINATION AND COOPERATION**

### **6.1 Coordination**

It is the intent to allow Trade Contractor to choose its own means, methods and procedures of construction, as long as the same are consistent with good and acceptable practices within the industry. However, overall coordination and scheduling of the Work with all other trade contractors will be under the direction of A/Z and Trade Contractor shall comply with the direction of A/Z and the requirements of the Project Schedule as the same may be amended from time to time by A/Z in its sole discretion. Trade Contractor shall not plan or prosecute the Work in such a manner that, in the opinion of A/Z, would cause any unreasonable hindrance or delay to other trade contractors, the Owner or the Owner's separate contractors. Trade Contractor shall afford other trade contractors, the Owner and the Owner's separate contractor's reasonable opportunity for the admittance and storage of their materials and the execution of their work. If the performance of the Work is likely to interfere with the simultaneous execution of the work of others or there are other work area conflicts, A/Z shall determine the sequencing and coordination of the Work and Trade Contractor shall immediately comply with A/Z's determination in this regard.

A/Z and the Owner shall not be responsible for any damage suffered or extra costs incurred by Trade Contractor resulting directly or indirectly from the exercise of the coordinating function and Trade Contractor shall not be granted, under any circumstance, an extension of time.

If any part of the Work depends upon the work of others for proper execution or results, Trade Contractor shall inspect the other's work, and, a minimum of three (3) business days prior to the time Trade Contractor desires to commence said Work, report to A/Z in writing any defects in the work of others that render it unsuitable for the proper execution of the Work. Trade Contractor's failure to inspect and report said defects prior to commencing said Work shall constitute acceptance of the other's work except as the same relates to latent defects that may develop in the other's work after the execution of the Work.



Trade Contractor agrees to sequence and coordinate the Work to protect the Project's interior from weather damage and water intrusion. In the event that weather damage or water intrusion occurs from any cause resulting from Trade Contractor's failure to properly perform its obligations or protect the Project where the Work is being performed, then Trade Contractor shall be responsible for the costs reasonably associated with and necessary to remedy all damages caused thereby including, but not limited to, testing for and remediation of mold and toxic substances before and after remediation occurs.

## **6.2 Cooperation**

A/Z and the Owner reserve the right to award other contracts in connection with the Project and Trade Contractor acknowledges and agrees to execute the Work in such a manner and in such order so as not to interfere with the work of other trade contractors, the Owner, the Owner's separate contractors or the Owner's operation of its facility. Trade Contractor shall conduct its operations, without exception, in complete cooperation with A/Z, other trade contractors, the Owner and the Owner's separate contractors working on the Project.

## **6.3 Coordination Meetings**

As directed by A/Z, Trade Contractor shall meet with A/Z to discuss and review Trade Contractor's plans and procedures for fulfilling the requirements of this Agreement. It is intended that, during the duration of the Project, similar meetings with all other trade contractors will be held at intervals of one (1) week or such other interval as A/Z deems appropriate. Trade Contractor shall have a supervisory representative in attendance at said meetings and the attending representative shall have the authority to bind Trade Contractor to decisions made at the meetings.

## **7.0 REPORTS AND SUBMITTALS**

### **7.1 Daily Reports**

Trade Contractor shall provide to A/Z, at the end of each work day, daily written reports that shall include, at a minimum, a description of Trade Contractor's Work activities for the day, a labor force count by trade for Trade Contractor, its subcontractors and independent contractors, a listing of all deliveries and a description of any delay event or other matter that has or may have an adverse impact on Trade Contractor's ability to perform the Work in accordance with this Agreement and a summary of its actual or anticipated impact on the Work and the Project Schedule then and there in existence.

### **7.2 Submittal Status Report**

Within ten (10) business days of the date of this Agreement, Trade Contractor shall submit to A/Z a complete list of submittals required to be provided by Trade Contractor under this Agreement. Thereafter, Trade Contractor shall furnish to A/Z, on a monthly basis, or more frequently if so directed by A/Z, a progress report on the status of the aforementioned submittals including any delay, anticipated delay or other impact regarding their issuance, revision or completion.

### **7.3 Delivery Status Report**

Trade Contractor shall provide A/Z with monthly reports on the manufacturing, fabrication, shipment and delivery status of materials and equipment required under this Agreement.

### **7.4 Submittals**



Trade Contractor shall prepare and submit to A/Z all information including, but not limited to, shop drawings, detail drawings, setting drawings, product data, manufacturer's literature, cut-sheets, samples, material lists and all other information and documentation as may be necessary to completely describe the details and construction of the Work (collectively referred to as "Submittals"). Such Submittals shall be made in sufficient time so as not to delay, disrupt or hinder the progress of the Work or the work of others or the Project.

Said Submittals shall bear Trade Contractor's approval stamp and no fabrication or construction of the objects or items described therein shall commence prior to the review of the aforementioned Submittals by A/Z, the Owner and the Architect.

Any deviation from the requirements of the Contract Documents in any Submittal shall be clearly identified in the Submittal including, without limitation, any "or equal" substitutions so stated in a separate written correspondence from Trade Contractor to A/Z. Review of such Submittals or other information by A/Z, the Owner or the Architect shall not relieve Trade Contractor of its obligation to perform the Work in strict accordance with the Contract Documents or of its responsibility for the proper matching and fitting of the Work with contiguous work. Incomplete Submittals will be returned to Trade Contractor without review.

In the event that Submittals are required to be revised and re-submitted, such Submittals shall be revised and re-submitted by Trade Contractor to A/Z promptly, but in no event more than three (3) business days after their return to Trade Contractor by A/Z. Trade Contractor acknowledges that the time required by A/Z, the Owner and the Architect to review and respond to Trade Contractor's Submittals shall not be the basis of any claim by Trade Contractor against A/Z or the Owner, and all such claims are expressly waived by Trade Contractor hereunder.

Trade Contractor warrants and understands it is the sole entity responsible for any and all errors or omissions regarding the aforementioned Submittals and that A/Z's, the Owner's or the Architect's review of the same shall in no way confer liability on the latter with regard to any aforementioned errors or omissions. Trade Contractor agrees to hold A/Z, the Owner and the Architect harmless with regard to any liability arising out of or connected to any errors or omissions with regard to the aforementioned Submittals pursuant to the indemnity provisions contained in this Agreement.

## **8.0 REGULATORY COMPLIANCE**

### **8.1 Compliance in General**

Trade Contractor, its subcontractors, its independent contractors, its suppliers and the Work performed hereunder shall strictly comply with all applicable laws, ordinances, rules and regulations bearing on the performance of the Work. Unless specifically stated by A/Z in writing to the contrary, Trade Contractor shall secure and pay for all permits, fees and licenses and arrange for any and all inspections required or necessary for the proper execution and completion of the Work.

To the fullest extent permitted by law, Trade Contractor agrees to indemnify, defend and hold harmless A/Z, the Owner and the Architect and their respective agents and representatives against the payment of any and all losses, costs, expenses, contributions, taxes, fines or premiums which may become due or payable under Federal, State or local laws, rules, regulations, statutes, ordinances and directives arising directly or indirectly out of Trade Contractor's failure to comply with the laws and requirements outlined herein including, but not limited to, any interest, penalties, attorney or consultant fees and any and all other expenses.



Trade Contractor expressly waives any and all claims for additional compensation because of any increase in taxes, contributions or premiums unless A/Z receives payment from the Owner for such increases incurred by Trade Contractor. Trade Contractor expressly represents and warrants that, at the time of the acknowledgement, acceptance and signing of this Agreement and throughout the duration of the Work, Trade Contractor is, and shall continue to be, a duly licensed contractor and authorized business entity under the laws of the State where the Project is located.

## **8.2 Safety Compliance**

Trade Contractor shall participate in the creation of an injury free environment and shall be responsible for safety precautions and training programs and shall take all actions necessary to provide for the safety of all persons and property engaged on or in the vicinity of the Project. Trade Contractor shall comply with all requirements relating to safety including those set forth in A/Z's Trade Contractor Safety Manual, the Contract between the Owner and A/Z and all requirements under applicable Federal, State and local laws, ordinances, rules, regulations, standards, orders and notices including, but not limited to, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders that have been or shall be adopted or issued thereunder.

A/Z may, in its sole discretion, require Trade Contractor to provide a safety designee or full time safety representative upon written demand. Trade Contractor shall provide said designee or representative within twenty four (24) hours of the receipt of such written demand. To the fullest extent permitted by law, Trade Contractor shall indemnify, defend, hold harmless and make whole A/Z and the Owner for any and all fines or penalties that are levied against the same that arise out of Trade Contractor's acts, omissions or negligence.

In the event of any accident or injury at the Project site involving Trade Contractor's employees, agents or third parties, Trade Contractor shall immediately furnish A/Z a written statement describing the time, location, circumstances and identity of persons involved in such occurrence. Said statement shall include, without limitation, a description of the medical care or treatment rendered and the lost time incurred.

## **8.3 Environmental Compliance**

Trade Contractor shall comply with all requirements under applicable Federal, State and local laws, ordinances, rules, regulations, standards, orders and notices relating to the protection and preservation of the environment from hazardous material or waste, toxic substances, pollution or contamination and the discharge of, release of or exposure of such materials into the environment.

Trade Contractor shall be exclusively responsible for complying with all Federal regulations promulgated including, but not limited to, the Clean Air Act, Standards for the Hazardous Air Pollutant Asbestos, the Toxic Substances Control Act, the Resource Conservation and Recovery Act and any and all State hazardous waste management program requirements. To the fullest extent permitted by law, Trade Contractor agrees to indemnify, defend and hold harmless A/Z, the Owner and their respective agents and representatives against any and all suits and claims relating to or arising under the provisions of this Paragraph 8.3 or any environmental legislation, regulation, ordinance or rule.





## 9.0 CHANGES, CLAIMS AND DAMAGES

### 9.1 Changes in the Work

A/Z shall have the right, at any time, whether the same be unilateral or by direction of the Owner, to furnish written notice to Trade Contractor, and without having to provide notice to its Surety, to make changes in the Work or direct that the performance of Trade Contractor hereunder be modified by performing additional or extra Work. In the event of such change or direction, this Agreement shall be modified accordingly and any such amendment, change or modification shall not invalidate this Agreement.

Unless directed by A/Z to proceed immediately with such change, Trade Contractor shall submit a detailed written request to A/Z for a modification to this Agreement, as provided herein, before proceeding with said change. Such request shall be submitted to A/Z within five (5) business days of Trade Contractor's receipt of such written notice or within such period of time to allow A/Z to prepare and submit its change request to the Owner in accordance with the Contract between the Owner and A/Z, whichever is earlier. A/Z shall have 37 days from the later of the commencement of the performance of the change in the Work or the submission of the written change request by the Trade Contractor, within which to either approve or reject, in whole or in part, the requested change to this Agreement.

If Trade Contractor fails to submit to A/Z its detailed request in the time provided, A/Z, at its sole discretion, may elect to; (a) prepare and submit to the Owner an estimate for the costs of such change, which estimate shall be the maximum compensation allowable to Trade Contractor for the performance of the change, regardless of whether the actual cost to perform the change is in excess thereof; (b) retain another trade contractor to perform the change; or, (c) perform the change with its own forces. It is expressly understood that Trade Contractor shall in no event be entitled to, nor shall it receive, any compensation or allowance from A/Z for any change in an amount greater than that which A/Z actually receives from the Owner.

Ordinary field modifications that do not substantially increase Trade Contractor's cost of performance shall be incorporated into the Work without any adjustment to the amount or time for completion of this Agreement.

If unit prices are stipulated in this Agreement, then all adjustments to the amount of this Agreement, whether the same are for increases or decreases, shall be made in accordance with said unit prices. Said unit prices shall be deemed to include all general and administrative expenses, supervision, overhead, profit, extended performance and any and all other direct and indirect expenses.

If A/Z elects to direct that the change be performed by Trade Contractor on a time and material basis, then Trade Contractor shall prepare daily time and material invoices that shall be submitted to A/Z on a daily basis for signature and verification of time only. Said daily time and material invoices shall only include direct costs to Trade Contractor for material, equipment and labor.

With regard to any and all change order pricing or costs provided hereunder, unless provided for differently within the Contract between the Owner and A/Z, Trade Contractor shall be allowed 15% OH&P on work performed with its own forces, 5% aggregate markup on the work of its subcontractors of any tier all levels below it and 5% aggregate on materials but only to the extent to which those materials are provided directly by the Trade Contractor. Said allowance for overhead and profit shall be deemed to be the full and complete compensation to Trade Contractor for all general and administrative expenses, supervision, overhead, profit and any and all other direct and indirect costs arising out of or relating in any way to said change.



No payment shall be made by A/Z to Trade Contractor for holiday or other non-working time. All changes performed on a time and material basis shall be subject to audit by A/Z and the Owner at any time during the course of the Work or for a period of duration not less than that provided for in the Contract between the Owner and A/Z. If Trade Contractor contends that any direction given by A/Z constitutes a change to this Agreement and A/Z disputes such contention, then, notwithstanding anything to the contrary in this Agreement, Trade Contractor shall immediately comply and proceed with A/Z's direction subject to Trade Contractor's rights under Paragraph 9.2 and Article 10.0 of this Agreement.

## **9.2 Claims**

Trade Contractor shall make any and all claims for additional compensation, extensions of time due to acceleration, disruption or inefficiency or other adverse impact to the Work or Trade Contractor's performance of the Work within three (3) business days of the occurrence of the circumstances giving rise to such claim or, at such earlier time if so required by the Contract between the Owner and A/Z. All such claims shall be supported by appropriate and accurate documentation that shall contain sufficient detail to support the claim. If Trade Contractor fails to submit a claim to A/Z as required hereunder, then such claim shall be deemed unconditionally waived and released by Trade Contractor regardless of the presence or absence of any prejudice to A/Z, the Owner or Trade Contractor.

The liability of A/Z to Trade Contractor for any direct or indirect cost, claim, damage or other adverse impact to the Work or to Trade Contractor's performance hereunder that is attributable to the Owner or the Owner's separate contractors or consultants, is limited to Trade Contractor's proportionate share of any actual recovery obtained by A/Z from the Owner, less a proportionate and reasonable share of actual, legal, consulting and administrative fees and expenses incurred by A/Z in handling said claim. Trade Contractor agrees to furnish all documents, statements, witnesses and other information required by A/Z to investigate and present Trade Contractor's claim.

## **9.3 Owner Damages**

If the Owner assesses liquidated or actual damages against A/Z, then A/Z may assess against Trade Contractor the portion of such damages that represent, in the sole reasonable discretion of A/Z, Trade Contractor's share of the responsibility thereof. The amount of said assessment for the Owner's damages shall not exceed the amount assessed against A/Z plus that portion of the total costs and expenses including, without limitation, any attorney fees, consulting fees and expenses A/Z incurs in defense of the Owner's claim for damages. This provision shall be applicable whether or not Trade Contractor actually completes the Work and specifically includes, but is not limited to, abandonment of the Work by Trade Contractor.

## **10.0 DISPUTES**

### **10.1 Dispute Decision**

A/Z shall initially decide all disputes arising under this Agreement and will provide Trade Contractor with written notice of its decision. The decision of A/Z shall be final and conclusive unless Trade Contractor advises A/Z in writing within forty eight (48) hours of receiving the decision of its disagreement with said decision. If Trade Contractor fails to contest the decision within the time allotted and in the manner required in this Paragraph 10.1, then Trade Contractor shall be deemed to have unconditionally waived and



released any right to contest said decision. Decisions properly contested by Trade Contractor shall be resolved in accordance with Paragraph 10.3 hereunder.

## **10.2 Continued Performance**

Trade Contractor agrees that its rights in connection with any claim or dispute with A/Z including, without limitation, those related to payment that arise out of or relate to this Agreement, shall be determined as provided herein or elsewhere in this Agreement. Trade Contractor shall not be entitled to suspend or otherwise delay its performance and completion of the Work or interfere with the progress of the Project in any manner based upon any alleged breach by A/Z or the existence of any claim or dispute between the parties, regardless whether said breach, claim or dispute is the subject of any dispute resolution between A/Z and Trade Contractor and shall continue to perform its obligations with regard to the same as directed by A/Z.

## **10.3 Dispute Resolution**

### **10.3.1 Mediation**

**10.3.1.1** Claims, disputes, or other matters in controversy arising out of or related to the Agreement except those waived shall be subject first to good faith negotiation between the Senior Management of both parties for a period of sixty (60) days prior to any mediation, both of which shall be a condition precedent to binding dispute resolution or litigation with-in a Court of competent jurisdiction.

**10.3.1.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**10.3.1.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **10.3.2 Arbitration**

**10.3.2.1** If the parties proceed with arbitration as the method for binding dispute resolution, any Claim subject to, but not resolved by mediation, shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.



**10.3.2.2** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**10.3.2.3** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**10.3.2.4** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **10.4 Consolidation or Joinder**

**10.4.1** Either party, at its sole discretion, may consolidate an arbitration or other binding dispute resolution procedure conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**10.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**10.4.3** A/Z and Trade Contractor grant to any person or entity made a party to an arbitration conducted under this Section whether by joinder or consolidation, the same rights of joinder and consolidation as A/Z and Trade Contractor have under this Agreement.

#### **10.5 Award**

The award under Arbitration shall be final and judgment may be entered upon it in accordance with applicable law in any Court of competent jurisdiction.

### **11.0 TERMINATION**

#### **11.1 Termination for Cause**

If Trade Contractor shall at any time: (a) become insolvent or is unable to meet its debts as they mature; (b) admit its inability to meet its debts; (c) institute or have instituted against it under any law relating to bankruptcy, insolvency, reorganization or relief of debtors; (d) refuse or fail to provide sufficient properly skilled workers or proper materials or equipment; (e) fail in any respect to prosecute the Work according to the then current Project Schedule or the terms of this Agreement; (f) fail to follow applicable law or the verbal or written direction of A/Z; (g) cause, by any act or omission, the stoppage or delay of or interference with the work of A/Z, its other trade contractors, the Owner or its separate contractors; (h) submit a false or misleading release, waiver, certification or claim; (i) file a lien against the Project or Project related funds; (j) fail to make payment to any of Trade Contractor's employees, subcontractors, independent contractors or



suppliers; (k) abandon the Work; or, (l) otherwise fail to strictly comply with the requirements of this Agreement or directives of A/Z, then, after A/Z has provided Trade Contractor forty eight (48) hour written notice of such condition, unless Trade Contractor shall, to the complete satisfaction of A/Z, either eliminate or undertake diligent efforts to eliminate the condition specified in such notice within said forty eight (48) hour notice period, A/Z may, at its option and discretion and without voiding the other provisions of this Agreement and without notice to Trade Contractor's Surety, take such action as A/Z deems necessary to overcome the condition, including, but not limited to, performing the Work itself or through others, and, in such case, Trade Contractor shall be liable to A/Z for all direct, indirect and consequential costs associated therewith, including, without limitation, attorney and consulting fees and expenses, plus interest thereon at a rate of twelve percent (12%) per annum plus overhead and profit on all such direct, indirect and consequential damages or A/Z may terminate this Agreement for default.

In the event this Agreement is terminated for cause, Trade Contractor shall not be entitled to receive any further payment from A/Z until such time the Work shall be fully completed and accepted and paid for by the Owner. At such time, if the unpaid balance hereunder exceeds the direct, indirect and consequential costs and expenses incurred by A/Z to complete the Work including, without limitation, legal, consulting and administrative fees and expenses and overhead, profit and interest, such excess shall be paid by A/Z to Trade Contractor. If the unpaid balance hereunder at the time of termination is less than such excess costs and expenses incurred by A/Z, then Trade Contractor and its Surety, if any, shall immediately pay A/Z the difference thereof. Any termination for cause of Trade Contractor by A/Z that is subsequently determined to have been in error shall be deemed to have been a termination for convenience under Paragraph 11.2 hereunder and Trade Contractor's sole and exclusive remedy shall be as provided in said Paragraph 11.2.

## 11.2 Termination for Convenience

A/Z shall have the right, upon written notice to Trade Contractor, to terminate this Agreement for its or the Owner's convenience, without cause and without prejudice to any of A/Z's rights or remedies hereunder or at law, when, in A/Z's sole discretion, it determines that it is in its best interest to terminate this Agreement.

Termination hereunder shall be effective in the manner specified within A/Z's written notice and unless directed otherwise by A/Z, Trade Contractor shall: (a) immediately discontinue the performance of the Work; (b) cease placing orders for materials, supplies, equipment and other items; (c) immediately demobilize from the Project site; (d) take all steps necessary, requested and required to preserve and protect the Work in progress; (e) use its best efforts and due diligence to mitigate its costs and expenses associated with its termination hereunder; (f) assign to A/Z, in the manner and to the extent directed by A/Z, any subcontracts, purchase orders, service orders relating to the Work and all of its rights and interests in the terminated portion of the Work; and, (g) take any other action related to termination of the Work that A/Z may direct.

If this Agreement is terminated for convenience, Trade Contractor shall comply with the termination instructions of A/Z and acknowledges, understands and agrees that it shall only be entitled to receive, as its sole exclusive remedy hereunder, payments equivalent to the approved scheduled value of the Work that has been properly completed in a timely manner and has been accepted by A/Z, the Owner and the Architect, up to and including the date of this termination. Trade Contractor shall not be entitled to nor shall claim any loss of anticipated overhead or profit or other cost or damage as a result of termination. Trade Contractor's termination payments hereunder will constitute full and final payment for all of the Work arising out of or related to this Agreement and shall be processed and become due and payable in accordance with the terms and conditions relating to payments contained in this Agreement.



Notwithstanding the foregoing, if A/Z is terminated for convenience by the Owner at or about the time that Trade Contractor is terminated for convenience by A/Z, termination settlement and costs to Trade Contractor shall be as provided in the Contract between the Owner and A/Z and only in an amount proportional to the amount actually received by A/Z from the Owner for the Work. Payment to Trade Contractor hereunder shall be subject to the condition that receipt of such funds by A/Z from the Owner shall be a condition precedent to the obligation of A/Z to pay Trade Contractor. Trade Contractor shall not be entitled to receive an amount in excess of the amount actually received by A/Z from the Owner hereunder on account of the Work regardless of circumstances or the amount of Work performed. Trade Contractor shall not be entitled to any recovery or claim for actual or anticipated profit, under-absorbed or unabsorbed overhead or liquidated or consequential damages in connection with any part of the Work not actually performed or not acceptable to A/Z, the Owner or the Architect.

## **12.0 LIENS AND ENCUMBRANCES**

If, at any time, there shall be evidence of any lien or claim for which, if established, A/Z or the Owner might become liable, or which, in any event, could be charged to Trade Contractor, A/Z shall have the right: (a) to require Trade Contractor to have the same discharged by posting a bond with the appropriate authorities within five (5) business days of written notice; or, (b) to retain, out of any payment due or thereafter to become due, an amount to fully indemnify A/Z, its Surety and the Owner against said lien or claim including, without limitation bond premiums and attorneys' fees and to apply the same in such manner as A/Z deems necessary to secure protection and satisfy such liens and claims.

If there is an insufficient unpaid balance under this Agreement to cover said costs and expenses incurred by A/Z and the Owner in discharging such liens and claims, then Trade Contractor and its Surety, if any, shall immediately reimburse A/Z, its Surety and the Owner the difference between the payments due Trade Contractor and said costs and expenses incurred. Nothing in this Agreement shall be construed to create or revive any lien rights in favor of Trade Contractor including, without limitation, the requirement that lien releases be submitted by Trade Contractor whenever the same makes a request for payment hereunder.

## **13.0 ASSIGNMENT AND SUBCONTRACTS**

### **13.1 Assignment**

Trade Contractor acknowledges and agrees that it will not transfer, assign, succeed or delegate all or any part of this Agreement or any payment due hereunder without prior written consent of A/Z. Any assignment, transfer, succession or delegation without such consent shall be of no force or effect with respect to any of the obligations of A/Z hereunder. A/Z shall have the right, upon furnishing written notice to Trade Contractor, to assign this Agreement to the Owner or the Owner's designee, assign or successor.

### **13.2 Subcontracts**

Trade Contractor acknowledges and agrees that all subcontractors, independent contractors and suppliers of any tier shall be subject to the requirements of this Agreement. Trade shall incorporate into each and every subcontract and purchase order it has with any party those provisions required by law, this Agreement or the Contract between the Owner and A/Z to be incorporated therein.

The subletting by Trade Contractor of portions of the Work shall not be deemed to create any contractual relationship between A/Z and Trade Contractor's subcontractors, independent contractors or suppliers. Trade Contractor expressly acknowledges that it is ultimately responsible for the performance and conduct of its subcontractors, independent contractors and suppliers hereunder.



## 14.0 PERFORMANCE AND PAYMENT BONDS

### 14.1 Performance and Payment Bonds

If so required by this Agreement, Trade Contractor, immediately upon receipt of this Agreement, shall furnish to A/Z separate performance and labor and material payment bonds each in an amount to one hundred percent (100%) of the amount of this Agreement in such form and from a surety acceptable to A/Z. Each bond shall: (a) incorporate this Agreement by reference; (b) provide that the surety be fully bound to all changes and modifications to this Agreement without prior notice thereof; (c) have an A. M. Best rating of A- or better; (d) be listed in the most current Federal Register listing of approved surety companies; and, (e) be authorized to conduct business and issue bonds in the state where the Project is located. Trade Contractor's failure to deliver satisfactory bonds within ten (10) business days after receipt of this Agreement shall be deemed a material breach of this Agreement.

### 14.2 Work Not to Commence

If bonds are required of Trade Contractor hereunder, Trade Contractor shall not commence performance of the Work before it has furnished the required performance and labor and material payment bonds to A/Z. If Trade Contractor commences performance of the Work prior to furnishing the required bonds to A/Z, then Trade Contractor shall be deemed to have commenced the Work at its own risk and it shall not be entitled to payment until such time the required bonds are furnished to A/Z. Trade Contractor acknowledges and agrees that the furnishing of said bonds to A/Z is a condition precedent to the obligation of A/Z to pay Trade for the Work performed.

## 15.0 INDEMNITY AND INSURANCE

### 15.1 Indemnity

To the fullest extent permitted by law, Trade Contractor shall indemnify, defend and hold harmless A/Z, its Surety, and other trade contractors, the Owner and its separate contractors, the Architect and all of their respective affiliates, parents, subsidiaries, officers, directors, agents, employees and representatives from and against all claims, demands, causes of action of whatever nature, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or relating in any way to the performance or lack of performance of Trade Contractor including, without limitation, any such claim, demand, cause of action of whatever nature, damage, loss or expense arising out of or relating to the actual or alleged: (a) infringement of any patent, trademark, copyright or other intellectual property or proprietary right; (b) bodily or personal injury, sickness, disease or death or to damage to or destruction of any property including the loss of use therefrom; (c) any breach of this Agreement by Trade Contractor; (d) any failure of the Work to comply with the requirements of this Agreement; (e) harm or damage attributed to any hazardous or toxic material, waste or substance, pollution or contamination brought to or generated on the Project site or used, handled, transported, stored, removed, remediated, disturbed or disposed of by Trade Contractor or its subcontractors, independent contractors and suppliers; or, (f) to the extent any such claim, cause of action of whatever nature, damage, loss or expense is caused or alleged to be caused in whole or in part by any negligent, willful or intentional act or omission of Trade Contractor or anyone directly or indirectly employed by Trade Contractor or anyone else for whose actions Trade Contractor may be liable, including without limitation, its subcontractors, independent contractors and suppliers of any tier, regardless of whether such claim, demand, damage, loss or expense is caused in part by a party indemnified hereunder.



Trade Contractor’s obligations hereunder shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Article 15.0. The obligations of Trade Contractor and its Surety, if any, hereunder shall survive termination of this Agreement.

**15.2 Insurance**

Prior to commencing the Work, Trade Contractor shall procure and maintain at its own expense, until completion and final acceptance of the Project and including such period of warranty or guaranty stipulated in this Agreement or the Contract between the Owner and A/Z, insurance coverages with minimum limits as set forth below or as provided in the Contract between the Owner and A/Z, whichever are greater. The insurance shall be provided by insurance companies with an A. M. Best rating of A-, FSC VII or better and authorized to do business in the state where the Project is located. It is the responsibility of Trade Contractor to require its subcontractors and independent contractors to procure and maintain the same insurance required of Trade Contractor including the requirement of naming the Owner and A/Z as additional insureds.

Certificates evidencing such insurance shall: (a) name the Owner and A/Z as additional insureds for ongoing and completed operations; (b) reference the Project name; (c) provide thirty (30) days prior written notice to A/Z of non-renewal, material change or cancellation; (d) be primary and non-contributory; and, (e) waive rights of subrogation of the insurers thereon against A/Z, the Owner and their respective assigns, subsidiaries, affiliates, employees, agents, representatives, insurers and underwriters. Additional insured endorsements shall provide the additional insureds with coverage as broad as the coverage afforded Trade Contractor. Trade Contractor agrees that all deductibles and self insured retentions, including claim handling and legal expenses, are the sole responsibility of Trade Contractor.

Commercial General Liability Insurance shall: (a) cover liability arising from premises, operations, independent contractors, products and completed operations and personal and advertising injury; and, (b) be written on an occurrence basis, per project, per location. Excess Liability Insurance shall be written on an occurrence basis, Automobile Liability Insurance shall include coverage for liability arising from owned, leased, hired and non-owned vehicles and Workers’ Compensation Insurance shall be maintained in accordance with applicable statutes.

The minimum limits listed below are for reference purposes only:

Type of Insurance	Minimum Limits
Commercial General Liability	Bodily Injury and Property Damage \$1,000,000.00 each occurrence \$1,000,000.00 products and completed operations \$2,000,000.00 general aggregate per project \$1,000,000.00 personal & advertising injury aggregate
Automobile Liability	Bodily Injury \$1,000,000.00 per person \$1,000,000.00 per accident Property Damage \$1,000,000.00 per accident
Excess Liability	\$5,000,000.00 per occurrence





\$5,000,000.00 aggregate

Type of Insurance

Minimum Limits

Workers' Compensation  
Employer's Liability

Statutory  
\$1,000,000.00 each accident  
\$1,000,000.00 disease each employee  
\$1,000,000.00 disease policy limit

## 16.0 GUARANTY AND WARRANTY

### 16.1 Scope

Trade Contractor warrants and guarantees: (a) the Work shall be free from defects in workmanship, material and equipment; (b) that all products used in connection with the Work shall be new unless otherwise specified; (c) the Work shall be performed in a good and workmanlike manner; and, (d) the Work shall be in strict conformance with the requirements of this Agreement and all other Contract Documents. Any portion of the Work that does not conform to these requirements including substitutions not properly approved and authorized may be considered defective.

If, during the warranty and guaranty period defined in Paragraph 16.2, any portion of the Work is found to be defective or deficient in material or workmanship or not in conformance with the requirements of this Agreement and all other Contract Documents, Trade Contractor shall, after receipt of written notice from the Owner or A/Z, and at no cost to the Owner or A/Z, promptly repair, change, modify, correct or re-perform such defective or deficient Work so that the same conform in every particular to the requirements of this Agreement and all other Contract Documents. If the defect or deficiency cannot be corrected to conform in every particular to the requirements of this Agreement and all other Contract Documents, then Trade Contractor shall replace the Work at no cost to the Owner or A/Z. The repair, other corrective action or replacement of such defective or deficient Work shall carry the same warranty and guaranty as the original installation beginning from the completion of such repair, other corrective action or replacement.

If A/Z deems it to be in the best interest of the Owner and A/Z, or inexpedient for Trade Contractor to correct such defects or deficiencies, A/Z may make a deduction from the amount of this Agreement in lieu of such corrective action or replacement.

This warranty and guaranty shall be in addition to, and not a limitation of, any other warranty, guaranty or remedy required by this Agreement, other Contract Documents or implied by law.

### 16.2 Term

Trade Contractor warrants and guarantees the Work for the same period as A/Z warrants and guarantees its work to the Owner under the provisions of the Contract between the Owner and A/Z. If the Contract between the Owner and A/Z does not state a specific warranty and guaranty period, then Trade Contractor shall warrant and guaranty the Work for a period of one (1) year from the date of final acceptance of the Project by the Owner, or such other longer period of time as may be specified in the Contract Documents or such other time in the case of equipment, machinery, materials and components based warranties and guarantees provided by the manufacturer, whichever is later. In no event shall any warranty or guaranty be for a period less than one (1) year. Nothing herein shall be construed to limit the time for commencing an action against Trade Contractor for any breaches of this Agreement including latent defects that may exist in the Work.



## 17.0 HEADINGS

The headings to the Articles of this Agreement: (a) are for convenience or ease of reference only; (b) shall not be relied upon or cited for any other purpose; (c) shall not, in any manner, affect the construction, meaning or effect of anything contained herein; and, (d) shall not, in any manner, govern the rights and liabilities of the parties.

## 18.0 GOVERNING LAW

Unless otherwise set forth herein or in the Contract between the Owner and A/Z or expressly required by law, the validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Connecticut without regard to conflict of law principals.

## 19.0 SEVERABILITY AND WAIVER

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure by A/Z to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement or to exercise any right hereunder shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

## 20.0 ROYALTIES AND PATENTS

Trade Contractor shall pay all royalties and license fees due and owing in connection with the Work and shall indemnify, defend and hold harmless the Owner and A/Z against any and all suits and claims for infringement of any patent, trademark, copyright, trade secret or intellectual property right as a result of the Work. Trade shall indemnify the Owner and A/Z from losses, expenses, costs and attorneys' fees and expenses resulting from such suits and claims. This provision shall survive the term of this Agreement.

## 21.0 COMPLETE AGREEMENT

This Agreement is solely for the benefit of the signatories hereto and the parties hereto understand and agree that this Agreement represents the entire understanding between the parties and supersedes all prior negotiations, representations or agreements whether written or oral. The parties hereto acknowledge and represent that no other promises, conditions or negotiations have been used to induce them to enter into this Agreement.

Except as provided herein, no other agreements, representations, warranties or other matters, whether the same shall be written or oral, shall bind the parties hereto, except upon written consent of each party.