

TERMS AND CONDITIONS FOR CONTRACT FOR SERVICES TO NAPROTEC, LLC

1. DEFINITIONS. As to this Contract for Services: (a) "Contract" and "Contract Documents" shall include those documents attached hereto as Exhibit A setting forth the Scope of Work, these Terms and Conditions, all other documents referenced in the attached Scope of Work that are furnished to Contractor prior to Contractor's acceptance of the Contract (such as Purchase Orders, Meeting Minutes, Drawings, Specifications, Addenda issued prior to execution of this Contract), and Modifications, if any, issued after execution of the Contract in accordance with the Contract; (b) a "Modification" is (1) a written amendment to the Contract signed by both parties, including but not limited to a Construction Schedule or Project Schedule prepared by Contractor and approved by Owner in writing (2) a Change Order, (3) a Construction Change Directive, if any, or (4) a written order for a minor change in the Work issued by Owner; unless specifically enumerated in the Contract, the Contract Documents do not include other documents such as bidding requirements, including advertisements or invitations to bid, Instructions to Bidders, sample forms, Contractor's bid or portions of addenda relating to bidding requirements; (c) "Contractor" shall mean the general contractor, contractor, or subcontractor retained by Owner, entering into this agreement with Naprotec and such Contractor's directors, officers, employees, agents, and representatives; (d) "Job Site" means Owner's facility or facilities where the Work is performed; (e) "Owner" or "Naprotec" shall mean Naprotec, LLC, its parent, their directors, officers, employees, agents, and representatives; (f) "Subcontractor" shall be any subcontractor retained by Contractor and includes Subcontractors of all tiers; (g) "Work" shall be all construction and services, labor, equipment, and material required to perform Contractor's obligations as set forth in the Scope of Work attached hereto and includes, but is not limited to, any services, labor, construction, installation, start-up or repair work to be performed at the Job Site.

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

2. ACCEPTANCE OF CONTRACT. Contractor's acceptance of Naprotec's offer of the Contract and the Scope of Work occurs upon Contractor's written acknowledgement and acceptance of the Contract and the Scope of Work. Contractor is entitled to rely on the accuracy and completeness of the documents and attachments to the Scope of Work depicting and describing the Work to be performed by Contractor. No proposal by Contractor to add, modify or vary these terms and conditions or any other term of this Contract shall be deemed accepted by Owner unless agreed to by Contractor and Naprotec in writing. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between an Architect and Contractor, (2) between a construction manager and Contractor, (3) between an Architect and a construction manager, (4) between Owner and a Subcontractor or Sub-subcontractor or (5) between any persons or entities other than Owner and Contractor.

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

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

Contractor shall prepare and submit a "Construction Schedule" for the Work, which shall be deemed a part of the Contract Documents upon review and written acceptance by Owner. Contractor's Construction Schedule shall:

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1. not exceed time limits set forth under the Contract Documents;
2. be revised at appropriate intervals as required by the conditions of the Work or as otherwise requested by Owner;
3. be related to Owner's entire construction schedule to the extent required by the Contract Documents;
4. provide for expeditious and practicable execution of the Work; and
5. not be revised without the prior review and written approval of Owner.

Contractor's Construction Schedule shall be in a detailed precedence-style critical path management format satisfactory to Owner and Architect, if any. Contractor's Construction Schedule shall provide a graphic representation of all activities and events necessary for performance of the Work, identify each phase of construction and occupancy and set forth dates that are critical to ensure the timely and orderly completion of the Work. Contractor shall update Contractor's Construction Schedule in accordance with this paragraph or if requested by Owner. Contractor shall cooperate with Owner in scheduling and performing Contractor's Work to avoid conflict, delay in or interference with the Work of Other Contractors or the construction or operations of Owner's own forces. Contractor shall prepare and keep current, for Owner, a schedule of submittals which is coordinated with Contractor's Construction Schedule and allows reasonable time for review of submittals. Contractor shall conform to the most recent Project Schedule, including Contractor's Construction Schedule.

3. CONTRACTOR AND ITS EMPLOYEES.

- (a) Contractor shall be an independent contractor in the performance of the Work and shall not hold itself out as an agent of Owner. Contractor shall be solely responsible for the hiring and firing of its employees.
- (b) Contractor is solely responsible for the training, supervision and safety of its employees and for providing all necessary tools and equipment, including safety equipment, to do the Work.
- (c) Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not skilled, licensed or permitted, as applicable, in tasks assigned to them.
- (d) Contractor shall employ a competent superintendent or project manager(s) and other necessary supervising personnel who shall be in attendance at the Job Site during performance of the Work. The superintendent shall represent Contractor, and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall always be confirmed in writing, while other communications shall be similarly confirmed upon Owner's written request. The superintendent and all other supervising personnel retained by or on behalf of Contractor shall, at all times, be reasonably satisfactory to Owner. Contractor shall replace any supervising personnel with whom Owner may be dissatisfied promptly upon notice to Contractor by Owner.
- (e) Contractor shall take all appropriate measures to verify that all personnel performing Work at the site are legally eligible to work in the United States. Contractor shall complete, execute and maintain all forms and documentation, including a federal Form I-9, for all personnel performing Work at the site. Contractor shall not knowingly or intentionally direct or allow any of its personnel to enter the site or to perform any Work of any nature who is not legally eligible to work in the United States. Upon Owner's request and subject to Applicable Laws, Contractor shall make available to Owner the employment, qualification and training records and documentation of its personnel, including Form I-9 and other records and documentation regarding the eligibility of Contractor's personnel to work in the United States.
- (f) Contractor shall ensure that it and all its Subcontractors comply with all applicable environmentally compliant practices required by law. Contractor shall comply with all safety regulations as governed by the Occupational Safety and Health Administration ("OSHA") and others.
- (g) Contractor shall supervise and direct the Work using Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons supplying materials, equipment or other supplies or performing portions of the Work for or on behalf of Contractor or any of its Subcontractors, including subsubcontractors and equipment and materials suppliers.

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4. RESPONSIBILITY FOR SAFETY.

- (a) The presence at the Job Site of Contractor or Contractor's Subcontractors is at Contractor's risk. Contractor shall maintain strict discipline and order among its employees and employees of its Subcontractors. Contractor shall be in control of the Work site and shall be solely responsible for ensuring that the Work is performed in a safe manner. Contractor is solely responsible for the training, supervision, and safety practices of all Contractor employees. Contractor is responsible for ensuring that its employees and those of any Subcontractor understand and will execute Naprotec's written and verbal safety instructions. Because these safety instructions will be in English, particularly in the event of an emergency, Contractor must ensure that all such employees are sufficiently competent in the English language that they can comprehend written and verbal safety instructions given in English or have a translator at the Job Site. In those situations where knowledge of an applicable Safety Data Sheet ("SDS") is required, Contractor is also responsible for ensuring distribution and awareness of the SDS. Contractor shall enforce all applicable safety rules and regulations governing the Job Site, for Contractor's employees and those of Contractor's Subcontractors including all regulations of the Occupational Safety and Health Administration. Contractor is solely responsible for daily inspecting the Work site to ensure that the Work is being performed in compliance with all safety rules and regulations. Contractor shall inspect portions of the Project related to Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.
- (b) Contractor will ensure that neither its employees nor employees of its Subcontractors work more than sixteen (16) hours in any one twenty-four (24) hour period, or more than sixty-four (64) hours in any one work week, unless otherwise agreed by Owner's management.
- (c) Owner retains the right to start or stop the Work and the right to inspect the progress of the Work. The right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity. Owner also reserves the right to require that any of the employees of Contractor or its Subcontractors be removed from the Job Site when, in Owner's opinion, such action is warranted. Owner further retains the right to conduct drug tests on employees of Contractor and/or Subcontractor for cause.
- (d) From the time Contractor commences performance of the Work until the Work is substantially complete, Contractor shall take all reasonable precautions (i) for the safety of the public, all employees, and other persons on or around the Work; and (ii) necessary to prevent damage to property in connection with the performance of the Work. In an emergency threatening the safety of persons or property, Contractor may act in its discretion, without waiting for special instructions or authorization from Owner, to prevent any injury or damage to persons (including, but not limited to, employees of Owner, Contractor, Subcontractors, or members of the public), or property (including property of Owner or adjoining property).

5. SUBCONTRACTORS.

- (a) Contractor shall be as fully responsible to Owner for the acts and omissions of Contractor's Subcontractors and of persons either directly or indirectly employed by them as it is for its own acts and omissions.
- (b) Each of Contractor's Subcontractors shall assume toward Contractor all obligations and responsibilities which Contractor assumes towards Owner under this Contract. Contractor shall provide all its Subcontractors with a copy of this Contract.
- (c) Owner shall have the right to require Contractor to terminate any of Contractor's Subcontractors and to require that any of Contractor's Subcontractors promptly vacate the Job Site if the acts or omissions of a Subcontractor threaten the life or safety of persons at the Job Site.

6. CHANGES. Contractor shall strictly comply with all terms of this Contract unless a change is agreed upon in writing by an authorized representative of Owner. No course of prior dealings or usage of trade shall apply unless expressly referred to in this Contract. Owner may at any time, by written notice to Contractor, make changes within the general scope of this Contract. Contractor shall promptly make such changes, and any difference in price or time for performance resulting from such changes shall be equitably adjusted as agreed to by Contractor and Owner. Contractor shall promptly provide to Owner documentation relating to such changes in such form and detail as Owner may direct. Contractor shall have no obligation to perform changed or additional Work until Owner and Contractor have executed a written Modification stating their agreement as to the scope of the changed or additional work and the adjustment to the price and time for performance.

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7. SEPARATE CONTRACTS.

- (a) In the event this Contract is terminated for any reason, Owner reserves the right to issue other contracts in connection with the Work or other related work, including, but not limited to, the right to perform the Work or any portion thereof with its own employees or through other contractors.
- (b) Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and equipment and the performance of their work, and Contractor shall properly connect the Work with theirs. Owner shall ensure that it, and its other contractors and their subcontractors afford Contractor and its Subcontractors a reasonable opportunity for introduction and storage of their materials and equipment and performance of the Work.
- (c) Owner represents and warrants that existing structures and improvements, and work performed by others, is fit for use in the performance of the Work, and is fit to receive the Work. If the proper performance of any of the Work depends upon the work of any other contractor, Contractor shall inspect such work, not for the purpose of discovering discrepancies or defects but for the purpose of facilitating its Work. Contractor is under no duty to discover discrepancies or defects; however, Contractor shall properly report to Owner any apparent discrepancies or defects in such work Contractor discovers that render it unsuitable for proper performance as called for under this Contract. Contractor's failure to so inspect and report discrepancies and defects it discovers shall constitute an acceptance of the other contractors' work as fit and proper to receive the Work.
- (d) Should Contractor or any of its Subcontractors cause damage to the work or property of any other Contractor or to any of its Subcontractors, Contractor shall, upon notice from Owner, make every effort to resolve the dispute and settle with such other Contractor or Subcontractor prior to the initiation of any litigation. Contractor shall be required to mediate the dispute with such other contractor or subcontractor. If such other contractor or subcontractor sues Owner or initiates any other type of proceeding on account of any such damage, Owner shall notify Contractor, in which case Contractor shall defend Owner in such proceeding at Contractor's expense. Contractor further agrees to confer with its insurance company and make every effort to have Owner's preferred legal counsel identified as approved attorneys with that company, such that, in the event a dispute arises under the circumstances addressed in this section 7(d), Owner's preferred legal counsel may serve as counsel for both Contractor and Owner. However, in the event that a conflict arises between Owner and Contractor, such that Owner is required to retain its own legal counsel, then Contractor shall promptly reimburse Owner for all of Owner's attorneys' fees and costs and expenses of raising a defense against any such claims as referenced herein, including expenses, costs of suit and attorneys' fees.

8.

- (a) **Overtime Work.** Owner shall not be obligated to pay Contractor any additional compensation for any overtime work by Contractor or its Subcontractors unless Owner (i) so agrees in writing prior to the performance of such overtime work; (ii) issues a request for the performance of such overtime work; or (iii) Contractor's time for performance is constructively accelerated by events or circumstances beyond its reasonable control. If this is a lump sum contract or if Contractor is to be compensated for the portion of the Work to which such overtime work relates on a lump sum basis, Owner shall reimburse Contractor for (i) the premium portion of the hourly wages paid in connection with such overtime work and (ii) all such premium portion. If this is not a lump sum contract and if Contractor is not to be compensated for the portion of the Work to which such overtime work relates on a lump sum basis, Owner shall pay Contractor 150% of the straight time hourly wages paid in connection with such overtime work. Notwithstanding the foregoing, Owner shall not be obligated to reimburse Contractor for overtime work that, in Owner's opinion, is required for the timely performance of the Work.
- (b) **Travel Time.** Owner shall not be obligated to pay Contractor any additional compensation for travel time to or from the Job Site, whether for individuals or pieces of equipment, absent separate special written provisions included in the Scope of Work, which specifically note that they are to control over this clause of the general Terms and Conditions, and which are signed by Owner as provided in paragraph 31 below.
- (c) **Timesheets.** Timesheets, field documents or other related contractor/vendor documents shall serve only to acknowledge performance of Work and shall neither modify or alter any term of this Contract or its terms nor serve as a course of dealing to modify this Contract. For Work performed on a time and materials basis only, all such documents must be provided to Owner for review and audit on a daily basis or within one (1) business day, and the

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amounts due Contractor may be adjusted as may be appropriate based upon such audits. To the extent any conflict exists between any such document and this Contract, the terms of this Contract shall prevail, except as provided in paragraph 31.

9. CLEANUP. Contractor shall at all times keep the Job Site free from the accumulation of waste materials or debris resulting from performance of the Work. Upon completion of the Work, Contractor shall (i) remove from the Job Site and adjoining property all waste materials, debris, tools, equipment, temporary structures and surplus materials belonging to it or its Subcontractors, and (ii) leave the Job Site broom clean, unless Owner gives written instructions to the contrary. If Contractor fails to perform such cleanup, Owner may, at its option, do so and charge the cost of such Cleanup to Contractor.

10. INSURANCE.

- (a) Contractor shall not commence performance of the Work until it has furnished Owner with certificates of insurance satisfactory to Owner certifying that valid insurance policies are in effect and will remain in effect until the Work has been fully performed. Such policies shall provide for (i) Workers' Compensation insurance in statutory limits and including a provision for waiver of subrogation, unless Contractor provides evidence satisfactory to Owner of being a qualified self-insurer, (ii) Employer's Liability insurance with a combined single limit of liability of not less than \$250,000 for each person/each accident, (iii) Comprehensive General Liability Insurance (including, but not limited to, coverage for Broad Form Property Damage, Contractual Liability and Personal Injury) with a combined single limit of liability of not less than \$10,000,000 per occurrence for bodily injury and property damage, and (iv) Comprehensive Automobile Liability insurance with a combined single limit of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, if any automotive or mobile equipment is to be used in connection with the Work. Owner shall also be named as an additional insured under any Excess Liability or Umbrella Liability policies, which may also be utilized to achieve the minimum amounts of insurance under any of the foregoing insurance requirements.
- (b) Contractor agrees that, except for the Worker's Compensation insurance, **OWNER SHALL BE NAMED AS ADDITIONAL INSURED IN ALL OF THE FOREGOING INSURANCE POLICIES** with a statement to that effect set forth in the certificates of insurance furnished to Owner. Contractor further agrees that, except for the Worker's Compensation insurance, prior to the commencement of any Work by a Subcontractor, that Subcontractor shall also be required to provide evidence (i) of insurance as set out in the foregoing paragraph, and (ii) that Owner is named as an additional insured under those policies. Such certificates of insurance shall provide for 30 days' written notice to Owner of any cancellation, termination or material change in coverage. **THIS OBLIGATION IS INDEPENDENT AND SEPARATE FROM ANY DUTY TO INDEMNIFY.** Notwithstanding anything to the contrary contained herein, Contractor's obligation to name Owner as an additional insured shall extend no further than the Tennessee Insurance Code allows.
- (c) If Contractor utilizes Subcontractors in performance of the Work, Contractor shall ensure that all such Subcontractors have obtained the insurance coverage and endorsements required to be obtained by Contractor and that certificates of insurance evidencing such coverage and endorsements have been furnished to Owner before any such Subcontractor enters the Job Site.

11. CONTRACTOR'S INDEMNITY OF OWNER.

- (a) **SEPARATE AND INDEPENDENT OF ANY OBLIGATION BY CONTRACTOR TO PROVIDE INSURANCE COVERAGE WITH OWNER AS A NAMED INSURED UNDER THE RELEVANT INSURANCE POLICIES, AND TO THE FULLEST EXTENT PERMITTED UNDER THE LAW, CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER,** and its affiliates, agents, invitees and employees, and their respective personnel, successors and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, losses, demands, causes of action, lawsuits, damages, costs, actions, judgments, expenses and liabilities of every kind and nature whatsoever, including but not limited to attorneys' fees and other professionals' fees, settlements and judgments (collectively "**Losses**") claimed by any third party in any claim, demand, suit or proceeding which, either directly or indirectly, are in any way connected with or arise out of:
 - 1. Contractor's performance of the Work;

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2. Any misrepresentation by Contractor or the breach by Contractor of its obligations or warranties to Owner under the Contract;
3. The death or bodily or personal injury of, or other legally enforceable damage incurred by, any agent, employee, customer, business invitee, or business visitor or other person caused by the breach of contract, breach of warranty, negligence, misconduct or any other acts or omissions of Contractor or its personnel or Subcontractors, Sub-subcontractors or materials and equipment suppliers;
4. The damage, loss or destruction of any real or personal property caused by the breach of contract, breach of warranty, negligence, misconduct or any other acts or omissions of Contractor or its personnel or Subcontractors, Sub-subcontractors or materials and equipment suppliers;
5. Liens, encumbrances and payment and other claims relating in any manner to the Work which are asserted by Contractor, any Subcontractor, Sub-subcontractors or materials and equipment suppliers, or anyone directly or indirectly engaged by any of them or for anyone for whose acts they may be responsible; Owner may withhold payment to satisfy such liens, encumbrances or payment and other claims and, upon the written request of Owner, Contractor shall bond off or otherwise satisfy any such liens, encumbrances and payment and other claims; and
6. Claims by Contractor or its personnel, affiliates or Subcontractors, Sub-subcontractors or materials and equipment suppliers relating to any benefits normally associated with employment with Owner, including insurance, pension, health, lease cars, compensation, tax withholdings, Medicare, and social security, and any claims relating to Contractor's failure to comply with, including without limitation any claims made by or relating to:
 - (a) Contractor's personnel, affiliates or Subcontractors, Sub-subcontractors or materials and equipment suppliers;
 - (b) the Wage and Hour Act;
 - (c) the Fair Labor Standards Act;
 - (d) the Retaliatory Employment Discrimination Act;
 - (e) the Employment Retirement Income Security Act;
 - (f) the Consolidated Omnibus Budget Reconciliation Act;
 - (g) the Age Discrimination in Employment Act;
 - (h) Title VII of the Civil Rights Act of 1964;
 - (i) Section 1981 of the Civil Rights Act as amended;
 - (j) the Americans With Disabilities Act;
 - (k) the Family and Medical Leave Act;
 - (l) the Immigration Control and Reform Act of 1986 and/or
 - (m) any other applicable federal, state or local statutes, laws, ordinances, rules, regulations or orders pertaining to immigration, discrimination, wrongful discharge (actual or constructive), breach of express or implied contract, worker's compensation, compensation (including payroll, withholding, employment taxation, social security, unemployment compensation, minimum wage, overtime, unpaid wages, vacation and/or sick leave pay), intentional and/or negligent infliction of emotional distress, defamation, and/or any other cause of action.

Such indemnity shall only exist to the extent Contractor's, its officer's, agent's, representative's, invitee's, employee's and/or Subcontractors' acts or omissions give rise to such Losses or liability. This indemnity, as defined above, shall also include, but is not limited to, claims or damages brought by agents or employees of Contractor or any of its Subcontractors, damage to or destruction of property whether real, personal or otherwise (including loss of use thereof), or claims or damages arising from any other matters in any way connected with the Work, or any action on or condition of the Owner's premises created or caused by Contractor's performance of the Work.

- (b) **THE FOREGOING OBLIGATION OF CONTRACTOR TO INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER SHALL ARISE WHETHER OR NOT SUCH DAMAGE, INJURY, LOSS OR CLAIM WAS OR IS ALLEGED TO HAVE BEEN CAUSED OR CONTRIBUTED TO BY THE ACTIVE, PASSIVE, AFFIRMATIVE, OR CONCURRENT NEGLIGENCE OF OWNER. PROVIDED, HOWEVER, THAT THIS INDEMNITY PROVISION SHALL NOT APPLY TO A CLAIM BROUGHT BY OR ON**

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BEHALF OF ANY PERSON OTHER THAN AN AGENT OR EMPLOYEE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, OR ANY AGENT OR EMPLOYEE OF ANY SUCH SUBCONTRACTOR, SO AS TO REQUIRE CONTRACTOR TO INDEMNIFY OWNER AGAINST A CLAIM CAUSED BY THE NEGLIGENCE, FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT BY OWNER, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER OWNER'S DIRECT CONTROL OR SUPERVISION AT THE TIME OF THE INCIDENT. It is further acknowledged that a portion of the price to be paid to Contractor by Owner for the Work serves as consideration for Contractor's assumption of liability and Contractor's indemnity obligations under this Contract. Contractor shall defend Owner in such proceeding at Contractor's expense. Contractor further agrees to confer with its insurance company and make every effort to have Owner's preferred legal counsel identified as approved attorneys with that company, such that, in the event a dispute arises under the circumstances addressed in this section 11(b), Owner's preferred legal counsel may serve as counsel for both Contractor and Owner. However, in the event that a conflict arises between Owner and Contractor, such that Owner is required to retain its own legal counsel, then Contractor shall promptly reimburse Owner for all of Owner's attorneys' fees and costs and expenses of raising a defense against any such claims as referenced herein, including expenses, costs of suit and attorneys' fees.

- (c) **SEPARATE AND INDEPENDENT OF ANY OBLIGATION BY CONTRACTOR TO PROVIDE INSURANCE COVERAGE WITH OWNER AS A NAMED INSURED UNDER THE RELEVANT INSURANCE POLICIES, AND TO THE FULLEST EXTENT PERMITTED UNDER THE LAW, CONTRACTOR SHALL ALSO BE SOLELY RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER** from any and all liability for any citations or any orders issued against Contractor of any of its Subcontractors by OSHA or under the Occupational Safety and Health Safety Act of 1970 and related law, to the extent relating to Contractor and work performed by Contractor or any of its Subcontractors under this Contract. Contractor shall be responsible for the abatement of any such alleged violation and shall indemnify Naprotec for fines assessed commensurate with any violation of the Occupational Safety and Health Safety Act of 1970 and related law by Contractor or any Subcontractor without increases that may arise from Naprotec's violations, if any.
- (d) The provisions of this Section 11 are intended to conform to and comply the Tennessee Insurance Code, while providing indemnity to Owner to the full extent permissible by law. If any of the provisions of this Section 11 are deemed unenforceable under applicable law, the parties agree that any unenforceable portion is separable and severable from the remaining portion of this Section 11, and from all other provisions of this Contract, (ii) that such unenforceable portion, if any, does not constitute the main or essential feature of this Contract, and (iii) that the obligations of indemnification assumed by Contractor under Section 11 shall be interpreted and applied to conform in all respects with applicable law.

12. TITLE AND RISK OF LOSS. (a) As between Owner and Contractor, Owner shall have title to and bear the risk of loss for any Work which has been completed or which is in the course of construction. Owner shall have title to all equipment, tools, materials and supplies as to which (i) title has passed from the vendors thereof to Contractor; (ii) which are to be consumed or incorporated in the Work; and (iii) for which Owner has made payment to Contractor. Contractor shall bear the risk of loss for such equipment, tools, materials and supplies until they have either been consumed or incorporated in the Work. Contractor shall obtain and deliver to Owner all documents Owner deems necessary to confirm title in Owner.

(b) Contractor warrants good title to all equipment, tools, materials and supplies consumed or incorporated in the Work, except for equipment tools, materials or supplies furnished by Owner or by a third party pursuant to a purchase order contract issued by Owner to such third party.

13. LIENS.

- (a) To the extent Owner has made payment to Contractor, Contractor shall keep Owner's real and personal property free and clear of liens, claims and encumbrances arising out of or resulting from the performance of the Work by Contractor or its Subcontractors, including, but not limited to, all materialmen's and mechanics' liens in connection with labor or material furnished by Contractor or its Subcontractors. If any such lien, claim or encumbrance is filed, Contractor shall promptly cause it to be removed without cost to Owner. **CONTRACTOR SHALL PROTECT, DEFEND AND INDEMNIFY OWNER AND OWNER'S AFFILIATES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES,**

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DAMAGES, COSTS, ACTIONS, JUDGMENTS, EXPENSES AND LIABILITIES OF EVERY KIND AND NATURE WHATSOEVER (INCLUDING BUT NOT LIMITED TO, ATTORNEYS' FEES AND COSTS AND EXPENSES OF THE PROCEEDING) WHICH ARISE OUT OR RESULT FROM, EITHER DIRECTLY OR INDIRECTLY, SUCH LIENS, CLAIMS OR ENCUMBRANCES. Contractor shall defend Owner in such proceeding at Contractor's expense. Contractor further agrees to confer with its insurance company and make every effort to have Owner's preferred legal counsel identified as approved attorneys with that company, such that, in the event a dispute arises under the circumstances addressed in this section 13(a), Owner's preferred legal counsel may serve as counsel for both Contractor and Owner. However, in the event that a conflict arises between Owner and Contractor, such that Owner is required to retain its own legal counsel, then Contractor shall promptly reimburse Owner for all of Owner's attorneys' fees and costs and expenses of raising a defense against any such claims as referenced herein, including expenses, costs of suit and attorneys' fees.

- (b) Owner shall not be obligated to make final payment or pay any part of any retained percentage to Contractor until Contractor, if requested by Owner, has delivered to Owner (i) a duly executed release and waiver of liens conditioned upon final payment using the statutory form and (ii) evidence establishing to Owner's reasonable satisfaction that all labor, services, equipment and materials have been fully paid for and that all Subcontractors have been paid in full. Additionally, if this Contract provides for progress payments to Contractor, Owner may, at its option, require Contractor to furnish a duly executed interim release and waiver of liens conditioned upon payment using the statutory form and evidence of payment by Contractor for the labor, services, equipment and materials covered by any preceding progress payment.
- (c) If a preliminary lien notice is received from any of Contractor's Subcontractors or from any employee or supplier of Contractor or Contractor's Subcontractors concerning the failure of Contractor or of any of its Subcontractors to pay for any labor, services, equipment or materials furnished in connection with the Work, Owner may, at its option, pay such Subcontractor, employee or supplier directly for such labor, services, equipment or materials and deduct the amount of such payment from any amounts then or thereafter due Contractor. If the amounts then or thereafter due Contractor are not sufficient to cover such payment, Contractor shall promptly pay the difference to Owner.
- (d) If any lien affecting Owner's property remains unsatisfied, or has not been released or discharged by a bond, then after all payments have been made to Contractor in connection with this Contract, Owner may, at its option, obtain a discharge of such lien. Contractor shall promptly reimburse Owner for all reasonable costs and expenses incurred by Owner in obtaining such discharge, including, but not limited to, all payments by Owner to the party which filed the lien and all of Owner's reasonable court costs and reasonable attorneys' fees.

14. LICENSES, PERMITS AND NOTICES. Except as otherwise provided in this Contract, Contractor shall obtain and pay for all required consents, approvals, fees, licenses, permits and inspections necessary for proper execution and completion of the Work and shall give all required notices. If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, regulations, ordinances, codes, rules or regulations, Contractor shall promptly notify Owner in writing and cooperate with Owner to accomplish any necessary changes by appropriate Modification. If Contractor performs Work contrary to such laws, regulations, ordinances, codes, rules or regulations, Contractor shall assume full responsibility for such Work and shall bear all attributable costs associated with such noncomplying Work.

15. INTELLECTUAL PROPERTY RIGHTS. Contractor warrants that the purchase, use of services or Work covered by this Contract do not and will not infringe any patent, trademark, copyright, trade secret or other intellectual property right. Owner shall own all intellectual property rights resulting from any design or development work by Contractor in connection with this Contract.

For purposes of this Contract, "**Work Product**" shall refer to Architect's and Contractor's services in connection with the Work and all information and documents produced by Architect or Contractor, including without limitation all Drawings, details,

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Specifications, schematics, models, visualizations, plans, documentation, reports, information, intellectual property, CADD (Computer Assisted Design and Drafting) and other electronic files, tapes, disks, and other data or materials (whether written or electronic) as any of the same may be revised, modified, and supplemented at any time (collectively the "**Work Product**"). The Drawings, Specifications and other documents, including those in electronic form, are the instruments through which the Work to be executed by Contractor is described. Contractor may retain one record set of the Contract Documents. Neither Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Work Product, as defined herein. Owner shall own and retain all rights in and to all Work Product including without limitation all intellectual property rights.

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

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

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

16. WARRANTIES AS TO MATERIALS AND WORKMANSHIP. Unless otherwise specified in this Contract, Contractor warrants that all materials furnished under this Contract shall (i) be of good quality, (ii) be new, (iii) be free of defect, and (iv) will conform to and meet the requirements of the Contract. Contractor further warrants that all Work performed in accord with this Contract shall conform to and meet the requirements of Owner and this Contract, its specifications, samples, drawings, designs or other descriptions expressly incorporated by reference into this Contract and that same shall be performed in a good and workmanlike manner free of defects. If any material or Work does not conform to these standards, including substitutions not properly approved or authorized, Owner may consider it to be defective. If requested by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and workmanship. Without cost to Owner, Contractor shall replace any defective material and correct any defective workmanship discovered during the three-year period commencing upon completion of the Work. No inspection, test, acceptance, use or payment in connection with this Contract shall affect Contractor's obligations under this Contract, and such obligations shall survive inspection, test, acceptance, use or payment.

Contractor represents and warrants that all manufactured articles, materials and equipment constituting a part of the Work shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents. Contractor shall also collect and deliver to Owner any specific written warranties given by others.

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

17. PRICE WARRANTY. Contractor warrants that the charges for the services covered by this Contract are not less favorable than those extended to others for similar services. If Contractor charges lower prices to others for such services before it has performed all of the services covered by this Contract, Contractor shall offer to reduce the prices under this Contract proportionately. Contractor warrants that the prices shown on the front of this Contract are complete and that no additional charges of any type shall be added without Buyer's prior written consent.

18.A. APPLICATIONS FOR PAYMENT. Unless otherwise provided in the Scope of Work, Contractor may submit progress invoices once a month for Work performed that month. Payment, less any statutorily permitted retainage, is due within thirty (30) days of the receipt of any invoice for Work performed. Owner may also withhold a portion of any payment otherwise due on Contractor's account for defective Work until the Work is corrected. Any and all invoices must be submitted within sixty (60) days of completion of the Work. If Owner fails to receive any invoice within such time period, Owner may extend the payment date without penalty or loss of discount. Owner reserves the right (i) to compute payment due date of each invoice from the date on which Contractor correctly completes Contractor's portion of the transaction involved, including, but not limited, to the issuance and forwarding of a correct invoice and (ii) to add to the payment period any additional time required by Owner as a result of Contractor's failure to correctly represent the Work completed.

- (a) At least fifteen (15) days before the date established for each monthly progress payment, Contractor shall submit to the Owner an itemized Application for Payment for Work completed in accordance with the schedule of values included in any Contract Documents. Such application shall be supported by such data substantiating Contractor's right to payment as Owner or Architect, if any, may require, including without limitation copies of requisitions from Subcontractors, Sub-subcontractors and equipment and materials suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.
- (b) Such applications may include requests for payment on account of Modifications to the Work.
- (c) Such applications may not include requests for payment of amounts Contractor does not intend to pay to a Subcontractor, Sub-subcontractor or any of their respective equipment or materials suppliers.
- (d) Each application for payment shall be accompanied by partial lien waivers, in form provided by or otherwise satisfactory to Owner, for previous payments and such other documentation from Subcontractors, Subsubcontractors and equipment and their respective equipment or materials suppliers as may be reasonably required by Owner or Architect to establish the absence of any mechanics liens or other statutory liens.
- (e) Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work and, if approved in advance by Owner, for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by Contractor with procedures satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.
- (f) Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment all Work for which payment has been received from Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, Sub-subcontractors, equipment and material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

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

18.B. PROGRESS PAYMENTS.

- (a) After Owner has reviewed, authenticated and verified Contractor's Application for Payment, Owner shall make payment in the manner and within the time provided in the Contract Documents.
- (b) Contractor shall promptly pay each Subcontractor, upon receipt of payment from Owner, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such Subcontractor's portion of the Work. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.
- (c) Neither Owner nor Architect, if any, shall have an obligation to pay or to see to the payment of money to a Subcontractor or equipment or materials supplier except as may otherwise be required by law.
- (d) A progress payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- (e) Regardless of whether Contractor provides Owner with a payment bond in the full penal sum of the Contract Sum, payments received by Contractor for Work properly performed by Subcontractors and equipment and materials suppliers shall be held in trust by Contractor for those Subcontractors or equipment and materials suppliers who performed Work or furnished materials, or both, under contract with Contractor for which payment was made by Owner.
- (f) When a Subcontractor completes its portion of the Work and Owner makes payment in full on account of such portion of the Work, Contractor shall promptly submit a complete Final Release and Waiver of Liens from said Subcontractor on forms provided by or acceptable to Owner.

18.C. FINAL PAYMENT (FINAL COMPLETION)

- (a) Upon completion of the Work, Contractor shall forward to Owner a written notice that the Work is ready for final inspection and acceptance and shall also forward a final Contractor's Application for Payment. Upon receipt, Owner and Architect, if any, will promptly inspect.
- (b) Neither final payment nor any remaining retained percentage shall become due until ninety (90) days after Contractor submits to Architect and Owner through Construction Manager:
 - 1. an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
 - 2. a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner;
 - 3. a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover any period required by the Contract Documents;
 - 4. consent of surety, if any, to final payment;
 - 5. if required by Owner, other data establishing payment or satisfaction of obligations including without limitation receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner;

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6. a final sworn statement and final lien waiver, in form and substance provided by or otherwise acceptable to Owner, from Contractor duly executed and acknowledged showing all Subcontractors, Sub-subcontractors and their respective equipment and materials suppliers to be fully paid, and similar final sworn statements and final lien waiver from Subcontractors and, where appropriate, from Sub-subcontractors, and their respective equipment and materials suppliers;
 7. proof that all required certificates of testing, inspection or approval as may be required by the Contract Documents have been secured by Contractor and provided to Owner or Architect, if any;
 8. an assignment of all warranties as required by the Contract Documents;
 9. a permanent certificate of occupancy from the municipality;
 10. a marked set of Record Drawings reflecting "as-built" conditions with record information as set forth in the Contract Documents;
 11. reproducible drawings reflecting the location of any concealed utilities, mechanical or electrical systems and components; and
 12. to the extent not previously supplied, a list of the names, addresses and telephone numbers of all Subcontractors, Sub-subcontractors and equipment and materials suppliers and of any persons providing warranties.
- (c) If a Subcontractor, Sub-subcontractors or one of their respective equipment and materials suppliers refuses to furnish a release or waiver required by Owner, Contractor shall take all actions necessary to obtain such release or waiver including without limitation furnishing a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, and is not bonded over as provided in the previous sentence, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and attorneys' fees.
- (d) If, after Substantial Completion of the Work, if the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted prior to certification of such payment, if any. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. The making of final payment shall not constitute a waiver of Claims by Owner.
- (e) Acceptance of final payment by Contractor, a Subcontractor or equipment or materials supplier shall constitute a waiver of Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

19. SET-OFF. Owner and Contractor shall be entitled to set-off any amount owed by the other in connection with this Contract against any amount owed to the other or any of its affiliates. As to any party, the term "affiliates" means any corporation, partnership, trust or other entity controlling, controlled by or under common control with such party. Contractor shall not have the right of set-off.

20.A. PERFORMANCE OF THE WORK.

- (a) Time is of the essence in the performance of the Work. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Contractor shall use only skilled craftsmen who are experienced in their respective trades and the types of work involved.
- (b) Actual delays to the Work beyond the Contractor's control shall entitle Contractor to additional time within which to complete the Work, including but not limited to: failure or inability of Owner to make the Job Site available, failure or inability of the Contractor or Owner to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, delays resulting from the acts or omissions of separate contractors hired directly by Owner; delays resulting from Force Majeure events described in Section 24 of this Contract; delays occurring due to the acts or omissions of Owner. In addition to Contractor's right to an extension of its time for performance for those events set forth above, Contractor shall also be entitled to a small appropriate adjustment to its compensation, except that Contractor shall not be entitled to an adjustment to its compensation for Force Majeure events.

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- (c) If Contractor fails to perform the Work in accordance with this Contract or fails to comply with any provision of this Contract, Owner may, after seven days' written notice to Contractor and opportunity to commence cure, make good any deficiencies resulting from such failure if Contractor has not commenced doing so, and Owner may deduct from the payments then or thereafter due Contractor the cost of correcting such deficiencies. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall promptly pay the difference to Owner.

20.B. SUBSTANTIAL COMPLETION.

- (a) Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so Owner can occupy and utilize the Work for its intended use.
- (b) Substantial Completion shall not be deemed to occur, and the Work will not be considered suitable for Substantial Completion review, until all Project systems included in the Work are operational as designed and scheduled; all designated or required governmental inspections and certifications have been made and posted; a final certificate of occupancy with respect to all portions of the Work has been issued; designated instruction of Owner's personnel in the operation of all systems have been completed; all final finishes in accordance with the Contract Documents are in place; the Project is available to Owner for occupancy for use intended, subject to agreed correction and completion of Punch List items; and Contractor has submitted to Owner for review and acceptance a certificate which states that the Work has been substantially completed in accordance with the Contract Documents, all equipment, system and material warranty and guarantee certificates (including Contractors' general ten (10) year warranty and guarantee); all operation and maintenance manuals, all as-built construction drawings, all building keys and all Subcontractor, Sub-Subcontractor and Contractor, including their respective equipment and materials suppliers, waiver of lien certificates accurately reflecting all payment made up to Substantial Completion.
- (c) When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Owner shall prepare and submit to Contractor a comprehensive list of items to be completed or corrected (the "Punch List"). Contractor shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on such Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Punch List, Architect or construction manager, if any, will inspect to determine whether the Work or designated portion thereof is substantially complete. If any item, whether or not included on the Punch List, is not in accordance with Contract Documents, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification. Contractor shall then submit a request for another inspection to determine Substantial Completion. Any items discovered by Owner or Architect, if any, during the inspection which are not on the Punch List but should be included thereon shall be added and an updated Punch List will be provided to Contractor.
- (d) Contractor will complete items on the Punch List promptly after receipt of approval of the Punch List from Owner or receipt of an updated Punch List. If Contractor fails to complete all items of the Punch List within thirty (30) days, Owner will reserve the right, without further notice to Contractor, to have the remaining Work completed by any reasonable means, and the actual cost of such Punch List items will be deducted from the final payment due to Contractor.
- (e) When the Work or designated portion thereof is substantially complete, Architect or Construction Manager, if any, will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or designated portion thereof, plus one hundred eighty (180) days of uninterrupted performance or use unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.
- (f) The Certificate of Substantial Completion shall be submitted to Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate and Owner shall be provided a list of warranties which take effect.

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21. TERMINATION FOR DEFAULT. If Contractor fails to properly perform any of its obligations or warranties under this Contract, and upon seven days' written notice Contractor fails to commence cure, Owner may terminate this Contract in whole or in part, upon notice to Contractor, without incurring liability to Contractor.

22. TERMINATION FOR CONVENIENCE. Owner may terminate this Contract in whole or in part at any time without cause upon notice to Contractor. Owner's only obligation to Contractor shall be to pay (i) the documented direct costs incurred by Contractor until the effective date of termination, (ii) the documented direct costs incurred by Contractor in complying with Owner's instruction in the termination notice, including but not limited to the costs of demobilization and the costs of terminating its subcontracts, (iii) not more than 15 percent of the foregoing for overhead and profit and (iv) such other costs as Owner may approve; provided, however, that the total payments made to Contractor under this Contract, shall not exceed the total amount to which Contractor would have been entitled had there been no termination.

23. OBLIGATIONS UPON TERMINATION. In the event of any termination of the Contract:

- (a) Contractor shall execute and deliver all such documents and take all such steps, including the assignment of Contractor's contractual rights under subcontracts and all other agreements, as Owner may reasonably request for the purpose of fully vesting Owner with the rights and benefits of Contractor with respect to the Project that Owner shall have elected (or be required under this Contract) to assume responsibility;
- (b) The parties shall remain responsible for all of their respective obligations and liabilities accrued or based upon events occurring prior to the date of termination, and those obligations and liabilities shall survive the termination;
- (c) To the extent reasonably applicable, Contractor's compliance with the documentary requirements for final payment set forth herein shall be a condition precedent to Contractor's receipt of any further payment hereunder;
- (d) Contractor shall cooperate with Owner to minimize any interruption or delay in Owner's operations with respect to the Project, and if requested by Owner, Contractor shall provide reasonable transition assistance services to Owner upon terms to be mutually agreed upon by the parties.

24. CLAIMS & DISPUTES.

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

- (a) Time Limits on Claims. The parties shall make commercially reasonable efforts to make Claims within twenty-one (21) days of the occurrence of the event giving rise to the Claim, provided that Claims must be made within one (1) year after occurrence of the event giving rise to such Claim or after the claimant, exercising reasonable diligence, first knew or should have known of the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been resolved by Change Order will not be considered unless submitted in a timely manner as set forth herein.
- (b) Continuing Contract Performance. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make payments of any amounts not in dispute in accordance with the Contract Documents.
- (c) Waiver of Claims: Final Payment. The making of final payment shall not constitute a waiver of Claims by Owner.
- (d) Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. Architect, if any, will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after Owner

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has given notice of the decision. If Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to Owner for initial determination, subject to further proceedings pursuant to Section 4.8.

- (e) Claims for Additional Cost. If Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3. If Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from Architect, (2) an order by Owner to stop the Work where Contractor was not at fault, (3) a written order for a minor change in the Work issued by Architect, (4) failure of payment by Owner, (5) termination of the Contract by Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.
- (f) Claims for Additional Time. If Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. Within five (5) days from the commencement of any delay, Contractor shall submit to Owner's Representative, in writing, a notice of the delay (a "Delay Notice"). Such Delay Notice shall, at a minimum, describe the nature and cause of the delay. Contractor's failure to give such notice to Owner shall deprive Contractor of its ability to request an adjustment to the Contract Time or the Contract Sum. In the case of a continuing cause of delay, only one Delay Notice shall be necessary. The giving of such Delay Notice shall not of itself establish the validity of the cause of delay, of the extension of the time for completion or of an increase to the Contract Sum. Submission of reports and/or updates required at regularly scheduled meetings or as a part of a regularly submitted report shall not constitute such Delay Notice. Within fifteen (15) days from the commencement of any delay, Contractor shall submit to Owner's Representative, in writing, a preliminary estimate of the impact of said delay on the Project Schedule and provide a recovery plan to mitigate the delay. Within fifteen (15) days from the resolution of the delay, Contractor shall submit to Owner's Representative a claim for an adjustment to the Project Schedule and the Contractor's Construction Schedule which shall include all documentation supporting the claim. Such submittal shall include a detailed description of all changes in activity durations, logic, sequence, or otherwise in the Project Schedule and Contractor's Construction Schedule. Contractor will make all reasonable efforts to mitigate the impact of delays and resolve Contractor claims resulting from delays as quickly as possible. In no event shall Owner be required to extend the Contract Time or increase the Contract Sum for time periods or expenses incurred prior to its receipt of the Delay Notice. Neither party shall be considered to be in default or in breach of its obligations under this Contract to the extent that performance of such obligations is prevented by any circumstance of Force Majeure arising after the Effective Date. "Force Majeure" shall mean, with respect to a party's obligations, any circumstances beyond the reasonable control of such party in performing its obligations and not resulting from the fault or negligence of such party, including but not limited to: Acts of God; floods; droughts; earthquakes; storms; abnormally unfavorable weather; pestilence; lightning or other natural catastrophes; fires; epidemics; wars; riots; civil disturbance or other civil disobedience; transportation accidents, rail car shortages or other transportation delays; and embargoes. Upon the occurrence of any circumstance of Force Majeure, Contractor shall use its reasonable best efforts to continue to perform its obligations under this Contract. Contractor shall notify Owner of the steps it proposes to take, including any reasonable alternative means for performance which are not prevented by Force Majeure. In any such case, Contractor shall use all reasonable efforts to mitigate all such costs and impacts on all Project Schedules, including Contractor's Construction Schedule or the Contract Time. Contractor shall not be permitted to claim an event of Force Majeure, and no change for Contractor's benefit will arise, on account of the following:
1. vendor or supplier non-performance, except to the extent such non-performance is caused by an event of Force Majeure;
 2. Contractor's non-payment of Taxes for which it is responsible;
 3. customs procedures, except for material changes in such procedures after the Effective Date;
 4. delay in applying for and/or pursuing, or failure to obtain or maintain, any government approval not constituting a change in the Applicable Laws for which it is responsible;
 5. noncompliance with the Applicable Laws, except for changes thereof after the Effective Date;

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6. normal unfavorable weather (excluding tornadoes, hurricanes and other catastrophic weather phenomena) and other Site-related conditions not constituting Owner's site risks;
 7. delay in, or failure to, import, transport to, or store or house at the Project Site all necessary tools, equipment, materials and supplies and personnel to perform the Work, except to the extent such nonperformance may be caused by an event of Force Majeure;
 8. the unavailability at the Project Site of all necessary water and other utilities;
 9. failure to perform under this Contract by Contractor caused by its failure to engage qualified Subcontractors, to hire an adequate number of personnel or labor or to perform the work and its obligations in an efficient manner;
 10. flaws in the Work requiring Contractor or others to redesign or re-engineer any portion of the Work; or
 11. any other act of negligence or any willful or intentional acts or omissions of Contractor or its Subcontractors, Sub-subcontractors or materials or equipment suppliers.
- (g) If unfavorable weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and such abnormal weather conditions had an adverse effect on the scheduled construction.

25. RESOLUTION OF CLAIMS AND DISPUTES

- (a) Owner, Architect, if any, and Contractor agree to resolve all claims and disputes ("Claims") in accordance with this Section. Claims must be made by written notice specifying the existence and nature of the Claim provided within a reasonable time following the occurrence of the event giving rise to the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- (b) Initial Meeting. Not less than ten (10) days following receipt of such notice, the Parties shall meet and attempt to resolve such Claim at the field level (the "Initial Meeting") through discussions between both parties' respective field representatives (the "Representatives").
- (c) Second Meeting. If the Representatives cannot resolve the Claim within thirty (30) days after the Initial Meeting, then, upon the request of either party, the parties' managers, supervisors, or other designated executives (the "Executives") shall meet again and attempt to resolve such Claim (the "Second Meeting").
- (d) Meeting Procedures. At least three (3) business days prior to any meetings between the parties, including the Representatives, the parties shall exchange any relevant information that will assist the parties in resolving the Claim. Either party may elect to be accompanied at any meeting by an attorney provided that the party intending to be accompanied by an attorney shall give the other party at least five (5) days' notice of such intention.
- (e) Mediation. If the Claim is not resolved within fourteen (14) days after the Second Meeting, the parties shall submit the Claim to non-binding mediation. If the parties cannot agree on a mediator, the parties shall submit the Claim to the American Arbitration Association ("AAA") for mediation administered in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the AAA ("AAA Rules") then in effect. Not less than seven (7) days after the selection of the mediator, the parties and the mediator shall participate in a premediation conference to determine the time and place of the mediation. All fees and expenses of the mediator shall be shared equally by the parties and each party shall submit to the mediator such information or position papers as the mediator may request to assist in resolving the Claim. The parties (i) will not attempt to subpoena or otherwise use as a witness any person who serves as a mediator and (ii) will assert no claims against the mediator as a result of the mediation.
- (f) Arbitration. All Claims not settled or resolved in accordance with the settlement and mediation procedures set forth herein shall be resolved by binding arbitration in accordance with the AAA Rules and in accordance with this Section 4.8. Notwithstanding any other provision herein to the contrary, if a Claim is not settled or resolved within one hundred twenty (120) days after the Initial Meeting, either party may submit the Claim to binding arbitration in accordance with the AAA Rules and in accordance with this Section.
- (g) Equitable Relief. Notwithstanding any other provision herein to the contrary, either party may, with respect to a Claim, apply to a court for equitable relief, including a temporary restraining order, preliminary injunction or other interlocutory or relief, provided that such application for equitable relief will not delay or adversely affect in any material respect the dates set by Owner for Substantial Completion or Final Completion of the Project. The Arbitration Panel (as defined below) shall have the authority to modify any court order granting such interlocutory

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relief and such court order shall remain in full force and effect until so modified. Any such court or Arbitration Panel order may be enforced in any court having jurisdiction thereof. Any court relief sought under this Section shall be brought in and subject to the exclusive venue and jurisdiction of the courts of Hamilton County, Tennessee or the U.S. District Court for the Eastern District of Tennessee, as applicable, provided that Owner may elect to seek such relief against Contractor in any court having jurisdiction over Contractor.

- (h) Continuing Obligations. In the event of any dispute arising by or between the parties, each party shall continue to perform as required under the Contract notwithstanding the existence of such dispute. In the event of such a dispute, the Owner shall continue to pay the Contractor as provided in the Agreement, excepting only such amount as may be disputed.
- (i) Arbitration Proceedings. The arbitration provisions under the Agreement, including their enforceability, shall be governed by the Federal Arbitration Act or the Tennessee Uniform Arbitration Act, as applicable ("Arbitration Acts"). All arbitration proceedings shall be conducted in Hamilton County, Tennessee, in the English language, in accordance with the AAA Rules and in accordance with this Section.
- (j) Arbitrator Qualifications. Unless the parties otherwise agree in writing, the arbitration shall be conducted using a panel of three (3) arbitrators ("Arbitration Panel") who are selected by the parties in accordance with the AAA Rules from the AAA National Construction Panel and who are practicing attorneys who have experience with respect to large construction projects. If the procedures of the AAA Rules do not result in the selection by the parties of a panel of three (3) arbitrators, then each party shall appoint one (1) neutral arbitrator who meets the required qualifications, and the two (2) neutral arbitrators selected by the parties shall appoint a third neutral arbitrator who meets such qualifications. If either party does not appoint a neutral arbitrator within two (2) weeks of being notified that it is required to do so, the AAA will appoint an arbitrator for such party.
- (k) Arbitration Award. The Arbitration Panel shall issue a written, reasoned award stating the bases of the award and including detailed findings of fact and conclusions of law. The award rendered by the Arbitration Panel shall be final, and judgment may be entered upon it and enforced without prejudice to the rights of either party to seek vacation of the award in accordance with the Arbitration Acts in any court having jurisdiction thereof.
- (l) Arbitration Fees and Expenses; Attorneys' Fees. Fees and expenses in connection with the arbitration, including without limitation reasonable attorneys' fees and dispute resolution costs, in addition to any other damages or other amounts to which it may be entitled, shall be awarded to the prevailing party. The failure by one party to pay its share of arbitration fees and expenses in accordance with the AAA Rules shall constitute a waiver of such party's Claim or defense in the arbitration.
- (m) Confidentiality. All arbitration proceedings and other information and matters relating to the arbitration shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction; provided that any such disclosure shall be to the most limited extent possible to accomplish such enforcement of the award and either party may seek a protective order in connection therewith. The parties agree to maintain such confidentiality.
- (n) Statute of Limitations. In no event shall a demand for mediation or arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by applicable statutes of limitations or repose.
- (o) Waiver of Joinder Objection. Contractor waives all objections to joinder of Contractor as a party to any mediation, arbitration or litigation related to the Contract in which Owner is joined with respect to which Contractor's conduct, Work or services have some relationship. Contractor also agrees to include in all contracts used or prepared by Contractor similar waivers on behalf of any and all individuals or entities with whom Contractor enters into a contract. Such contracts in which Contractor must include similar waivers include without limitation, contracts between Contractor and any individual or entity having a direct contract with Contractor for any Work or services under the Contract, and any general and supplemental conditions applicable to such contracts
- (p) Discretionary Joinder. Either party may include by joinder individuals or entities in accordance with the AAA Rules.
- (q) Waiver of Jury Trial. OWNER AND CONTRACTOR ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF OWNER AND CONTRACTOR, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE CONTRACT DOCUMENTS.

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

26. FORCE MAJEURE. Neither party shall be liable for failure or delay in performance under this Contract due in whole or in part to an act of God, labor dispute, civil commotion, sabotage, terrorism, fire, flood, explosion, acts of any government, unforeseen shortages or unavailability of fuel, power, transportation, raw materials or supplies, inability to obtain or delay in obtaining governmental approvals, permits, licenses or allocations, or any other causes not within such party's reasonable control, whether or not of the kind specifically enumerated above. During any period of Contractor's inability to perform, Owner may acquire from others, without incurring liability to Contractor, such services that Owner may deem necessary, and, at Owner's option, the quantity of such services contracted from Contractor may be proportionately reduced.

27. DESIGN RESPONSIBILITY. If this Contract involves the design of any equipment, machinery, materials or products, it is agreed that (i) Contractor is engaged to provide such design, and (ii) Owner's specifications shall set forth Owner's minimum requirements, but Contractor retains sole responsibility for design.

28. CONFIDENTIALITY. Contractor shall hold in confidence and use only for Owner's benefit any information furnished by Owner or originated or developed by Contractor in connection with this Contract. Owner shall have no obligation of nondisclosure or nonuse with respect to any information furnished by Contractor, except as may be expressly set forth in an agreement signed by an officer of Owner. Contractor shall not in any manner advertise, publish or release for publication any statement mentioning Owner or the fact that Contractor has furnished or contracted to furnish Owner the goods or services covered by this Contract without first obtaining Owner's written consent. Contractor's obligations under this paragraph shall terminate ten (10) years after the completion, cancellation or termination of this Contract.

29. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall comply with all applicable statutes, laws, ordinances, codes, contracts, rules, regulations, proclamations and other governmental requirements, and all provisions required thereby to be included in this Contract are incorporated by reference.

30. RIGHTS, REMEDIES AND WARRANTIES. Each of the parties' respective rights and remedies under this Contract and each warranty made by Contractor to Owner shall be cumulative and in addition to any other or further rights, remedies or warranties under this Contract or as may be provided at law or in equity. Contractor further represents and warrants that it is lawfully licensed to enter into the Contract and to perform the Work, and that Contractor shall perform the Work in accordance with the Contract Documents.

31. WAIVER. No failure to exercise, delay or partial exercise of any right, power, privilege or remedy of Owner shall operate as a waiver thereof, and no waiver shall occur unless expressly set forth in writing and signed by the applicable party.

32. GOVERNING LAW. The law of the State of Tennessee shall govern the validity, interpretation, construction and effect of this Contract.

33. GENERAL. This Contract contains the **entire agreement** of the parties with respect to the services covered by this Contract, and all previous contracts, proposals, discussions and communications relating to the services covered by this Contract are superseded except to the extent they have been incorporated by direct reference. This Contract may not be amended absent Owner's written consent. In the event of any conflict between this Contract and any other document, even if deemed to have been executed simultaneously, the TERMS OF THIS CONTRACT SHALL PREVAIL unless otherwise expressly noted in writing, signed by Owner. Owner hereby rejects any other contract's terms or conditions that contradict this Contract.

34. SEVERABILITY CLAUSE. If any provision of this Contract is found to be null and void or unenforceable, such provision shall be deemed severed, and all remaining provisions of this Contract shall remain in full force and effect.

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35. DIFFERING SITE CONDITIONS. To the extent Contractor encounters physical conditions which differ materially from those depicted and described in the Contract or from those ordinarily found to exist and generally recognized as inherent in the Work, Contractor shall be entitled to an equitable adjustment in its payment and its time for performance.

36. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. Contractor and Owner waive any and all claims against one another for incidental and/or consequential damages arising out of or relating to the Contract, including without limiting the generality of the foregoing, loss of financing, business and reputation, and for loss of profit.

Reference Attachments in EXHIBIT A: _____

OWNER:
NAPROTEC, LLC

CONTRACTOR:

By: _____
Name: _____
Title: _____
Date: _____
Witness
Signature: _____
Name: _____

By: _____
Name: _____
Title: _____
Date: _____
Witness
Signature: _____
Name: _____