

 **AIA**® Document A251™ – 2007*General Conditions of the Contract for Furniture, Furnishings and Equipment*

for the following PROJECT:
(Name, location, and brief description)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

THE OWNER:
(Name, legal status, address and other information)

THE ARCHITECT:
(Name, legal status, address and other information)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 **The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Vendor (hereinafter the Agreement), and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as the request for quotation or the Vendor's quotation.

§ 1.1.2 **Modification.** A Modification is (1) a written amendment to the Contract signed by both parties or (2) a written order for a minor change in the Work issued by the Architect.

§ 1.1.3 **The Contract.** The Contract Documents form the Contract for Furniture, Furnishings and Equipment. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Vendor; (2) between the Owner and a sub-vendor; (3) between the Owner and the Architect or the Architect's consultants; or (4) between any persons or entities other than the Owner and the Vendor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.4 **The Work.** The term "Work" means the fabrication, shipping, warehousing, delivery, installation and all other labor, materials and activities required of the Vendor. The Work may constitute the whole or a part of the Project with regard to the furniture, furnishings and equipment required by the Contract Documents.

§ 1.1.5 **The Project.** The Project is the total construction and installation of which the Work performed under the Contract may be the whole or a part. Other vendors and contractors under separate agreements with the Owner may concurrently perform construction or other activities for the Project.

§ 1.1.6 **The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.7 **The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for furniture, furnishings, equipment, systems, quality and workmanship standards for the Work.

§ 1.1.8 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.2 Unless otherwise stated in the Contract Documents, words that have well-known technical or furniture, furnishings and equipment industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document or (3) the titles of other documents published by the American Institute of Architects.

§ 1.3 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 1.3.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Vendor, sub-vendors and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in

connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.3.2 The Vendor, sub-vendors and suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Vendor, sub-vendors and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.4 Transmission of Data in Digital Form

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 General

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 9.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Unless otherwise provided in the Contract Documents, the Owner shall provide

- .1 areas of the Project premises that the Vendor may utilize in the performance of the Work;
- .2 access to the premises for the Vendor at reasonable times;
- .3 suitable space for receipt, inspection, acceptance and staging of materials, furniture, furnishings and equipment;
- .4 temporary utilities and facilities on the premises and vertical transportation necessary for progress and execution of the Work; and
- .5 security normal for the Project premises.

§ 2.2.2 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall furnish any other information or services under the Owner's control and relevant to the Vendor's performance of the Work with reasonable promptness after receiving the Vendor's written request for such information or services.

ARTICLE 3 VENDOR

§ 3.1 General

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

§ 3.1.2 The Vendor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Vendor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract or by tests, inspections or approvals required or performed by persons or entities other than the Vendor.

§ 3.2 Review of Contract Documents and Inspection of Project Premises by Vendor

§ 3.2.1 Execution of the Contract by the Vendor is a representation that the Vendor has visited the Project premises or, if the Project premises have not yet been constructed, has reviewed the documents pertaining thereto; has become familiar with local conditions under which the Work is to be performed and information relative to access to and use of the Project premises, as provided by the Owner under Section 2.2; and has correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Vendor shall, before starting each portion of the Work, (1) carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.1; (2) take field measurements of any existing conditions related to that portion of the Work; and (3) observe any conditions of the access route or on the Project

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premises affecting the Work. These obligations are for the purpose of facilitating delivery and installation by the Vendor and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents; however, the Vendor shall report promptly to the Architect any errors, inconsistencies or omissions discovered or made known to the Vendor as a request for information in such form as the Architect may require. It is recognized that the Vendor's review of the Contract Documents is made in the Vendor's capacity as a Vendor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Vendor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Vendor shall report promptly to the Architect any nonconformity discovered by or made known to the Vendor as a request for information in such form as the Architect may require.

§ 3.2.4 In addition to the Vendor's representations under Section 3.2.1, the Vendor shall, prior to shipment, delivery and installation, visit and inspect the Project premises in order to confirm the conditions under which the Work is to be performed; verify the stage of completion of the premises and the Project; determine availability of facilities for access, delivery, transportation and staging area; determine the physical and environmental restrictions imposed by the Owner and the condition of the premises and separate vendors; and correlate these observations with the requirements of the Contract Documents. The Vendor shall promptly report to the Owner conditions observed during such inspection or thereafter that would impede the Vendor's performance of the Work.

§ 3.2.5 If the Vendor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Vendor's notices or requests for information pursuant to Sections 3.2.2, 3.2.3 and 3.2.4, the Vendor shall make Claims as provided in Article 15. If the Vendor fails to perform the obligations of Sections 3.2.2, 3.2.3, or 3.2.4, the Vendor shall pay such costs and damages to the Owner as would have been avoided if the Vendor had performed such obligations.

§ 3.3 Supervision of the Work

§ 3.3.1 The Vendor shall supervise and direct the Work, using the Vendor's best skill and attention. The Vendor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of fabrication, shipment, delivery and installation, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 3.3.2 The Vendor shall be responsible to the Owner for acts and omissions of the Vendor's employees, sub-vendors and their agents and employees, and other persons or entities performing or providing portions of the Work to, for or on behalf of, the Vendor or any of its sub-vendors.

§ 3.3.3 The Vendor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition for subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Vendor shall provide and pay for labor, materials, furniture, furnishings and equipment, tools, installation equipment and machinery, delivery, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

§ 3.4.2 The Vendor shall not make substitutions until after evaluation by the Architect and approval by the Owner.

§ 3.4.3 The Vendor shall enforce strict discipline and good order among the Vendor's employees and other persons carrying out the Work. The Vendor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Taxes

The Vendor shall pay all required sales, consumer, use and similar taxes for the Work provided by the Vendor.

§ 3.6 Permits, Fees, Notices, and Compliance with Laws

§ 3.6.1 Unless otherwise provided in the Contract Documents, the Vendor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required as of that date.

§ 3.6.2 The Vendor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.6.3 If the Vendor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Vendor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7 Superintendent

The Vendor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project premises during performance of the Work. The superintendent shall represent the Vendor, and communications given to the superintendent shall be as binding as if given to the Vendor.

§ 3.8 Vendor's Schedules

§ 3.8.1 The Vendor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Vendor's progress schedule for the Work. The schedule shall not exceed time limits established in the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and the Project, shall be related to the Project and related Work to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.8.2 The Vendor's progress schedule shall indicate dates for commencement and completion of phases of the Work, within the Contract Time, including dates for order placement, fabrication, shipping, delivery and installation. The schedule shall indicate other critical dates, such as deadlines for approval of submittals of colors, finishes, fabrics and other materials. The Vendor shall obtain and submit for the Owner's and the Architect's information written confirmation from sub-vendors of dates of fabrication and delivery.

§ 3.8.3 The Vendor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Vendor's progress schedule, and (2) allow the Architect reasonable time to review submittals. If the Vendor fails to submit a submittal schedule, the Vendor shall not be entitled to any increase in Contract Sum or extension of contract completion time based on the time required for review of submittals.

§ 3.8.4 The Vendor shall perform the Work in accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.8.5 The Vendor shall cooperate with the Owner and Architect in coordinating the Vendor's progress schedule with those of separate Vendors and with the requirements of the Owner and Architect. The Vendor shall cooperate in determining mutually acceptable dates and times for delivery, installation and inspection of the Work, and use of services and facilities provided to the Vendor, all to be confirmed in writing within a reasonable time in advance of such dates and times.

§ 3.9 Documents for the Owner's Records

The Vendor shall maintain for the Owner one copy of the Drawings, Specifications, Addenda and other Modifications, in good order and marked currently to indicate field changes and selections made during performance of the Work, and one copy of approved Shop Drawings, Product Data and similar required submittals. These shall be available to the Architect and shall be delivered to the Owner upon completion of the Work as a record of the Work installed.

§ 3.10 Shop Drawings, Product Data and Samples

§ 3.10.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Vendor or a sub-vendor to illustrate some portion of the Work.

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

§ 3.10.3 Shop Drawings, Product Data and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Vendor proposes to conform to the information given and the design concept expressed in the Contract Documents. Informational submittals upon which the Architect is not expected to take responsive action may be

so identified in the Contract Documents. The Architect may return without action submittals that are not required by the Contract Documents.

§ 3.10.4 The Vendor shall review for compliance with the Contract Documents, and approve and submit to the Architect, Shop Drawings, Product Data and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submitted schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate vendors.

§ 3.10.5 By submitting Shop Drawings, Product Data and similar submittals, the Vendor represents to the Owner and Architect that the Vendor has (1) reviewed and approved them, and (2) determined and verified materials, field measurements and field installation criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.10.6 The Vendor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data or similar submittals until the respective submittal has been approved by the Architect.

§ 3.10.7 The Work shall be in accordance with approved submittals, except that the Vendor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or similar submittals unless the Vendor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work or (2) a Modification to the Contract has been approved authorizing the deviation. The Vendor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data or similar submittals by the Architect's approval.

§ 3.10.8 The Vendor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.10.9 Samples, once approved, constitute an express warranty that the goods will conform to the sample.

§ 3.10.10 When professional certification of performance criteria for furniture, furnishings and equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such certifications.

§ 3.11 Cleaning Up

§ 3.11.1 The Vendor shall keep the premises and surrounding area free from accumulation of waste materials and other debris created by operations under the Contract. At completion of the Work, the Vendor shall remove waste materials and other debris created by the Vendor's activities, the Vendor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.11.2 If the Vendor fails to clean up as provided in the Contract Documents, the Owner may do so, and the Owner shall be entitled to reimbursement from the Vendor for the cost thereof.

§ 3.12 Indemnification

§ 3.12.1 To the fullest extent permitted by law, the Vendor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Vendor, a sub-vendor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.12.

§ 3.12.2 In claims against any person or entity indemnified under this Section 3.12 by an employee of the Vendor, a sub-vendor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.12.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Vendor or a sub-vendor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 TITLE AND RISK OF LOSS

§ 4.1 Title to all furniture, furnishings and equipment shall be transferred to the Owner upon acceptance by the Owner pursuant to Section 6.2 or upon payment in full to the Vendor, whichever occurs first.

§ 4.2 The risk of loss, with respect to all furniture, furnishings and equipment provided by the Vendor, shall remain on the Vendor until acceptance by the Owner pursuant to Section 6.2 of the furniture, furnishings and equipment, or designated portion thereof.

§ 4.3 The Owner shall be under no obligation to insure furniture, furnishings or equipment that does not conform to the Contract Documents or that the Owner has rejected. Under such circumstances, the risk of loss shall remain with the Vendor.

ARTICLE 5 DELIVERY AND INSTALLATION

§ 5.1 The Vendor shall make delivery of all furniture, furnishings and equipment in accordance with the Vendor's progress schedule or at a time agreed upon by the Owner and Architect.

§ 5.2 The Vendor shall become fully informed of the conditions relating to delivery, installation and labor under which the Vendor's Work will be performed. The Vendor shall employ the labor, and means and methods of carrying out the Vendor's Work as the conditions require.

§ 5.3 Delivery and installation of all furniture, furnishings and equipment shall be made to the location of the Project, as specified in the Contract Documents. Installation of furniture, furnishings and equipment shall include testing as required by the Contract Documents.

§ 5.4 The Vendor shall consult with the Owner to identify a route to be used within the Project premises from the point of initial delivery at the Project premises to the place of final placement or installation. After its selection, the route shall be made available to the Vendor for delivery of furniture, furnishings and equipment as provided in Section 5.1 and Section 5.2.

§ 5.5 The Vendor shall, within a reasonable time prior to delivery, provide the Owner with schedules for access and arrange for the use of elevators and unloading facilities.

§ 5.6 When the Vendor considers installation of all or a designated portion of the furniture, furnishings or equipment required by the Contract Documents to be complete, the Vendor shall advise the Owner and Architect in writing.

ARTICLE 6 ACCEPTANCE

§ 6.1 Prior to the tender of delivery by the Vendor, the Owner may conduct a preliminary inspection of the furniture, furnishings and equipment upon delivery for the purpose of verifying the delivery of such furniture, furnishings or equipment, including quantities. Such preliminary inspections shall not constitute acceptance of, taking charge over or control of such furniture, furnishings or equipment. Any defects, damage, deficiencies or nonconformity discovered by the Owner shall be reported to the Vendor.

§ 6.2 Upon completion of installation pursuant to Section 5.6, the Owner, with the assistance of the Architect, shall conduct an acceptance inspection. If the Owner determines that the furniture, furnishings and equipment comply with the requirements of the Contract Documents, the Owner shall notify the Vendor that the furniture, furnishings and equipment have been accepted. If the Owner determines that all or any portion of the furniture, furnishings or equipment do not conform to the requirements of the Contract Documents, the Owner shall reject such nonconforming portion by notifying the Vendor in writing of such rejection.

§ 6.3 If the Owner rejects all or any portion of the delivery, the Owner shall notify the Vendor within a reasonable time, which shall not be more than 30 days after the date of the inspection performed pursuant to Section 6.2. The notice shall include the specific basis for the Owner's rejection.

§ 6.4 If the Owner rejects all or any portion of the delivery, the Owner shall hold the rejected portion for a reasonable time to permit the Vendor to remove it from the Project premises.

§ 6.5 Upon rejection by the Owner, the Vendor shall have 30 days to provide acceptable evidence of arrangements to remedy the basis for rejection. If the Vendor remedies the basis for rejection, the Vendor shall notify the Owner in writing. The Owner shall have an additional period of time to conduct an acceptance inspection of the previously rejected

furniture, furnishings or equipment. If the Owner agrees to accept the furniture, furnishings or equipment, the Owner shall so notify the Vendor in writing. If the Owner rejects the tender of such furniture, furnishings or equipment, the Owner shall notify the Vendor within a reasonable time, which shall not be more than 30 days. Such notice shall include the specific basis for rejection. Upon rejection, the Vendor shall remove the rejected furniture, furnishings or equipment from the Project premises.

§ 6.6 If furniture, furnishings or equipment that have been previously accepted are found not to comply with the requirements of the Contract Documents, the Owner shall be entitled to revoke acceptance so long as the Vendor does not suffer actual prejudice by virtue of the Owner's prior acceptance of such furniture, furnishings or equipment. Such revocation of acceptance shall be made by giving prompt notice to the Vendor. In such event, the Vendor shall proceed in accordance with Section 6.5.

§ 6.7 The provisions of this Article 6 do not preclude recovery of damages as provided by law.

ARTICLE 7 WARRANTIES

§ 7.1 The Vendor expressly warrants to the Owner and Architect that the Work complies with the requirements of the Contract Documents. The Vendor further warrants that the Owner shall receive the benefit of standard manufacturer's warranties and guarantees applicable to the Work.

§ 7.2 The Vendor provides to the Owner and Architect all warranties relating to the furniture, furnishings and equipment implied by law, including but not limited to the warranty of merchantability.

§ 7.3 The Vendor acknowledges that no exclusion of or limitation on warranties contained in any proposal, product literature or other submittal shall affect the warranties provided pursuant to Sections 7.1 and 7.2.

ARTICLE 8 PAYMENT

§ 8.1 Before the first application for payment, the Vendor shall submit to the Owner a quotation schedule showing the values allocated to each quotation for portions of the Work. The Vendor's quotation schedule shall be accompanied by a certified statement from the Vendor prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, when approved by the Owner, shall be submitted with each application for payment and shall be used as a basis for reviewing the Vendor's applications for payment.

§ 8.2 When payment is due pursuant to the payment terms of the Agreement, the Vendor shall submit to the Owner an itemized application for payment. Such application shall be notarized, if required by the Contract Documents, and supported by such data substantiating the Vendor's right to payment as the Owner may require, such as copies of bills of lading or requisitions from sub-vendors and equipment suppliers.

ARTICLE 9 ARCHITECT

§ 9.1 General

The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 9.2 Administration of the Contract

§ 9.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during performance of the Work until final payment is due. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 9.2.2 The Architect will assist the Owner in coordinating schedules for fabrication, delivery and installation of the Work, but will not be responsible for failure of the Vendor or a sub-vendor to meet schedules for completion or to perform their respective duties and responsibilities in conformance with such schedules.

§ 9.2.3 The Architect will visit the Project premises at intervals appropriate to the stage of the Vendor's operations, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed; and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous inspections at the Project premises to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the means, methods, techniques, and sequences or

procedures of fabrication, shipment, delivery or installation, or for the safety precautions and programs in connection with the Work, since these are solely the Vendor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 9.2.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Vendor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall not have control over, charge of, or responsibility for acts or omissions of the Vendor, sub-vendors, their agents or employees, or any other persons or entities performing portions of the Work.

§ 9.2.5 The Architect has authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the completion time, and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Vendor. The Vendor shall carry out such written orders promptly.

§ 9.2.6 Unless otherwise provided, the Architect's authority shall not extend to the receipt, inspection or acceptance on behalf of the Owner of furniture, furnishings and equipment at the time of their delivery to the Project premises and subsequent installation. The Architect is not authorized to reject nonconforming Work, stop the Work or terminate the Contract.

§ 9.2.7 The Architect may recommend to the Owner rejection of Work that does not conform to the Contract Documents. A recommendation by the Architect made in good faith shall not give rise to a duty or responsibility of the Architect to the Owner, Vendor, sub-vendors, their agents or employees, or other persons or entities performing portions of the Work.

ARTICLE 10 RELATED ACTIVITIES OF OWNER OR OF SEPARATE VENDORS

§ 10.1 Owner's Right to Perform Related Activities and to Award Separate Contracts

§ 10.1.1 The Owner reserves the right to perform activities related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other activities at the Project premises. If the Vendor claims that such action by the Owner involves delay or additional cost, the Vendor shall make such Claim as provided in Article 15.

§ 10.1.2 When separate contracts are awarded for different portions of the Project or other activities at the Project premises, the term "Vendor" in the Contract Documents in each case shall mean the vendor who executes each separate Owner-Vendor Agreement.

§ 10.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate vendor with the Work of the Vendor, who shall cooperate with them. The Vendor shall participate with other separate vendors and the Owner in reviewing their progress schedules. The Vendor shall make any revisions to the progress schedule deemed necessary after a joint review and mutual agreement. The progress schedules shall then constitute the schedules to be used by the Vendor, separate vendors and the Owner until subsequently revised.

§ 10.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs activities related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Vendor under the Contract, including, without excluding others, those stated in this Article 10, and in Article 3, Article 12 and Article 13 herein.

§ 10.2 Mutual Responsibility

§ 10.2.1 The Vendor shall afford the Owner and separate vendors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Vendor's activities with theirs as required by the Contract Documents.

§ 10.2.2 If part of the Vendor's Work depends for proper execution or results upon activities by the Owner or a separate vendor, the Vendor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects resulting from their activities that would impede the Vendor in achieving proper execution and results. If the Vendor fails to report discrepancies or defects reasonably discoverable, it shall be responsible for deficiencies or defects in its Work due to such deficiencies or defects.

§ 10.2.3 The Vendor shall reimburse the Owner for costs the Owner incurs that are payable to a separate vendor because of the Vendor's delays, improperly timed activities or other damage to the Work of a separate vendor. The Owner shall be responsible to the Vendor for costs the Vendor incurs because of the delays, improperly timed activities or damage to the Work caused by a separate vendor.

§ 10.2.4 The Vendor shall promptly remedy damage it wrongfully causes to property of the Owner or separate vendors as provided in Section 12.2.4.

§ 10.3 Owner's Right to Clean Up

If a dispute arises among the Vendor, separate vendors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and, with the Architect's assistance, allocate the cost among those responsible.

ARTICLE 11 TIME

§ 11.1 Definition of Day

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

§ 11.2 Progress and Completion

§ 11.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Vendor confirms that the completion date stated in the Contract Documents provides a reasonable period for performing the Work.

§ 11.2.2 The Vendor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project premises prior to the effective date of insurance required by Article 13 to be furnished by the Vendor and the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 11.2.3 The Vendor shall proceed expeditiously with adequate forces and shall achieve completion by the mutually agreed upon completion date.

§ 11.3 Delays and Extensions of Time

§ 11.3.1 If the Vendor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Vendor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes which the Architect determines may justify delay, the completion date shall be extended by mutual agreement between the Owner and the Vendor.

§ 11.3.2 Conformance to Agreed-Upon Schedules

§ 11.3.2.1 The Owner shall cooperate and coordinate its activities with the agreed-upon critical dates identified in the Vendor's progress schedule provided under Section 3.8.2.

§ 11.3.2.2 The Owner shall be responsible for costs the Vendor incurs, such as demurrage, warehousing, and storage or delivery charges, that are due to the Owner's failure to conform to the mutually agreed-upon progress schedule for the Work; to the Owner's failure, without justification, to accept delivery or final installation of furniture, furnishings and equipment; or to any other delays for which the Owner is responsible.

§ 11.3.3 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 11.3.4 This Section 11.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 12 PROTECTION OF PERSONS AND PROPERTY

§ 12.1 Safety Precautions and Programs

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

§ 12.2 Safety of Persons and Protection of Property

§ 12.2.1 The Vendor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials, furniture, furnishings and equipment to be incorporated therein, whether in storage on or off the Project premises, under care, custody or control of the Vendor or sub-vendors; and
- .3 other property at the Project premises or adjacent thereto, including property of the Owner, separate vendors or other persons, whether or not completed or installed.

§ 12.2.2 The Vendor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

§ 12.2.4 The Vendor shall promptly remedy damage and loss to property, other than damage to the Work, caused in whole or in part by the Vendor or anyone directly or indirectly employed by the Vendor, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Vendor.

ARTICLE 13 INSURANCE

§ 13.1 Vendor's Liability Insurance

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Vendor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Vendor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to, or destruction of, tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Vendor's obligations under Section 3.12.1; and
- .9 Claims for products liability and completed-operations insurance.

§ 13.1.2 The insurance required by Section 13.1.1 shall be written for not less than the limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and with respect to the Contractor's completed operations coverage, until the expiration of the period specified in the Contract Documents.

§ 13.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by Section 13.1.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage including coverage for completed operations shall be submitted with the final application for payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 13.1.2. The Vendor shall provide information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, with reasonable promptness.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Governing Law

This Agreement shall be considered to be for sale of goods and shall be governed by the Uniform Commercial Code (UCC) as adopted in the place where the Project is located. The Contract shall be governed by the law of the place where the Project is located, except, that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 9.6.

§ 14.2 Successors and Assigns

The Owner and Vendor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Vendor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.1 Notice of Claims. Claims by either party must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.2 Continuing Contract Performance. Pending final resolution of a Claim, the Vendor shall proceed diligently with performance of the Contract, and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.3 Claims for Consequential Damages. The Vendor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Vendor for principal office expenses, including the compensation of personnel stationed there; for losses of financing, business and reputation; and for loss of profit, except anticipated profit arising directly from the Work. Nothing contained in this Section 15.1.3 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Resolution of Claims and Disputes

Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect. An initial recommendation in writing by the Architect, followed by negotiation of the parties, shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Vendor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no recommendation having been made by the Architect.

§ 15.3 Mediation

§ 15.3.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Section 15.1.3, shall, after recommendation by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§ 15.3.2 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 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 Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a demand for arbitration, 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 an 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.

§ 15.3.3 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.

§ 15.4 Arbitration

§ 15.4.1 Any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 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 Contract, 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.

§ 15.4.1.1 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 such 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.

§ 15.4.2 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.

§ 15.4.3 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.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration 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).

§ 15.4.4.2 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 a Claim not described in the written consent.

§ 15.4.4.3 The Owner and Vendor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Vendor under this Agreement.