

[PROJECT NAME]

**INTEGRATED PROJECT DELIVERY  
AGREEMENT**

[Profit Deferred Until Final Completion]



**HansonBridgett**

# [PROJECT NAME]

## INTEGRATED PROJECT DELIVERY AGREEMENT

This Integrated Project Delivery Agreement (“**Agreement**”) is entered into on [DATE] (“**Effective Date**”) by and between:

The Owner (“**Owner**”):

[name]  
[entity type]  
[address]  
[city]

The Architect (“**Architect**”)

[name]  
[entity type]  
[address]  
[city]

The Contractor (“**Contractor**”)

[name]  
[entity type]  
[address]  
[city]

### 1. DEFINITIONS

**1.1** Defined terms will be capitalized throughout the Agreement. Most definitions for this Agreement appear in alphabetical order in **Exhibit A** and may also be bolded the first time the term is used. Other terms that are capitalized are described or defined within the Agreement or General Conditions. The Owner, Architect and Contractor may be individually referred to as the **Party** and will be collectively referred to throughout this Agreement as the **Parties**.

### 2. THE PROJECT AND RELATIONSHIP OF THE PARTIES

**2.1 The Project.** The Project consists of [insert general project description].

**2.2 Project Objective.** During the Conceptualization Phase the Parties will jointly develop the Project Objective based upon the Owner’s requirements, goals and limitations. The Project Objective is comprised of the **Validated Target Program (VTP)**, **Validated Target Cost (VTC)**, and **Validated Target Schedule (VTS)**, which establishes the Project requirements and metrics for measuring the Project’s success. If, after development and validation under Section 7.2.1, the Parties agree to the Project Objective it will be incorporated into this Agreement as **Exhibit B**.

The Owner, Architect and Contractor will collaboratively work together to achieve the Project Objective by:

2.2.1 Individually performing the **Contract Tasks** designated as their respective responsibilities in the Contract Task Matrix set forth in **Exhibit C**;

2.2.2 Jointly managing the Project through the **Project Management Team** (“**PMT**”) pursuant to Section 4;

2.2.3 Cooperating with the PMT and the Project Implementation Team (“**PIT**”) described in Section 5, subject to the limits of their respective professional expertise, licensing and abilities; and

2.2.4 Complying with all other obligations, terms and conditions of this Agreement.

### 3. THE PARTIES

**3.1 Relationship of the Parties.** Although this Agreement establishes a relationship of mutual trust and good faith among the Parties, who recognize that their individual success is directly tied to the performance of other Project participants, it does not create an agency relationship, fiduciary relationship, partnership, or joint venture between the Parties. The Owner, Architect and Contractor are each independent contractors solely responsible for directing and managing their own forces and services within their respective area of responsibility as described in Section 4. The Parties acknowledge that this Agreement is not a design/build agreement and that each Party is responsible for its own errors, omissions or construction defects to the extent provided in this Agreement. Likewise, nothing contained in this Agreement will make any Party jointly and severally liable for the negligent acts or omissions of any other Party.

**3.2 Owner.** The Owner is responsible for expressing the requirements, goals and limitations that must be accommodated in the Project and actively participating in developing and documenting the Project Objective. In addition, the Owner will perform and/or provide the following **Work** or services:

3.2.1 Retain the following consultants and contractors:

[Insert consultants]

[Insert contractors]

3.2.2 Provide the PMT with available information regarding the Project and the Project site.

3.2.3 Provide insurance and legal services necessary for the Project;

3.2.4 Perform the Contract Tasks assigned to it in the Contract Tasks Matrix, set forth in **Exhibit C**;

3.2.5 Provide the PMT with timely decisions necessary to support the Project Objective throughout the Project duration;

3.2.6 Make timely payments as required by this Agreement; and

3.2.7 Perform all of its other obligations under this Agreement.

**3.3 Architect.** The Architect is responsible for designing the Project, except for those portions of the Project that are being designed through design/build subcontractors, in a manner that meets the Project Objective. In addition, the Architect will perform and/or retain the following Work or services:

3.3.1 Retain the following consultants:

[Insert consultants]

3.3.2 Perform all Contract Tasks assigned to it under the Contract Tasks Matrix set forth in **Exhibit C**.

3.3.3 Manage and coordinate all design submissions, questions and responses to all applicable **Governmental Authorities** and all other reviewing and permitting agencies.

3.3.4 Sign and affix its professional seal on all documents prepared by it and arrange for its consultants to do the same for all documents prepared by each of them, to the extent required by the **Project State**.

3.3.5 Perform all services and furnish all reports, affidavits, certificates, and other documents required by Governmental Authorities pursuant to the building code or other codes, statutes or regulations of the Project State and other applicable laws and regulations relating to those portions of the Project designed by the Architect, and will require its consultants to do the same with respect to portions of the Project designed by them.

3.3.6 Perform all of its other obligations under this Agreement.

**3.4 Contractor.** The Contractor is responsible for constructing the Project in accordance with the Implementation Documents and for supervising, directing, managing and performing construction work in a manner that meets the Project Objective. In addition, the Contractor will perform and/or retain the following Work or services:

3.4.1 Retain all design/build subcontractors and all other standard subcontractors required for the Project, except for those separate contractors retained directly by the Owner. All design/build subcontractor services will be provided by a Project State licensed professional and all design/build documents will be stamped and signed by the registered engineer and/or architect. In addition, the design/build subcontractors will furnish all reports, affidavits, certificates, and other documents required by and Governmental Authority that are required by the applicable building codes, laws and regulations governing those portions of the Project.

3.4.2 Perform all Contract Tasks assigned to it under the Contract Tasks Matrix set forth in **Exhibit C**.

3.4.3 Assist the Architect during all phases of design by providing cost and constructability information that will support **Target Value Design** and will coordinate design information between design/build subcontractors and the **Project Implementation Team (PIT)**.

3.4.4 Manage Project information by using a **Building Information Model** or Models linked to Project cost and schedule databases.

3.4.5 During the Construction Phase, the Contractor will manage, perform, oversee and direct all construction work in accordance with the Implementation Documents through Final Completion of the Project.

#### **4. PROJECT MANAGEMENT TEAM**

**4.1 Project Management Team (PMT).** The PMT includes representatives of the Owner, Architect and Contractor. The PMT provides executive level guidance for collaborative planning, design management and construction of the Project to achieve the Project Objective. The PMT is responsible for reviewing Project progress and for developing benchmarks, metrics, or standards for progress evaluation.

**4.2 Authority and Responsibility.** The PMT will manage and coordinate implementation of the Project Objective and provide direction to the Parties and to the PIT. Subject to the requirement that its decisions be unanimous, it is authorized to manage and direct the Project. The PMT is not, however, authorized to direct the actions of Architect's or Contractor's employees and is not responsible for any failure of Contractor or Architect to perform their respective obligations.

**4.3 Reliable Participation.** Fundamental to the success of the PMT is the willingness and ability of each member to participate reliably throughout the Project by providing dependable commitments, promises, and information in the best interest of the Project. The Parties commit to supporting the full engagement of their PMT representative and to providing the necessary resources to allow the PMT member to meet or exceed it's commitments.

**4.4 Interpretation of Implementation Documents.** The PMT has the sole authority to interpret the Implementation Documents and will review and respond to all written requests for information or clarification. A Party may not proceed with any work related to a request for clarification until a written response is received from the PMT pursuant to Section 4.7. The PMT will resolve all questions, discrepancies, ambiguities and other clarifications regarding the requirements of the Implementation Documents in accordance with this Agreement and the Project Objective.

**4.5 Project Meetings.** The PMT will hold Regular Meetings and Special Meetings as set forth below. The PMT will designate a party to facilitate communications between the Project participants, lead Regular and Special Meetings and prepare minutes of all PMT meetings (**Meeting Facilitator**).

**4.5.1 Regular Meetings.** The PMT will establish a regular meeting schedule, which in general should be no less frequently than [weekly]. Regular Meetings will be held to review, discuss and evaluate the current status of the Project with respect to design issues, cost, and schedule and implement programs to improve overall Project performance. The Regular Meetings will be held separately from other meetings to assure proper management of the Project and encourage candor among the Parties. The Regular Meetings may include Senior Management Representatives from each of the Parties as determined by the PMT members.

4.5.2 **Special Meetings.** Special Meetings may be requested by any PMT member to allow the PMT to address a matter of urgency. The Party requesting the Special Meeting will provide at least 3 business days written notice, unless all PMT members agree to a shorter timeframe. Notice of a Special Meeting will identify the issues to be addressed. If a PMT member is not able to attend either a Regular Meeting or Special Meeting because of a scheduling conflict, an alternate member of the Party may be designated pursuant to Section 4.8.1.

4.6 **Direct Communications.** The PMT members, and their employees, are encouraged to communicate directly as necessary to efficiently manage the Project and to execute each individual PMT member's responsibilities. All decisions affecting design, cost or schedule, however, must be made by the PMT jointly in accordance with Section 4.7 and confirmed in writing in a **PMT Directive**.

4.7 **Decision Making.** Decisions of the PMT will be by unanimous agreement. If the PMT is unable to reach agreement, the PMT will refer the issue to the Senior Management Representative level under Section 4.9, who will first attempt to reach a consensus and only if a consensus is not reached, will decide the issue by majority vote. Notwithstanding the above, the Owner will have the right to make decisions that are opposed by all non-Owner members of the PMT by issuing a written **Owner's Directive**. If an Owner's Directive causes the cost of the Project or the **Contract Time** to be increased, the VTC or VTS will be adjusted accordingly. Any dispute resulting from an Owner's Directive may be pursued under the Dispute Resolution provisions set forth in Section 15 of this Agreement.

4.8 **Parties' Representatives.** The PMT will include a representative from each Party as identified below. Each Party will assure that its PMT representative attends all PMT meetings, has authority to act on behalf of the Party, and fulfills his or her responsibilities as a PMT representative. The PMT may approve any representative's designation of an alternate representative but any proposed replacement of a PMT representative will be subject to the PMT's approval, which will not be unreasonably withheld.

4.8.1 The Owner's PMT representative is [name]

4.8.2 The Architect's PMT representative is [name]

4.8.3 The Contractor's PMT representative is [name]

4.9 **Senior Management Representatives.** Each Party will be represented by a Senior Management Representative who will act on its behalf with respect to the Dispute Resolution Procedures set forth in Section 15 and, upon request, to meet with the PMT at any Regular and/or Special Meetings. A Party may appoint a replacement Senior Management Representative by providing written notice to the other Parties.

4.9.1 The Owner's Senior Management Representative is [name].

4.9.2 The Architect's Senior Management Representative is [name].

4.9.3 The Contractor's Senior Management Representative is [name].

4.10 **Written Confirmation of Decisions.** PMT decisions affecting design, cost, schedule or reallocation of the Work will be recorded in writing by a PMT Directive and will be

issued directly to the Contractor or Architect for distribution to the appropriate subcontractors and consultants. PMT Directives must be signed by all PMT members to signify their concurrence with the decision. PMT Directives that increase or decrease the VTC or VTS will be further documented by Change Order executed by the Parties. All other decisions will be recorded through written minutes. PMT decisions and meeting minutes will be circulated to the Parties' members and maintained on a collaborative web portal.

**4.11 Personnel Management.** The PMT will not supervise or control any person employed by Owner, Architect or Contractor in connection with the Project. The PMT may, however, require any Party to remove any person employed in connection with the Project if it determines that the presence of that person is detrimental to achievement of the Project Objective. The Owner, Architect and Contractor will provide personnel in accordance with the Staffing Plan set forth in **Exhibit D**. The Staffing Plan will list all individuals assigned to the Project and the percentage of time each individual will devote to working on the Project. The Parties will not remove or reduce involvement of any personnel set forth in the Staffing Plan, without the PMT's written consent, which will not be unreasonably withheld.

## **5. PROJECT IMPLEMENTATION TEAM**

**5.1 Project Implementation Team (PIT).** The Project Implementation Team includes Party representatives as well as the consultants, design/build subcontractors, certain subcontractors, and others that may have a significant impact on the Project outcome. The PIT is responsible for designing and implementing the Project consistent with the Project Objective. The composition of the PIT, and the participation of its members, is determined by the PMT and will vary depending upon the stage of the Project and the utility of involving a particular participant at a specific meeting or during a specific period of the Project. The PIT will be directed by the PMT and will meet regularly to discuss and address issues relating to design and construction of the Project. The PMT may further subdivide the PIT into taskforces focused on specific Project elements and issues. Unlike the PMT, the PIT can not issue directives. Although the PMT retains authority for project decisions, it will actively seek and consider the input and counsel of the PIT.

## **6. AWARD OF SUBCONTRACTS AND CONSULTING AGREEMENTS**

**6.1 Bid List.** During the Conceptualization Phase, each Party will provide the PMT, in writing, with the names of persons or entities proposed to perform any portion of the Work. Within      days receipt, the PMT will provide a written response if it has a reasonable objection to any proposed entities submitted by any Party. Failure of the PMT to timely object or recommend other potential subcontractors or consultants will constitute the PMT's acceptance.

**6.2 Contract Award.** Upon completion of the bidding process for each subcontractor and/or consultant, the Contractor and/or Architect will make a written recommendation to the PMT for contract award. If the PMT members reasonably object to a person or entity proposed by the Party, the PMT member will propose another person or entity for which the PMT has no reasonable objection. A Party will not contract with a proposed person or entity reasonably and timely objected to by the PMT. If the proposed but rejected subcontractor or consultant was qualified to perform that portion of the Work and submitted a bid that conforms to the Project Objective and Implementation Documents, the VTC and the VTS will be adjusted accordingly through a PMT Directive and Change Order. Substitutions of a subcontractor or consultant previously selected and approved by the PMT will not be made without PMT approval.

**6.3 Licensing Requirements.** All subcontractors and consultants will be properly licensed by the Project State for the portion of the Work they are performing.

**6.4 Required Subcontract and Consultant Pass Through Provisions.** The Parties will endeavor to pass the following provisions through to subcontractors and consultants as set forth below.

**6.4.1 Cost Reimbursable Subcontractors and Consultants.**

**6.4.1.1 Waiver of Liability and Claims.** The Contractor and Architect will incorporate clauses substantially similar to Sections 13.1 and 13.2 regarding waiver of liability and claims against the Parties and any other Cost Reimbursable Subcontractors or design consultants working on the Project.

**6.4.1.2 Indemnification.** Substantially similar indemnity provisions to those set forth in Section 13.4 will be incorporated into all subcontracts and consulting agreements. The Owner, Contractor and Architect will be indemnified parties under all such provisions.

**6.4.1.3 Compensation and ICL.** The Cost Reimbursable Subcontractors and design consultants will be subject to substantially similar compensation and ICL provisions set forth in Sections 8 and 9.

**6.4.1.4 Change Orders and Permitted Delays.** The Cost Reimbursable Subcontractors and design consultants will be tied to similar provisions governing Time under Section 11 and Change Order provisions under Section 12.

**6.4.2 All Subcontracts and Consulting Agreements.**

**6.4.2.1 Assignment.** All subcontracts and consulting agreements will include assignment of the contract by the PMT member to Owner provided that the assignment is effective only after termination of this Agreement by the Owner for cause pursuant to Section 16.3 and only for those subcontract and consulting agreements that the Owner accepts by written assignment of the subcontractor and/or consulting agreement. If the subcontract is assigned pursuant to this Section, and the Work has been suspended for more than 30 calendar days, the subcontractors' and/or consultants' compensation will be equitably adjusted for increases in cost resulting from the suspension.

**6.4.2.2 Insurance.** The applicable insurance requirements set forth in Section 13.3 and **Exhibit K** will be included in all subcontracts and consulting agreements. The Parties will be named additional insured under all subcontractor commercial general liability policies and auto insurance policies.

**6.4.2.3 Contract Flow-through.** By appropriate written agreement, the Contractor and Architect will require each subcontractor and consultant, to the extent of the Work to be performed by the subcontractor or consultant, to be bound to the Contractor and/or Architect by terms of the Project Objective, the Contract Task Matrix, and the Implementation Documents, and to assume toward the Contractor and/or Architect all the obligations and responsibilities that the Contractor and/or Architect assumes toward the Owner through those documents. Each subcontract and consulting agreement will preserve and protect the rights of the Parties under this Agreement with respect to the Work to be performed by the subcontractor



and/or consultant so that subcontracting will not prejudice the Parties rights. Where appropriate, the Contractor and Architect will require each subcontractor and consultant to enter into similar agreements with tier-subcontractors and tier-consultants.

6.4.2.4 **Indemnification.** The Contractor will include indemnification provisions into each Fixed Price subcontract that indemnify the Owner, Architect and Contractor from all claims, damages and liability arising out of or related to the subcontractor's construction work including breach of contract, personal injury and property damage.

6.4.2.5 **Dispute Resolution Proceedings.** All subcontractors and consultants are subject to the dispute resolution proceedings set forth in Section 14.

## 7. RESPONSIBILITIES BY PHASE

7.1 **Contract Task Matrix.** Throughout all phases, the Parties, the PMT and PIT will perform the specific Contract Tasks designated as their responsibility pursuant to the Task Matrix set forth in **Exhibit C**. The PMT will administer performance of the specific Contract Tasks by continuously:

7.1.1 Developing management protocols and monitoring compliance with the management protocols;

7.1.2 Evaluating progress toward the achievement of the Project Objective;

7.1.3 Providing directions, approvals and decision making needed to achieve the Project Objective; and

7.1.4 Actively promoting an environment of cooperation, collaboration and mutual respect in furthering the best interests of the Project.

### 7.2 Conceptualization Phase.

7.2.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.2.2 **Deliverables.** The Project deliverables include:

7.2.2.1 **Validation of Project Objective.** The PMT will confirm the Validated Target Price (**VTP**), the Validated Target Schedule (**VTS**) and the Validated Target Cost (**VTC**), in writing as the Project Objective and the Parties will incorporate the executed Project Objective document into this Agreement as **Exhibit B**. Once the Project Objective is executed, the VTP, VTC and the VTS are the sole criteria for measuring the Project Objective and cannot be modified, except as provided under Section 12.

7.2.2.1.1 **Notice of Impasse.** If the Parties are unable to reach an agreement to the Project Objective, a Party may declare an impasse by issuing a written **Notice of Impasse**. Unless the Project Objective is agreed to within 14 calendar days' receipt of a Notice of Impasse, this Agreement will terminate for convenience and the Owner will only be responsible for paying non-Owner PMT member's the **Allowable Costs** incurred prior to the Notice of Impasse, including demobilization costs, if any, or costs of subcontractor or consultant contract obligations that could not be avoided by the Contractor or Architect.

Termination costs do not include any overhead, profit, lost opportunity, or any other costs caused by or related to the termination. All designs, models, drawings, calculations or reports prepared by the PMT or its members prior to termination will be delivered to the Owner for its use, at its discretion, for the continuation of the Project. If the Owner uses these materials, it will indemnify, defend and hold harmless Contractor and Architect from any liability arising from the use of these materials.

7.2.2.2 **Incentive Compensation Layer.** The PMT will set the Incentive Compensation Layer and the ICL Distribution Percentage pursuant to Section 9.

7.2.2.3 **Management Protocols.** If the Project Objective is confirmed, the Parties will develop Management Protocols consisting of: (i) Cost Management Strategy set forth in **Exhibit E**; (ii) PMT Work Plan set forth in **Exhibit F**; and (iii) BIM Workflow Plan set forth in **Exhibit G**.

7.2.2.4 **Joint Site Investigation.** The PMT will conduct Joint Site Investigations in accordance with Section 3.2 of the General Conditions to this Agreement.

7.2.2.5 **Project Manual.** The PMT will develop a Project Manual in accordance with Section 2.2 of the General Conditions to this Agreement.

### 7.3 **Criteria Design Phase.**

7.3.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.3.2 **Deliverables.** Criteria Design deliverables consist of:

7.3.2.1 **Building Information Model.** Development of the BIM in accordance with Section 4 of the General Conditions.

7.3.2.2 **Conceptual Drawings and Specifications.** Development of conceptual drawings, outline specifications, reports and other documentation required by the PMT.

7.3.2.3 **Procurement Schedule.** Development of a Project Procurement Schedule that complies with the requirements of the VTS and sets forth the timeframe to purchase subcontracts and release fabrication or purchase long lead items.

7.3.2.4 **Independent Assessor.** Appointment of an Independent Assessor who will make the Quality Adjustment decisions under Section 9.5 if the Parties cannot reach agreement regarding the Quality Adjustment of the ICL or the proportion of ICL payable if Owner terminates for convenience under Section 16.1.2.

7.3.3 The Criteria Design deliverables will illustrate development of the VTP and describe in sufficient detail the final criteria for design and implementation of the Project in a manner consistent with the Project Objective. The PMT will determine the method for delivery of the Criteria Design Deliverables.

7.3.4 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits F-H**.

PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols. The Management Protocols will be revised by the PMT prior to commencement of the next phase as necessary to achieve the Project Objective.

#### **7.4 Detailed Design Phase.**

7.4.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.4.2 **Deliverables.** The Detailed Design deliverables consist of:

7.4.2.1 **Building Information Model.** Further development of the **Model** in accordance with Section 4 of the General Conditions to this Agreement.

7.4.2.2 **Project Drawings and Detailed Specifications.** Further development of the Project drawing and specifications to provide detailed layouts for architectural, structural and mechanical, electrical and plumbing system design including all sections, elevations, and typical construction details. The Project drawings and specifications will demonstrate the development of the approved Criteria Design deliverables and will fix the size, form and character of the building assemblies, systems and other components; specify materials and systems and establish their performance requirements and quality levels; and provide other information necessary and appropriate to implement the Project in a manner consistent with the Project Objective. The PMT will determine the method for delivery of the Detailed Design deliverables.

7.4.2.3 **Project Reports.** Procurement or creation of other relevant Project reports and documents as determined by the PMT.

7.4.2.4 **Procurement Schedule.** Further refinement of the Procurement Schedule developed in the Criteria Design Phase.

7.4.3 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits F-H**. PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols. The Management Protocols are revised by the PMT prior to commencement of the next phase as necessary to achieve the Project Objective.

#### **7.5 Implementation Documents Phase.**

7.5.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.5.2 **Deliverables.** The deliverables consist of the following:

7.5.2.1 **Construction Model.** The BIM will be augmented and coordinated to include all shop drawing, product data and other submittal information required for fabrication and installation of the Work together with detailed drawings, specifications and other documents required to complete Agency Review, Project Purchasing and construction of the Work.

7.5.2.2 **Implementation Documents.** The Implementation Documents will illustrate the development of the approved Detailed Design deliverables and will include the final plans, sections, elevations, typical construction details together with dimensions and layouts for architectural and structural design and mechanical, electrical, and plumbing systems. The Implementation Documents will describe in detail the requirements for construction of the Work and provide information necessary and appropriate to implement the Project in a manner consistent with the Project Objective. The PMT will determine the method for delivery of the Implementation Documents.

7.5.2.3 **Prefabrication.** The PMT may authorize prefabrication of systems that are fully described as well as early procurement of materials and equipment.

7.5.3 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits F-H**. PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols. The Management Protocols are revised by the PMT prior to commencement of the Construction Phase as necessary to achieve the Project Objective.

## 7.6 Agency Review.

7.6.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.6.2 **Deliverables.** Agency Review deliverables consist of all approvals, consents and permits required by the governing agencies who have jurisdiction over the Project for design and construction of the Work.

7.6.3 **Commencement and Completion.** Agency Review commences with the Criteria Design Phase and is completed on or before the date of commencement of the Work set forth in the Owner's **Notice to Proceed**.

## 7.7 Project Purchasing.

7.7.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.7.2 **Deliverables.** The purchasing deliverables consist of:

7.7.2.1 **Procurement of Subcontracts and Purchase Orders.** The Contractor will procure all labor, materials and equipment necessary to complete construction in accordance with the Implementation Documents and the Project Objective. The PMT will direct and oversee the Contractor's selection and procurement of subcontractors and suppliers and

authorize the Contractor to enter into the necessary written subcontract agreements and purchase orders. The PMT will have appropriate commitments for labor, materials, equipment and construction-related services in place prior to commencement of the Work to permit the timely and orderly sequencing of the Work.

7.7.2.2 **PIT Subcontractors.** To enable early involvement of PIT-subcontractors, the Contractor may, subject to approval by the PMT, award PIT subcontracts at any time after commencement of Criteria Design Phase.

7.7.2.3 **Procurement Schedule.** The procurement of all labor, materials and equipment will comply with the Procurement Schedule.

7.7.3 **Commencement and Completion.** The Project Purchasing process commences with the Criteria Design Phase and is completed on or before the commencement date set forth in the Notice to Proceed issued by the Owner.

7.7.4 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits E-G**. PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols. The Management Protocols are revised by the PMT prior to commencement of the Construction Phase as necessary to achieve the Project Objective.

## 7.8 Construction and Construction Administration.

7.8.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.8.2 **Deliverable. Final Completion** of the Work.

7.8.3 **General Conditions.** The terms and conditions governing administration and construction of the Work are stated in the General Conditions to this Agreement.

7.8.4 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits F-H**. PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols.

7.8.5 **Commencement and Completion.** Construction Phase commences on the date for commencement of the Work set in the Notice to Proceed issued by the Owner and must be completed on or before the **Substantial Completion Date** established in the VTS.

## 7.9 Commissioning and Closeout.

7.9.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.9.2 **Deliverables.** Closeout Phase deliverables include:

7.9.2.1 **Close-Out Documents.** Operation and Maintenance manuals, as-built drawings, the **Record Model**, warranties, keying schedules, attic stock, and any other items required under the Implementation Documents.

7.9.2.1.1 **Approval.** Within 7 calendar days receipt of the Close Out Documents, the Owner will provide the Architect and Contractor with written notice of its approval and/or identify the items requiring correction. The Contractor and/or Architect will correct any non-conforming items within 7 business days receipt of notice.

7.9.2.2 **Lien Releases.** The Architect and Contractor will provide the Owner with the unconditional lien releases and waivers required under Section 10.5.

7.9.2.3 **ICL Determination and Adjustment.** The PMT will complete a final accounting of project costs and determine whether and to the extent the Project Objective was achieved. The Incentive Compensation Layer available for distribution will then be determined and adjusted in accordance with Section 8.

## 8. COMPENSATION

8.1 **General.** The Architect's and Contractor's compensation for the Project includes Allowable Costs specifically set forth in **Exhibits H and I**, and subject to the quantitative and qualitative success of the Project and achievement of the Project Objective, their respective percentage of the adjusted and available **Incentive Compensation Layer (ICL)**.

## 9. INCENTIVE COMPENSATION LAYER

9.1 **Incentive Compensation Layer.** At the conclusion of the Conceptualization Phase, and at the same time the Project Objective is validated, the Parties will set the Incentive Compensation Layer and the ICL Distribution Percentages, recording them in **Exhibit B**. The ICL is an amount agreed by the Parties, but is normally based on the amount of Architect's and Contractor's usual profit (all or a portion) that is not included in their respective Allowable Costs. The ICL is at risk if the VTC is exceeded, the VTS is exceeded, and/or the Quality Adjustment is negative, but may also be increased, depending upon Project success, as described below.

9.2 **ICL Adjustments.** Within 14 calendar days after Final Completion, the PMT will meet and adjust the ICL by first applying the Project Cost Adjustment per Section 9.3 and then the Schedule Adjustment under Section 9.4. If there is ICL remaining after these two adjustments, the PMT will meet within an additional 7 calendar days to consider and determine the Quality Adjustment per Section 9.5.

### 9.3 Project Cost Adjustment.

9.3.1 **Project Cost Under VTC.** If at Final Completion, the total Allowable Costs incurred by Contractor and Architect are less than the VTC, the ICL is increased by 50% of the difference between the total Allowable Costs incurred and the VTC.

9.3.2 **Project Cost Exceeds VTC.** If at Final Completion, the total Allowable Costs incurred by the Contractor and Architect are more than the VTC, the ICL will continue to be reduced to cover the Project Allowable Costs until the ICL is exhausted. Once the ICL is

exhausted the Owner will continue to compensate the Architect and Contractor for Allowable Costs until Final Completion.

#### 9.4 Schedule Adjustment.

9.4.1 **VTS Accelerated.** If Substantial [Final] Completion is achieved before the milestone Substantial [Final] Completion Date established in the VTS, the ICL will be increased by \$ [redacted] for each day that the Substantial [Final] Completion date established in the VTS is accelerated.

9.4.2 **VTS Exceeded.** If Substantial [Final] Completion is achieved after the milestone Substantial Completion Date established in the VTS, the ICL will be decreased by \$ [redacted] for each day that the Substantial [Final] Completion date established in the VTS is delayed.

#### 9.5 Project Quality Adjustment.

9.5.1 **Quality Rating.** Any ICL remaining after applying the Project Cost and Schedule Adjustments will be distributed to the Architect and Contractor based on an assessment of the Quality Criteria listed in the table below. If the sum of the Quality Rating is positive, the ICL will be increased by [redacted] % per Quality Rating point and if negative, the ICL will be decreased by [redacted] % per Quality Rating point. The rating for an individual Quality Criterion may be any integer between -5 to +5 with -5 being substantially worse than required by the Project Objective, 0 being adequate to meet the Project Objective and + 5 being substantially better than required by the Project Objective.

Standard	Quality Criteria	Potential Quality Points
Quality	<b>Materials:</b> Are the materials installed of the quality, durability and maintainability required by the VTP?	[-5 to +5]
	<b>Workmanship:</b> Is the workmanship of the completed Work consistent with the VTP?	[-5 to +5]
	<b>Performance:</b> Are the building systems operational and functioning in accordance with the performance requirements stated in the VTP?	[-5 to +5]
Functionality	<b>Spatial:</b> Does the Project provide the spaces required by the VTP?	[-5 to +5]
	<b>Functional:</b> Does the arrangement of spaces comply with the VTP so that it meets the needs of the Owner's staff and assist them in carrying out their responsibilities?	[-5 to +5]
	<b>Usability:</b> Does the arrangement of spaces comply with the VTP so that it meets the needs of the Owner's clients and others that will use the space?	[-5 to +5]
Aesthetics	<b>Visual Appeal:</b> Does the completed Work provide the visual appeal required by the VTP?	[-5 to +5]
	<b>Cultural Expression:</b> Does the completed Work express the Owner's culture and uniqueness as stated in the VTP?	[-5 to +5]
Sustainability	<b>Sustainable Design Objective Achieved:</b> Has the Sustainable Design Objective stated in the VTP been achieved?	[-5 to +5]
	<b>Sustainable Design Innovation:</b> Does the completed Work provide sustainable design solutions that are innovative?	[-5 to +5]
<b>QUALITY RATING:</b>		[-50 to +50]

**9.5.2 PMT Assessment.** The PMT will meet no later than 14 calendar days after finalizing the Project Cost and Schedule Adjustments to attempt to agree upon a Quality Adjustment. If the PMT does not reach consensus within 7 calendar days after the first Quality Adjustment meeting, any Party may demand in writing that the adjustment be made by Independent Assessment under Section 9.5.3.

**9.5.3 Independent Assessment.** During the Criteria Design Phase, the Parties will appoint an Independent Assessor to make the Quality Adjustment, if required. If the Parties failed to appoint an Independent Assessor or the Independent Assessor is no longer willing or able to make the assessment, and the Parties cannot agree upon a replacement Independent Assessor, then the Quality Assessment will be made by an arbitrator appointed using the procedures in section 15.7.

**9.5.3.1** Within 30 calendar days after demand for Independent Assessment, the Parties will meet with the Independent Assessor or arbitrator to present any information a Party believes will aid the Independent Assessor. The Party presentation will not exceed one hour per Party. The Independent Assessor or arbitrator will be provided with a copy of this Agreement, will be given an opportunity to inspect the project, and may request any other information the Independent Assessor or arbitrator believes necessary to make the assessment.

**9.5.3.2** Within 7 calendar days after the assessment hearing, the Independent Assessor or arbitrator will issue a written decision stating the number of Quality Rating Points awarded (positive or negative) and a brief statement setting forth the rationale for the award. The Independent Assessor's or arbitrator's award is final and not subject to review or modification.

## **10. PAYMENT**

**10.1 Allowable Costs.** The Architect's Allowable Costs are set forth on **Exhibit H**. The Contractor's Allowable Costs are set forth on **Exhibit I. Cost Reimbursable Subcontractors** Allowable Costs will use the same categories as those for the Architect and Contractor, respectively.

**10.2 Periodic Payments.** Payment Applications will be prepared by the Architect and Contractor in the format agreed by the PMT and submitted for approval no later than the 25th day of the month. The period covered by each Payment Application will be one calendar month. The Payment Application will include all Allowable Costs earned or projected by the Architect and Contractor for that calendar month. The PMT will approve all or part of the Payment Application within 5 business days of receipt. The Owner will make payment for all approved amounts within 30 calendar days.

**10.3 Final Payment.** The Owner will make Final Payment 30 calendar days after Final Completion of the Work, receipt of all close-out phase deliverables and determination of the ICL adjustment per Section 9. The PMT must approve the Final Payment Application. Final Payment does not waive Owner's right to later object to defective design, materials or workmanship; waive any warranty rights the Owner may have; or release any Party from its indemnification obligations set forth in Section 13.4.



**10.4 Materials and Equipment.** Periodic Payment Applications may include materials and equipment delivered and suitably stored on-site for subsequent incorporation into the Work or, with PMT's prior approval, suitably stored off-site at a bonded or insured warehouse that is approved by the PMT. The risk of loss will remain on Contractor for all materials and equipment stored off-site. Payment for materials and equipment stored on or off site will be conditioned upon compliance with procedures that protect the Owner's interest and establish Owner's title to the materials and equipment. Stored material costs will include the costs of applicable insurance, storage, and transportation to the site, if stored off-site. Contractor will not make advance payments to subcontractors or suppliers for stored materials or equipment without PMT approval.

**10.5 Supporting Documents.** Each Payment Application will be accompanied by the following:

10.5.1 Sufficient documentation supporting the Allowable Costs claimed in the Payment Application including, without limitation, receipts, purchase orders, contracts, time reports and other documentation reasonably required by the PMT or the Owner.

10.5.2 A duly executed conditional waiver and release forms complying with applicable law covering all services and work performed during the billing period by the Architect, Contractor, subcontractors, consultants, suppliers or any other party entitled to record or serve a stop notice or mechanics' lien.

10.5.3 Certification that Architect and Contractor have no knowledge of any recorded stop notices or mechanics' liens with respect to the Work performed by others and that all subcontractors, consultants and vendors have been paid to date or will be paid with the proceeds for Work covered under the Payment Application.

10.5.4 In addition to the above, within 5 calendar days after receipt of Final Payment, the Architect and Contractor will provide Owner a duly executed unconditional waiver and release form complying with applicable law covering all services and work performed by subcontractors, subconsultants or other suppliers or any other party entitled to record or serve a stop notice or mechanics' lien with respect to any services, work, equipment or material rendered or provided for the Project.

**10.6 Right to Withhold.** Owner may refuse to approve a Payment Application or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of a prior Payment Application to the extent the PMT determines, or the Senior Representatives determine by majority vote, is necessary to protect Owner from loss arising out of or resulting from:

10.6.1 Nonconforming Work not remedied.

10.6.2 Third-party claims filed against Owner or the Project or reasonable evidence indicating probable filing of the claims, unless security acceptable to Owner is provided.

10.6.3 Failure of Contractor to make timely payments to subcontractors or for labor, materials or equipment.

10.6.4 Failure of Architect to make timely payments to its consultants for design services rendered in connection with the Project.

10.6.5 Damage to Owner or Owner's separate contractors if the Contractor, Architect, or any entity working directly for Contractor or Architect is potentially liable.

10.6.6 Failure to carry out the Work in accordance with the Implementation Documents.

10.6.7 Insufficient documentation, erroneous estimates of value of the Work performed or other incorrect statements in the Payment Application.

**10.7 No Right to Stop Work.** If a Party disputes any determination with respect to any Payment Application, the Party will nevertheless expeditiously continue to prosecute the Work, provided amounts not in dispute are timely paid. Owner will not be deemed to be in default or breach of this Agreement for withholding of any payment under Section 10.6.

**10.8 Reliance.** In taking action on Payment Applications, the PMT may rely on the accuracy and completeness of the information furnished by the Architect and Contractor and will not be deemed to represent that the PMT has made: (i) a detailed examination, audit or arithmetic verification of the documentation or supporting data; (ii) exhaustive or continuous on-site inspections; or (iii) examinations to ascertain how or for what purposes the Architect and Contractor have used amounts previously paid.

**10.9 Warranty of Title.** Contractor warrants that title to all construction work, materials and equipment covered by a Payment Application, whether incorporated in the Project or not, will pass to Owner at the time of payment by Owner, free and clear of all liens, claims, security interests or encumbrances in favor of Contractor, subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials or equipment relating to the work. Contractor will defend, indemnify and hold Owner harmless from any and all liens, claims, security interests or encumbrances filed by Contractor, subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the work, provided Contractor has received payment pursuant to this Agreement.

**10.10 No Waiver.** Payment by Owner will not constitute approval or acceptance of any item of cost in the Payment Application or final acceptance of approval of that portion of the Work to which the partial payment relates.

**10.11 Payments to Subcontractors.** Neither Owner, nor Architect will have an obligation to pay nor to see to the payment of money to a subcontractor or supplier except as may otherwise be required by law.

**10.12 Payment to Consultants.** Neither Owner, nor Contractor will have an obligation to pay nor to see to the payment of money to a consultant except as may otherwise be required by law.

**10.13 Audit Right.** The Owner, at its expense, may audit Architect's or Contractor's financial information related to (i) direct costs, profit and overhead calculations provided in establishing the VTC; (ii) any application for payment or calculation of amounts owed by Owner; and/or (iii) subcontractor or consultant costs submitted as Allowable Costs. The PMT

member being audited will reasonably cooperate and make its financial information available for inspection and audit.

**10.14 Disputes.** Claims for payment including, without limitation, those regarding amounts withheld pursuant to Section 10.6 will be resolved under Section 14.

## **11. CONTRACT TIME**

**11.1 Contract Time.** The Contract Time is the time allotted in the VTS to achieve Substantial Completion [Final Completion] of the Work. The Substantial Completion and Final Completion dates may only be extended by mutual agreement of the PMT through the Change Order process for Permitted Delays.

**11.2 Validated Target Schedule.** The VTS will be based on critical path or network precedence methodologies coordinating all major components of the design and construction work including governmental agency deadlines, procurement, submittal and long lead item schedules, construction work by trade, and Owner's occupancy requirements projecting a milestone Substantial Completion Date and Final Completion Date.

**11.2.1 Monthly Project Schedules.** The Contractor will provide Project schedule updates to the PMT indicating the status of construction and the projected milestone dates for Substantial Completion and Final Completion. If the Project schedule update indicates that the milestone dates established in the VTS may be exceeded, the Contractor will submit a recovery plan to the PMT pursuant to Section 11.3.

**11.2.2 Interim Project Schedules.** The Contractor, with the assistance of the its subcontractors and suppliers, will also use Interim Project Schedules, that provide a 3 week look ahead for the performance of upcoming design and construction requirements and document all construction work performed during the prior 3 week period. The Interim Project Schedule is to be used as a working tool to evaluate any schedule slippages and collaborate on methods for labor efficiency. Work flow will be scheduled based on providing information, material and resources as required by the user of the information, material or resources, optimizing the flow of Work through the Project and reducing bottlenecks and activity that will not advance the Project schedule.

**11.3 Schedule Slippage.** The Contractor and/or Architect will notify the PMT within 48 hours of any slippage in the VTS as a result of its Work and must submit a detailed recovery plan for evaluation and approval by the PMT.

**11.4 Acceleration.** The PMT may determine that it is in the best interest of the Project to direct certain subcontractors to work overtime in an attempt to recapture any delays to the VTS.

**11.5 Permitted Delays.** If the Architect or Contractor are delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of their Work by: (i) delays in issuance of governmental permits; (ii) **Adverse Weather**; (iii) a **Force Majeure Event**; (iv) **Unforeseen and Differing Site Conditions**; (v) a PMT Directive; or (vi) an **Owner's Directive** and the critical path of the VTS is impacted extending the Substantial Completion [Final Completion] date, then the Architect and Contractor will be entitled to an extension of the Contract Time for the same period of time that the Substantial Completion [Final Completion] date was delayed provided that the delay, obstruction, interference or hindrance was not caused, in whole or in part by any fault, neglect, act or omission of the Architect, Contractor, or their respective employees, subcontractors, suppliers, or consultants. Notwithstanding the above, the Architect and Contractor will not be entitled to an

extension of time unless they notify the PMT in writing of the cause or causes of the delay, obstruction, hindrance or interference within 3 business days of the commencement of the delay and demonstrate that the delay could not have been anticipated or avoided and was not concurrently caused by a condition, event or occurrence that is not a Permitted Delay..

**11.6 Unforeseen and Differing Site Conditions.** Any Party who claims that a Differing Site Condition exists must notify the PMT in writing within 3 business days of first discovering the conditions and before the condition is disturbed. The PMT will promptly investigate whether a Differing Site Condition exists and the effect, if any, on VTS and/or VTC and render its decision pursuant to Section 4.7. Claims by any Party in opposition of the findings must be made within 21 calendar days after the PMT has given notice of its findings. If the Parties cannot agree whether the conditions are materially different or cannot agree on an adjustment in the VTC and/or VTS, the matter will be subject to the Dispute Resolution Process under Section 15.

## **12. CHANGE ORDERS**

**12.1 Change Orders.** Change Orders will be used to document changes to the VTP, VTC, VTS, or ICL. Change Orders are limited to the following conditions:

**12.1.1 PMT Directives.** Additional Work that is not reasonably necessary to meet the intent of the Project Objective or elimination of Work that was reasonably necessary to meet the intent of the Project Objective, which affects the VTP, VTC or VTS and is agreed to by the PMT.

**12.1.2 Permitted Delays.** Permitted Delays pursuant to Section 11.5; and

**12.1.3 Owner's Directives.** An Owner's Directive to the extent that it results in changes to the Work that increase the VTC or impact the critical path of the VTS and is disputed by the Architect or Contractor after Senior Representative decision under Section 4.7;

**12.2 Change Order Procedure.** Any Party may request a Change Order to this Agreement by providing the PMT with a written Change Order request (**Change Order Request**) setting forth the nature of the change, the reason for the change, and the effect, if any, on the VTC, VTS, VTP, or ICL. All Change Order Requests must be submitted to the PMT within [redacted] calendar days of the discovery of the occurrence of the event or circumstance necessitating the change. Failure to submit the Change Order within this deadline waives and releases any claim for a Change Order related to the facts or circumstances that allegedly support the Change Order Request. The PMT will promptly review the Change Order Request and (i) accept the request, (ii) accept the request in part or with modification, (iii) request additional information or perform its own investigation, or (iv) deny the Change Order Request. If a Change Order Request is accepted by the PMT, then a Change Order will be executed by the PMT members formally modifying this Agreement. If the PMT does not act on a Change Order Request within [redacted] days of its submission, it will be deemed denied. Any disagreements with regard to a Change Order Request will be determined in accordance with the PMT procedures set forth in Section 4.7.

### 13. LIABILITY ALLOCATION

**13.1 Waiver of Liability.** The Parties waive and release all claims and liability between and among each other except for the **Excluded Claims** set forth in Section 13.2. However, this liability waiver is void as to any Party that is in **Willful Default** of this Agreement.

**13.2 Excluded Claims.** Excluded claims include the following:

**13.2.1 Warranty Claims.** Contractor and its subcontractors and suppliers will remain liable for all warranty obligations under Section 15.

**13.2.2 Project Performance.** Claims for (i) personal injury or property damage caused by the failure of the construction work to be executed in conformance with the Implementation Documents; (ii) personal injury or property damages caused by negligent errors or omissions in the design of the Project or its component systems; and (iii) claims for the repair, modification, or replacement of components or systems that do not meet the functional and performance requirements of the Implementation Documents and the Project Objective.

**13.2.3 Non Payment.** Failure of Owner to pay undisputed amounts due under this Agreement.

**13.2.4 Indemnity.** Claims to enforce indemnification obligations set forth in Section 13.4.

**13.2.5 Insurance.** Claims for failure to procure the insurance required under Section 13.3.

**13.2.6 Dispute Resolution.** Claims to enforce the Dispute Resolution Provisions set forth in Section 14 and civil actions necessary to enforce mechanics' liens and/or stop notice rights.

**13.3 Insurance.** Owner, Architect and Contractor will purchase and maintain insurance of the type and in the amounts set forth in **Exhibit J**. The Parties agree that their respective insurance companies will have, to the extent available and to the extent coverage is not impaired, no right of subrogation against any other Party on account of any losses arising under insurance maintained or required to be maintained pursuant to this Agreement. Contractor will name the Owner and Architect as additional insureds under its Commercial General liability policy. The Owner, Contractor and its subcontractors will be insureds under the Builder's Risk insurance policy.

**13.4 Indemnification.**

**13.4.1 Contractor's Indemnification.** The Contractor will defend, indemnify and hold the Owner and Architect harmless from and against any and all claims, losses, damages, liabilities and expenses (including legal, expert witness and consulting fees and costs) by any third parties (including indemnifying Party's employees), arising out of, or resulting from, bodily injury (including death) or damage to tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the indemnifying Party or anyone directly or indirectly employed by it or anyone for whose acts it may be liable.

**13.4.2 Owner's Indemnification.** The Owner will defend, indemnify and hold the Architect and Contractor harmless from and against any and all claims, losses, damages, liabilities and expenses (including legal, expert witness and consulting fees and costs) alleged by their respective employees arising out of, or resulting from, bodily injury (including death) but only to the extent caused by the negligent acts or omissions of the indemnifying Party or anyone directly or indirectly employed by it or anyone for whose acts it may be liable.

**13.4.3 Architect's Indemnification.** The Architect will defend, indemnify and hold the Owner and Contractor harmless from and against any and all claims, losses, damages, liabilities and expenses (including legal, expert witness and consulting fees and costs) alleged by their respective employees arising out of, or resulting from, bodily injury (including death) but only to the extent caused by the negligent acts or omissions of the indemnifying Party or anyone directly or indirectly employed by it or anyone for whose acts it may be liable.

**13.4.4 Patent and Copyright.** Contractor and Architect represent and warrant that designs used by each for the Project do not and will not violate any patents, copyrights or trademarks. Contractor and Architect each indemnify Owner from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, attributable to patent, copyright or trademark violations from the use of infringing patents, copyrights or trademarks in violation of applicable law.

**13.4.5 Lien Free Obligation.** If any subcontractor, supplier or consultant record or file, or maintain any action on or respecting a claim of mechanics' lien, stop notice or lis pendens, relating to the Work, the Contractor and/or Architect will immediately procure, furnish and record appropriate statutory release bonds, which will extinguish or expunge the mechanics lien, stop notice or lis pendens, provided that the Owner has paid the Contractor and/or Architect for the Work and Contractor and/or Architect failed to pay its respective consultants, subcontractors or suppliers. If Architect or Contractor fail to make payments to its respective consultants, subcontractors and suppliers as required by the payment provisions of this Agreement, the Owner may settle or bond over those claims or take such other actions necessary to prevent a default under any other agreement affecting the Project, and Contractor and Architect will upon written demand reimburse Owner for any substantiated amounts that were necessary to satisfy Architect's and/or Contractor's obligation to satisfy, discharge or defend against any such claim of lien or stop notice. The Architect and/or Contractor will indemnify and hold the Owner harmless from any claims filed by their respective consultants, subcontractors or suppliers for foreclosure on mechanics liens or stop notices provided the Owner has made payment to the Architect and Contractor for such services and/or work. Nothing contained in this Section will be construed to require the Contractor or Architect to provide release bonds for any valid mechanics lien, stop notice, lis pendens or other claim due to non-payment by Owner or a valid dispute between the Parties.

**13.5 Site Safety.** The Contractor is solely responsible for training, initiating, maintaining and supervising safety precautions and programs in connection with performance of the construction work. The Contractor will defend, indemnify and hold the Owner and Architect harmless from and against all demands, causes of action and other claims for damage, loss and expense, including but not limited to attorneys' fees, resulting from bodily injury, sickness, disease, death, injury and/or tangible property damage (other than to the Work itself) caused, in whole or in part, from actual or alleged failure to train, initiate, maintain or supervise safety precautions and programs in connection with construction of the Project.

**13.6 Joint Defense Approach to Third Party Claims.** Because the Parties have a similar interest in the outcome of the Project, the Parties will endeavor to resolve any third party claims (including subcontractor and consultant claims) in accordance with a joint defense agreement. To the greatest extent possible, the Parties will jointly address, investigate, manage, defend, settle and/or otherwise resolve all third party claims arising from or related to the Project or this Agreement subject to applicable legal and ethical considerations including the need for independent legal counsel. If the Parties determine that legal counsel is required to settle the claim, and that it is in their best interest to provide a joint defense, the Parties will execute any required conflict waivers associated with using the same legal counsel and enter into a joint defense agreement establishing the procedures and rights of the Parties.

## **14. WARRANTY**

**14.1** Contractor warrants all construction work for a period of 1 year commencing from the Substantial Completion Date of the Project or the date of repair, whichever is later, and for longer periods specified in the Implementation Documents for certain equipment manufacturers or suppliers. The Contractor will repair or replace any and all deficient or defective construction work, provided that the work was properly maintained and/or used, together with any other work that is displaced during repair or replacement without expense to Owner. Contractor's warranty excludes improper or insufficient maintenance, improper operation, normal wear and tear and normal usage. Contractor will procure all subcontractor and manufacturer express warranties required under the Implementation Documents on the Owner's behalf and will transmit the warranties to Owner before Final Completion and Project close-out. Establishment of the 1 year express warranty period for correction of construction work relates only to the specific obligation of the Contractor to correct defective or non-conforming work, and has no relationship to statute of limitations periods for legal claims arising from this Agreement.

## **15. DISPUTE RESOLUTION**

**15.1 Scope.** All Disputes between the Parties arising from or in connection with this Agreement will be resolved as provided in this Section

**15.2 Continued Performance.** At all times during the pendency of a Dispute or a Dispute Resolution Proceeding, Work will continue. Provided the Owner continues to comply with its obligations under this Agreement, the parties to the Dispute Resolution Proceeding will continue to comply with any Owner's Directives.

**15.3 Disputes.** The Parties have waived all claims between themselves, subject only to those exceptions set forth in Section 13.2 and the indemnification provisions in Section 13.4. Nonetheless, issues may arise with regard to such exceptions or to the interpretation of this Agreement that require resolution between the Parties. Only the following claims may be made pursuant to this Section as all other claims, disputes and matters in controversy have been waived by the Parties:

15.3.1 Claims related to determination of the dates for Substantial and Final Completion;

15.3.2 Claims related to application of the Incentive Compensation Layer;

15.3.3 Claims for Allowable Costs;

- 15.3.4 Claims for unresolved Change Order Requests under Article 12;
- 15.3.5 Claims for indemnification under Section 13.4;
- 15.3.6 Claims resulting from termination or suspension under Article 16; and
- 15.3.7 Third party claims by subcontractors or consultants.

**15.4 Notice.** A Party may initiate the dispute resolution procedures stated in this Section by providing all PMT members with written notice of a potential Dispute which specifies in reasonable detail the basis of the Dispute and the remedy sought. Notice of a Dispute will occur within \_\_\_\_\_ calendar days following the occurrence of the event or condition or circumstance giving rise to the Dispute. Under no circumstances will a claim be made if it is barred by applicable statutes of limitation and/or repose.

**15.5 Senior Representative Meeting.** If the PMT is unable to resolve the Dispute, any party may request Senior Management Representatives to meet with the PMT and attempt in good faith to resolve the Dispute. Senior Management Representative from each PMT member will then review the claim in detail and meet face-to-face to discuss and resolve the matter (**Senior Representative Meeting**). This Senior Representative Meeting will occur no later than 14 calendar days after the PMT has declared an impasse in its efforts to resolve the dispute, unless the Parties agree upon a longer period of time. This meeting will be for the express purposes of: (i) exchanging and reviewing all pertinent non-privileged documents and information relating to the matters and issues in dispute; (ii) freely and candidly discussing each party's position; and (iii) reaching agreement upon a reasonable, compromise resolution of the Dispute. If during a Special Meeting a negotiated settlement is reached, the terms of the settlement will be recorded in a written Change Order signed by the parties.

**15.6 Mediation.** If the dispute is not resolved by the conclusion of the Senior Representative Meeting, any party may request mediation of the Dispute in writing. If the Parties agrees to mediate, the mediation will be conducted by a third party mediator who is acceptable to all PMT members and experienced in resolving design and construction-related disputes on projects of similar type, sizes, quality and complexity. The mediator will be given written statement(s) by each Party and may inspect the Project site, Project Objective, Implementation Documents and other information reasonably required to understand the factual and legal basis of the Dispute. The mediator will schedule a mediation session within \_\_\_\_ days of the PMT's agreement to mediate. The mediation will be attended by representatives from each Party who has authority sufficient to resolve the Dispute, together with any other Party who has an interest in the Dispute. The cost of the mediation will be borne equally by the Parties involved in the Dispute. The mediation proceeding will be confidential and not admissible except as provided below. The mediation process must be completed within 60 calendar days of the initial PMT meeting regarding the Dispute, unless all Parties involved in the Dispute extend the mediation period. If, as a result of the mediation, a negotiated settlement is reached, the Parties will enter into a written settlement agreement that will be enforceable in a court of competent jurisdiction.

**15.7 Arbitration.** All Disputes arising out of or related to this Agreement that are not resolved will be subject to binding arbitration. Any party to the Dispute may serve the other Parties a written demand for arbitration within 30 calendar days after conclusion of mediation required under Section 15.6 or within the applicable statute of limitations if the claim were to be litigated, whichever is sooner. Disputes involving claims of \$1,000,000 or less will be subject to



arbitration before a single arbitrator. Those involving claims in excess of \$1,000,000 will be subject to arbitration before a panel of 3 arbitrators. Within 15 calendar days after service of a demand for arbitration, the Parties or their attorneys will meet and confer in an attempt to select an arbitrator or arbitrators. If the Parties fail to reach agreement, the Party who served the demand for arbitration will file the demand with the American Arbitration Association and the Dispute will be resolved in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The parties further agree that this arbitration may include, by consolidation or joinder, consultants to Owner or Architect and subcontractors or suppliers to Contractor. The award rendered by the arbitrator or arbitrators will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

## **16. DEFAULT, SUSPENSION AND TERMINATION**

**16.1 Termination for Convenience.** The Owner may terminate this Agreement for convenience upon 30-days written notice at any time before 75% completion of construction of the Project.

**16.1.1 Notice.** The notice will state the extent and effective date of the termination, and on the effective date the PMT members affected will (i) to the extent directed, stop Services under this Agreement; (ii) terminate or assign all subcontract and consulting agreements to Owner unless otherwise directed; (iii) take other actions as may be necessary or requested by Owner to protect and preserve the Work and any other property in a PMT member's possession, in which Owner has or may acquire an interest.

**16.1.2 Payment Upon Termination for Convenience.** If the Owner terminates this Agreement for convenience, the Owner will pay the Architect and Contractor the (i) Allowable Costs incurred by the Architect and Contractor prior to the effective date of termination; (ii) all reimbursable expenses related to the termination and demobilization; and (iii) a portion of the ICL per Section 8 based on the percentage of the Project completed, as determined by the Independent Assessor, prior to termination. In no event will the total amount paid to the Architect and Contractor exceed the VTC. Any payment under this Section is subject to Owner's receipt of all requested statutory lien waiver and release forms as well as other documentation required for payment under Section 10.5, subject to withholding by Owner for reasons and in the manner provided in connection with Final Payment. Any dispute over the amount to be paid upon termination will be resolved in accordance with the Dispute Resolution Procedures set forth in Section 14.

**16.2 Suspension.** The Owner may, without cause, order the PMT to suspend, delay or interrupt the Project for as long as the Owner may determine. In the event the Project is suspended pursuant to this Section, the VTS will be extended for a period reasonably caused by the suspension. In the event the suspension results in an increase in the cost of the Project, the VTC will also be increased by the amount reasonably caused by the suspension. No adjustment will be made to the extent that performance was suspended, delayed or interrupted by acts or omissions of the Architect, Contractor, or any entity or persons working directly for either of them and for whom they are responsible. In the event the suspension of the Project is longer than 45 consecutive days, the Agreement will terminate automatically unless the Owner provides for reinstatement.

**16.3 Owner Termination for Cause.** The Owner will have the right to terminate this Agreement, or a Party to this Agreement, upon 15 calendar days written notice, and an

additional 15 calendar days to cure, in the event of any of the following. The effective date of termination will be 30 calendar days from the date of the Notice.

16.3.1 Failure of one or more Parties to this Agreement to provide adequate labor and resources to achieve the VTS and VTC;

16.3.2 Refusal by a Party to rectify Work that is not in accordance with this Agreement, the Project Objective, and Implementation Documents;

16.3.3 Failure of a Party to work cooperatively with the PMT for the benefit of the Project;

16.3.4 Failure of the Architect and/or Contractor to properly pay their respective subcontractors, suppliers and consultants;

16.3.5 Bankruptcy or insolvency of a Party to this Agreement;

16.3.6 Acts of Willful Default;

**16.4 Architect/Contractor Termination for Cause.** The Architect and/or Contractor may terminate this Agreement for cause upon 15 calendar days notice and an additional 15 calendar days to cure if any of the following occur: (i) The Owner fails to pay undisputed amounts due pursuant to this Agreement; (ii) Owner's suspension of the Project under Section 16.2 exceeds 45 consecutive days; or (iii) Willful Default.

16.4.1 **Effective Date.** Termination is effective 30 days after the date on the notice.

16.4.2 **Payment.** If the Agreement is terminated, the Owner will pay the Architect and Contractor the (i) Allowable Costs incurred by the Architect and Contractor prior to the effective date of termination; (ii) all reimbursable expenses related to the termination and demobilization; and (iii) a portion of the ICL per Section 8 based on the percentage of the Project completed, as determined by the PMT or the Independent Assessor, if the PMT is unable to agree, prior to termination. Any payment under this Section is subject to Owner's receipt of all requested statutory lien waiver and release forms as well as other documentation required for payment under Section 10.5. Any dispute over the amount to be paid upon termination will be resolved in accordance with the Dispute Resolution Procedures set forth in Section 14.

## **17. MISCELLANEOUS PROVISIONS**

**17.1 License.** The Architect and Contractor represent that they are properly licensed in the Project State to perform the Work required under this Agreement and the Implementation Documents, and that each Party's business entity, is in good standing and qualified to do business in the Project State.

**17.2 Standard of Care.** The Architect will perform its services using that skill and care used by other competent Architects skilled in designing projects similar to this Project. Contractor will perform all Work using its best skill and attention and all Work will be performed in a timely workman-like manner consistent with the degree of care and skill customarily exercised by contractors constructing facilities of this size, and complexity in the location where the Project is

situated. All Work performed in connection with this Agreement must be in accord with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities. No party assumes any responsibility for tasks outside of its professional expertise or capability and outside of the scope of its license.

**17.3 Notices.** Any notice required to be given by this Agreement will be in writing and deemed effective upon personal delivery, or 1 business day after being sent via registered or certified mail return receipt requested or by overnight commercial courier providing next business day delivery and addressed to the following respective parties:

**Owner:**

[name]  
[address]  
[city]

**Architect:**

[name]  
[address]  
[city]

**Contractor:**

[name]  
[address]  
[city]

**17.4 Governing Law.** This Agreement will be governed and construed in accordance with the laws of the Project State without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction.

**17.5 Commencement of Statute of Limitations.** Causes of action between the Parties to this Agreement pertaining to acts or failures to act will be deemed to have accrued and the applicable statutes of limitations will commence to run not later than either the date of Substantial Completion for the Project, or the date of a recorded Notice of Completion, whichever is later.

**17.6 No Solicitation of Employees.** Owner will not solicit or employ any of Contractor's or Architects personnel for the duration of the Project and then for a period of 1 year after Final Completion.

**17.7 Assignment.** The Parties respectively bind themselves, their partners, successors, assigns and legal representatives to the other Parties to this Agreement. Neither Owner, Contractor or Architect will assign this Agreement without the written consent of the other Parties.

**17.8 Severability.** The terms and conditions of this Agreement will be interpreted in accordance with their plain meaning, and not strictly for or against any Party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this

Agreement. If a court of competent jurisdiction finds any term or provision of this Agreement to be void or unenforceable for any reason the term or provision will be deemed severed, and the remainder of the Agreement will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.

**17.9 No Third Party Beneficiaries.** Nothing contained in this Agreement creates a contractual relationship with, or a cause of action in favor of a third party against, either the Owner, Architect or Contractor. The Parties acknowledge and agree that the obligations of the Architect and Contractor are solely for the benefit of the Owner and are not intended in any respect to benefit any third parties.

**17.10 Rights and Remedies.** Duties and obligations imposed by the Implementation Documents and the rights and remedies available thereunder will be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law or in equity.

**17.11 Survival.** The following provisions will survive the termination or expiration of this Agreement: (i) Waiver of liability under Sections 13.1 and 13.2; (ii) Insurance requirements under Section 13.3 and **Exhibit K**; (iii) Indemnity provisions under Section 13.4; (iv) warranty obligations under Section 14; and (v) the Dispute Resolution Process under Section 15.

**17.12 Waiver.** No action or failure to act by a Party will constitute a waiver of a right or duty afforded them under this Agreement, nor will such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, unless specifically agreed to in writing by the Parties.

**17.13 Execution.** By executing this Agreement, each of the individuals represent that he or she has authority to bind the Party on whose behalf his or her execution is made.

**17.14 Counterparts.** This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original. When proving this Agreement, it will only be necessary to produce or account for the counterpart signed by the party against whom enforcement is sought.

**17.15 Exhibits.** The Exhibits referred to in this Agreement and listed below are incorporated into this Agreement by reference as though set forth in full:

Exhibit A	Definitions
Exhibit B	Project Objective and ICL
Exhibit C	Contract Task Matrix
Exhibit D	Staffing Plan
Exhibit E	Cost Management Strategy
Exhibit F	PMT Work Plan
Exhibit G	BIM Work Plan
Exhibit H	Architect's Allowable Costs
Exhibit I	Contractor's Allowable Costs
Exhibit J	Insurance

**17.16 Entire Agreement.** This Agreement constitutes the entire integrated agreement between the Parties and supersedes all prior oral and written negotiations, representations or agreements by the Parties with respect to this subject matter.

This Agreement is entered into as of the Effective Date first written above.

**Owner**

**Architect**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Contractor**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor State License No.: \_\_\_\_\_