

DOCUMENT 00500 - AGREEMENT

**AGREEMENT** Made as of the        day of,        in the year of  
Two Thousand Six

**BETWEEN** Pace University, 1 Pace Plaza, New York, New York 10038 ("Owner")  
and the Contractor:

The Project is:

The Architect/Engineer is:

The Owner and Contractor agree as set forth below.

**ARTICLE 1**

**THE WORK OF THIS CONTRACT**

- 1.1** The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows.

**ARTICLE 2**

**DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 2.1** The date of commencement is the date from which the Contract Time of Paragraph 2.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
- 2.2** The entire Work not later than 120 calendar days subject to adjustments of this Contract time as provided in the Contract Documents. 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 the Owner can legally and actually occupy or utilize the Work for its intended Use.

### ARTICLE 3

#### **CONTRACT SUM**

**3.1** The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of \_\_\_\_\_ (**\$** \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents.

**3.2** The Contract Sum is based upon the following Alternates, which are described in the Contract Documents and the status of the Owner's acceptance of such alternates are reflected in the following:

**3.3** Unit prices are set forth in the Proposal dated \_\_\_\_\_ .

The Contract Sum may be revised upon the Owner's notice to the Contractor of Owner's acceptance of additional alternates referred to in the following documents.

### ARTICLE 4

#### **PROGRESS PAYMENTS**

**4.1** Based upon Applications for Payment submitted to the Architect/Engineer/Engineer by the Contractor and Certificates for Payment issued by the Architect/Engineer/Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be 30 calendar days.

**4.2** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect/Engineer an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner or Architect/Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage, if provided for elsewhere in the Contract Documents.

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

**4.2.2 Such** applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

**4.2.3** The Owner shall pay 95 percent of the amount due the Contractor on account of progress payments through substantial completion. The Architect/Engineer will recommend payment with 5% retainage to be paid in full upon final invoice with project completion certification.

**4.2.4** Unless otherwise provided in the Contract Documents, payments shall be

made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials or 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 the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Contractor shall submit requisitions from suppliers and Subcontractors to substantiate the amounts requested on the Application for Payment for materials or equipment stored on or off site. Payment for materials stored on site will not relieve the Contractor from sole responsibility for the following:

**4.2.4.1 Care** and protection of materials and work installed in building or materials stored on site for which payment has been made.

**4.2.4.2 Restoration** of damaged work and replacement of damaged or stolen materials.

**4.2.4.3 Payment** shall not waive Owner's right to require fulfillment of all terms of the Contract.

## **ARTICLE 5**

### **FINAL PAYMENT**

**5.1** Final payment, constituting the entire unpaid balance of the Contract sum shall be made by the Owner to the Contractor when the work has been completed, the Contract fully performed, and a final Certificate for Payment has been issued by the Architect/Engineer.

## **ARTICLE 6**

### **ENUMERATION OF CONTRACT DOCUMENTS**

**6.1** The Contract Documents, except for modifications issued after execution of this Agreement, are enumerated as follows:

**6.1.1** The Agreement is this executed Agreement between Owner and Contractor.

**6.1.2** The Supplementary and other Conditions of the Contract are those contained in this Agreement.

**6.1.3** The Specifications dated \_\_\_\_\_, are those contained within and on the drawings listed in 6.1.4

**6.1.4** The Drawings are as follows:

Drawings dated \_\_\_\_\_.

**6.1.5** The Addenda are as follows:

**6.1.6** Documents forming part of the Contract Documents are as follows:

## **ARTICLE 7**

### **CONTRACT DOCUMENTS**

**7.1** The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the 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. In the event of a discrepancy between the terms and conditions of this Agreement or any other form of agreement signed by the parties and the contract specifications (including General Specifications, Owner's Separate Specifications and all addenda and amendments thereto), the terms most favorable to Owner, as determined by Owner, shall be controlling.

**7.2** The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect/Engineer and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor.

**7.3** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site and is familiar with the local laws and permitting requirements and any special conditions pertaining to the means or methods of performing the Work and correlated personal observations with requirements of the Contract Documents.

**7.4** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**7.5** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. At no time shall Drawings or Specifications be subdivided into separate parts. All Contract Documents shall remain intact, as issued. Should such separation occur, the responsibility for any errors, omissions, or conflicts resulting from such separation shall be borne by the Contractor.

**7.6** References made in the Contract Documents to standard designation of DOH, DPW, ASTM, ACI, AISC, AWWA and other similar organizations and associations is intended to refer to Specifications, Codes, Standards, etc., of the latest revision of such standard, as of the date of the Specifications. Any reference in these Standards, codes or Specifications, which is contrary to the intent of these Contract Documents, shall be considered void. The Contract Documents shall prevail over the referenced standards. The Contractor shall be experienced and familiar with his own trade's generally accepted published standards of quality and workmanship.

**7.7** Should there be any inconsistency in the quality or quantity of work required under the Contract Documents, it shall be interpreted that the better quality or greater quantity of work is required under the contract without an increase in the Contract Sum. The Owner, upon consultation with the Architect/Engineer, reserves the right to determine if such quality or quantity is consistent with the design intent.

## **ARTICLE 8**

### **Owner**

**8.1** The Owner shall furnish surveys describing physical characteristics and utility locations and a legal description of the site, if requested by the Contractor in writing. The Contractor shall verify and confirm the accuracy of the information furnished.

**8.2** The Owner shall secure and pay for necessary easements and charges required for the use or occupancy of permanent structures or permanent changes in existing facilities.

**8.3** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or in the Owner's reasonable judgment, fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

## **ARTICLE 9**

### **CONTRACTOR**

**9.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention, consistent with highest professional standards. 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 the Contract, unless Contract Documents give other specific instructions concerning these matters. The Contractor shall review any specified construction or installation procedures including, but not limited to, those recommended by any product manufacturer or referenced standard. The Contractor shall be responsible for determining the appropriateness of any construction or installation procedure specified.

**9.2** Unless otherwise specifically provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, safety equipment, protective clothing, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**9.3** The Contractor shall enforce strict discipline, safety and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**9.4** The Contractor warrants to the Owner and Architect/Engineer that materials and

equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from faults and defects and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**9.5** Unless otherwise provided in the Contract Documents, the Contractor shall pay all applicable sales, consumer, use, and other similar taxes which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, and shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. Further, if any such permit or license is required to be in the name of the Owner, the Contractor shall so advise the Owner and shall cooperate with the Owner in obtaining such permit or license at Contractor's expense. The Owner is a tax-exempt body and is therefor exempt from certain sales and use taxes.

**9.6** The Contractor and its subcontractors and their respective agents and employees shall:

**9.6.1** Comply with all federal, state and local statutes, laws, codes, ordinances, rules, regulations and orders pertaining to the means or methods of performing the Work, including but not limited to the applicable provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 relating to Equal Employment Opportunity, section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended and section 503 of the Rehabilitation Act of 1973. Contractor shall be responsible to ensure that its employees, agents and those of its subcontractors who enter upon Pace's premises abide by all Pace University rules, regulations and policies, including but not limited to Pace's posting, non-solicitation policies and security rules and regulations.

**9.6.2** Comply with and give notices required by laws, codes, ordinances, rules, regulations, and lawful orders of public authorities bearing on the means or methods of performing the Work.

**9.6.3** Carefully study and compare the contract documents with each other and with other information furnished by the Owner pursuant to Subparagraph 8.1, and shall at once report to the Architect/Engineer and Owner: (i) any errors, inconsistencies, or omissions discovered, and (ii) if the Drawings and Specifications are observed by the Contractor to be at variance with the applicable laws, codes, ordinances, rules, regulations and orders pertaining to the means or methods of performing the Work. The Contractor shall not be liable to the Owner or Architect/Engineer for damage resulting from errors, inconsistencies or omissions in the Contract Documents or variance of such Drawings, Specifications and other Contract Documents from applicable laws, codes, ordinances, rules regulations and orders pertaining to the means or methods of performing the Work, unless the Contractor recognized or should have recognized such error, inconsistency, omission or variance and knowingly failed to report it to the Architect/Engineer and Owner.

**9.6.4** If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency, or omission in the Contract Documents or is at variance with the applicable laws, codes, ordinances, rules, regulations and orders pertaining to the means or methods of performing the Work, without notice to the Architect/Engineer and Owner, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

**9.7** The Contractor shall be responsible to the Owner and any other appropriate third-parties for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

**9.8** The Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with reviewed submittals.

**9.9** The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed or stamped, "Make Corrections Noted, Resubmit Corrected Copy" by the Architect/Engineer. Such Work shall be in accordance with reviewed submittals.

**9.10** By approving and submitting Shop Drawings, Product Data, Samples and



similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**9.11** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer by written notice separate from the submittal containing the deviations at the time of the submittal and the Architect/Engineer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.

**9.12** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect/Engineer on previous submittals.

**9.13** Information submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.

**9.14** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

**9.15** The Contractor shall provide the Owner and Architect/Engineer access to the Work in preparation and progress wherever located.

**9.16** The Contractor warrants and represents that it owns or has the rights to use and license all intellectual property that it may use or license to Owner in connection with the Work to be performed by Contractor under this Agreement. In addition, the Contractor shall pay all royalties and license fees; shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents if the Contractor shall have notified the Architect/Engineer and

Owner of a reasonable basis to believe that there is an infringement of patent.

**9.17** To the fullest extent permitted by law, the Contractor waives any right of contribution against and shall indemnify and hold harmless the Owner, Owner's consultants, agents and employees of any of them, and the Architect/Engineer, Architect/Engineer's consultants, agents and employees of any of them from and against all claims, damages, losses and expenses threatened or imposed, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work by Contractor and Subcontractors or their respective consultants, agents and employees, attributable to: (1) bodily injuries including death if any resulting therefrom, sustained by an employee of Contractor or Subcontractors while at the premises of Owner, or elsewhere while engaged in the performance of the Work, and (2) because of bodily injuries including death at any time resulting therefrom, sustained by any person, or persons, other than employees of Contractor and Subcontractors caused by the acts of or omissions of Contractor or Subcontractors, and (3) because of bodily injuries including death resulting therefrom, sustained by any person alleged to be caused by the Owner's failure to properly supervise work of the Contractor or its subcontractors, and (4) because of injury or destruction of property caused or occasioned directly or indirectly by the Contractor or Subcontractors or their respective consultants, agents, or employees, (5) because of damages or fines threatened or imposed as a result of the Contractor's or Subcontractor's failure to comply with requirements of pertinent federal, state and local statutes, codes, permit and license requirements, and/or for Contractor's failure to advise Owner regarding permits and licenses required to be obtained by Owner in its own name in connection with the means or methods of performing the Work, or (6) because of additional expenses, including but not limited to additional compensation to Architect/Engineer and other consultants necessitated by Contractor's default in its timely performance of the terms and conditions of this Agreement and the Work, unless such claim, damage, loss or expense is caused actively by a party indemnified hereunder. The Contractor agrees to defend promptly and diligently at its sole cost and expense, any claim, action or proceeding brought against Owner individually, jointly or severally (a) arising out of or connected with any of the Work to be performed by Contractor or Subcontractors hereunder at the Owner's premises or elsewhere for the Owner, and (b) by any employee or former employee of Contractor or Subcontractors arising out of or based upon common law, statute, regulation, requirement, contract or award, including but not limited to those in the nature of personal injury, death, property damage, other torts including intentional torts, breach of contract, the hours of employment, working conditions, and/or wages or compensation of any such employees,

agents, contractors, subcontractors or suppliers. It is expressed understood and agreed that the foregoing provisions shall survive the final payment made pursuant to this contract.

The foregoing obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this Paragraph 9.17.

**9.17.1** In claims against any person or entity indemnified under this Paragraph 9.17 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 9.17 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**9.17.2** The obligations of the Contractor under this Paragraph 9.17 shall not extend to the liability of the Architect/Engineer, the Architect/Engineer's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports surveys, Change Orders, Construction Change Directives, designs or specifications, or (2) the giving of or the failure to give recommendations by the Architect/Engineer, the Architect/Engineer's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

## **ARTICLE 10**

### **ADMINISTRATION OF THE CONTRACT**

**10.1** The Architect/Engineer will provide administration of the Contract and will be the Owner's representative (1) during construction, (2) until the later of the date that final payment is due or a final Certificate of Occupancy or other final governmental approval or certification is issued and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 18.2.

**10.2** The Architect/Engineer will visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the completed Work and to determine if the Work is being performed in accordance with the Contract Documents. However, the Architect/Engineer will not be required to make continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations,

the Architect/Engineer will keep the Owner informed of progress of the Work and will notify the Owner of defects and deficiencies in the Work and guard the Owner against such defects and deficiencies and any violation of legal requirements.

**10.3** Based on the Architect/Engineer's observations and evaluations of the Contractor's Applications for Payment, the Architect/Engineer will review and state the amounts due the Contractor and will issue Statements for Payment in such amounts, as herein provided.

**10.4** The Architect/Engineer will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect/Engineer will make initial decisions on all claims, disputes or other matters in question between the Owner and Contractor. The Architect/Engineer's decisions in matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. A decision by the Architect/Engineer shall be a condition precedent to litigation of disputes between the Owner and Contractor as to all matters arising prior to the date final payment is due, unless the position of Architect/Engineer is vacant, the Architect/Engineer has not received evidence or rendered a decision within thirty (30) days after the Claim is made, or forty-five (45) days has passed after the Claim has been referred to the Architect/Engineer.

**10.5** The Architect/Engineer will have authority to reject Work, which does not conform to the Contract Documents.

**10.6** The Architect/Engineer will review or take other appropriate action upon the Contractor's submittals such as Shop Drawings, product Data and Samples.

**10.7** Subject to an initial presentation of the claim or dispute to the Architect/Engineer as required under Paragraph 10.4. all claims or disputes between the Contractor and the Owner arising out or relating to the Contract, or the breach thereof, shall be settled by discussion between the parties and failing resolution by a competent court of law in the State of New York, County of New York. In either case, the loser is required to pay all legal fees.

**10.8** The Drawings, Specifications and other documents prepared by the Architect/Engineer are instruments of the Architect/Engineer's service through which the Work to be executed by the Contractor is described. The Contractor may retain one

contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect/Engineer. The Architect/Engineer shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect/Engineer, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect/Engineer and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect/Engineer. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect/Engineer appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect/Engineer. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect/Engineer's copyright or other reserved rights. The Architect/Engineer shall not be responsible for any costs or damages as a result of any re-use.

**10.9** The Architect/Engineer will prepare Change Orders with supporting documentation and data if deemed necessary by the Architect/Engineer for the Owner's review and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in a Contract Sum or an extension of a Contract Time which are not inconsistent with the intent of the Contract Documents.

**10.10** The Architect/Engineer's final evaluation of the Work for general conformance with the Contract Documents as prepared by the Architect/Engineer shall be conducted subsequent to the Contractor's certification of Substantial Completion and the Contractor's list of items to be completed or corrected.

**10.11** Continuing Contract Performance. Pending final resolution of a Claim including litigation, unless otherwise agreed in writing the Contractor shall proceed

diligently with performance of the Contract and the Owner shall continue to make payment in accordance with the Contract Documents.

**10.12** 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. The Architect/Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the 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/Engineer 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/Engineer 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 the Architect/Engineer has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect/Engineer for initial determination, subject to further proceedings pursuant to Paragraph 10.7.

## **ARTICLE 11**

### **SUBCONTRACTS**

**11.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

**11.2** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect/Engineer for acceptance by the Owner and Architect/Engineer, the names of the Subcontractors for each of the principal portions of the Work.

**11.3** All subcontracts shall be in writing, shall be assignable by the Contractor to the

Owner subject to Owner's acceptance of such assignment, and shall contain the following sentence; "The Owner is an intended third party beneficiary of the subcontract."

**11.4** Proper and complete execution of all work shall be the responsibility of Contractor and should he elect to sublet certain parts of work, Owner will hold him responsible for proper and complete execution thereof. If Contractor elects to enter into a subcontract for any section of work, he shall assume all responsibility of ascertaining that the subcontractor for work is thoroughly acquainted with all conditions of the work and that the subcontractor has included all materials and appurtenances in connection therewith.

**11.5** It shall also be responsibility of Contractor to notify sub-bidders at time of request for bids of all requirements of General Conditions and any other parts of other divisions and sections of specifications that he, the Contractor, intends to include as part of subcontract.

**11.6** The Contractor shall not contract with any Subcontractor to whom the Owner or Architect/Engineer has made reasonable objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner and Architect/Engineer, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract documents.

## **ARTICLE 12**

### **CONSTRUCTION BY OWNER OR**

### **BY SEPARATE CONTRACTORS**

**12.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

**12.2 The** Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**12.3** If any of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Architect/Engineer any apparent discrepancies or defects in such work that renders it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his work except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's work.

**12.4** Should the Contractor cause damage to the work or property of any separate contractor on the project, the Contractor shall, upon due notice, settle with such other contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the Owner or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceeding at the Contractor's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court and arbitration costs which the Owner has incurred.

**12.5** Costs caused by delays, improperly timed activities or defective construction shall be borne by the party responsible therefor.

## **ARTICLE 13**

### **CHANGES IN THE WORK**

**13.1** The Owner, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or modifications, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Architect/Engineer or by written Construction Change Directive signed by the Owner and Architect/Engineer. All Change Orders shall be prepared by Contractor or Architect/Engineer and shall provide full details regarding materials to be used and mechanical systems (if any) to be installed or altered in connection with the contemplated change. The cost or credit to the Owner from a change



in the Work shall be determined by mutual agreement.

**13.2 The** Contract Sum and Contract Time shall be changed only by Change Order.

**13.3 If** the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect/Engineer on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an allowance for overhead and profit in accordance with Clauses 13.4 through 13.4.6 below. In such case, and also in connection with any Construction Change Directive, the Contractor shall keep and present, in such form as the Architect/Engineer may prescribe an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 13.3 shall be limited to the following:

1. Cost of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom; workers; or workmen's compensation insurance.
2. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed.
3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
5. Additional costs of supervision and field office personnel directly attributable to the change.

**13.4 In** Subparagraph 13.3, the allowance for the combined overhead and profit combined included in the total cost to the Owner shall be based on the following schedule:

1. For the Contractor, for any Work performed by the Contractor's own forces fifteen percent (15%) of the cost.
2. For the Contractor, for Work performed by the Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.

3. For each Subcontractor, for Work performed by the Subcontractor's Subcontractors, ten percent (10%) of the amount due the Subcontractor.
4. Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraphs 13.3.

In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by observation, shall be accompanied by a complete itemization of costs, including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$150.00 be approved without such itemization.

**13.5 For** any adjustments to the Contract Sum based on other than the unit price method, the Contractor agrees to charge and accept payment for his overhead and profit at the percentages of the cost attributable to the change in the Work as stipulated in Paragraph 13.4.

## **ARTICLE 14**

### **TIME**

**14.1** By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**14.2** The date of Substantial Completion is the date stated by the Architect/Engineer in accordance with Paragraph 15.3. Notwithstanding anything contained in the Contract Documents, the Work shall not be deemed Substantially Complete unless and until the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can legally and actually occupy or utilize the Work for its intended Use.

**14.3** If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Architect/Engineer reasonably determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer may determine.

**14.4** Notwithstanding anything contained to the contrary in the Contract Documents, an extension of time in which to complete the Work shall be the Contractor's sole remedy for delay and hindrance in performance of the Work, loss in productivity, damages or other similar claims unless caused by acts constituting intentional interference by the Owner with the Contractor's performance of the Work, but only to the extent that such acts continue after the Contractor's notice to the Owner of such interference. The Owner's reasonable exercise of any of its rights or remedies under the Contract Documents, regardless of the extent or frequency, shall not under any circumstances be construed as intentional interference with the Contractor's performance of the Work.

**14.5** Extensions in the Contract Time shall be granted only to the extent that such delay: (1) warrants an extension in the scheduled completion of the Work, (2) has not been caused by the Contractor and/or its subcontractors, (3) is grounds for an extension in the Contract Time under the Contract Documents, and (4) is in addition to any time contingency periods set forth in the critical path for completion of the Work.

**14.6** Annexed hereto and made a part hereof as Exhibit 14.6 is the estimated progress schedule for the Work prepared by the Contractor, which, subject to the other provisions of this Article 14, shall be adhered to by the Contractor.

## **ARTICLE 15**

### **PAYMENTS AND COMPLETION**

**15.1** Payments shall be made as provided in Articles 4 and 5 of this Agreement.

**15.2** Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed, (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (5) damage to the Owner or another contractor, (6) reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, (7) failure, in the Owner's reasonable judgment to carry out the Work in accordance with the Contract Documents, or (8) the failure of the Contractor or a Subcontractor to deliver a waiver of mechanic's lien.

**15.3** When the Architect/Engineer agrees that the Work is substantially complete, the Architect/Engineer will issue a Statement of Substantial Completion. Prior to the

issuance of a Statement of Substantial Completion, however, the Contractor shall prepare for submission to the Owner a list of items to be completed or corrected (hereinafter referred to as the "Punchlist") for the Owner's approval. The failure to include any item on the Punchlist shall not alter the responsibility of the Contractor to complete all Work in accordance with the requirements of the Contract Documents. The Owner and Architect/Engineer shall review the Work to comment on the accuracy of the Punchlist. Such review however, shall not relieve the Contractor of its responsibility to correct any Work, which is defective. The Statement of Substantial Completion shall state the responsibilities of the Contractor for completion of the items on the Punchlist. Warranties required by the Contract Documents shall commence on the earlier of date of final completion or the date when the Owner commences to use or occupy the Work following Substantial Completion.

**15.4** Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**15.5** The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

1. Liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
2. Failure of the Work to comply with the requirements of the Contract Documents;
3. Faulty or defective work or latent defects appearing after substantial completion; or
4. Terms of express or implied warranties.

Facts or circumstances giving rise to Contractor's indemnification obligations under this Agreement

**15.6** The Contractor warrants that (1) title to all Work, materials and equipment will pass to Owner free and clear of liens, claims, security interests or encumbrances (collectively referred to as "Liens") upon receipt of payment by Owner to Contractor and (2) the Contractor shall acquire no work, materials or equipment whether directly or through a Subcontractor, subject to an agreement under which a Lien is retained by the seller or otherwise imposed by the Contractor, any Subcontractor or any other person or entity. The Contractor also shall defend and indemnify the Owner, at the Contractor's sole cost and expense, against any actions, lawsuits or proceedings brought against the Owner as a result of any Lien filed against the site of the Project or otherwise. The Contractor hereby indemnifies, defends and holds harmless the Owner against any Lien against the Owner or Owner's property resulting from any actions, lawsuits or proceedings brought to enforce any Lien or claim.

**15.6.1** Notwithstanding anything to the contrary herein contained, should any person or entity file a lien on account of the labor and/or materials furnished to the Project at the request of the Contractor or its subcontractors, and should the Contractor then refuse, fail or neglect to obtain a discharge of such lien within 90 days after such lien has been filed, the Owner shall have the option, after the expiration of such period and upon five days written notice to the Contractor, to discharge of such lien under the provisions of the New York State Lien Law and to charge the Contractor for all costs and expenses, including but not limited to bond premiums and attorney's fees, associated with obtaining such discharge. The Contractor shall promptly reimburse the Owner for such expenses and/or payments together with all costs incurred, upon demand, or the Owner may elect to deduct such amount(s) from the Contract Sum otherwise payable by Owner to the Contractor.

**15.6.2** The Owner shall release to Contractor any payments withheld due to any Lien if the Contractor discharges the Lien by bonding or otherwise in a manner that is satisfactory to the Owner.

**15.7** The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner out of the amount paid to the Contractor on account of any Work performed by Subcontractors. The Owner shall not have any obligation to pay or to cause payment of monies to any Subcontractor. The Contractor shall not make requests for payment of monies if the Contractor does not intend to pay the same to subcontractor(s).

**15.8** No Statement for Payment, nor any payment by the Owner, nor any partial or entire use of occupancy of the Project premises by the Owner, shall constitute an acceptance of any Work not performed in accordance with the applicable laws, codes, ordinances, rules, regulations and orders pertaining to the means or methods of performing the Work and the Contract Documents.

## **ARTICLE 16**

### **PROTECTION OF PERSONS AND PROPERTY**

**16.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract, including but not limited to the completion of the work. The Contractor shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. Employees on the Work and other persons who may be affected thereby;
2. The Work and materials and equipment to be incorporated therein; and
3. Other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy all damage and loss to property at the site caused in whole or in part by the

Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose negligent acts they may be liable, except for damage or loss attributable to the active negligence of the Owner or Architect/Engineer or by anyone for whose negligent acts either of them may be liable, and not attributable to the acts or omissions of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 9.17.

**16.2** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or

polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**16.3** The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB), except as anticipated in the Contract Documents.

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

**16.5** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner reasonable advance notice.

## **ARTICLE 17**

### **INSURANCE**

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

- 1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, including private entities performing Work at the Site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

- 2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees, or persons or entities excluded by statute from the requirements of Clause 17.1.1 but required by Contract Documents to provide the insurance required by the Clause;
- 3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- 4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- 5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- 6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. Claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 9.17.
- 8 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis, including:
  - 1 Premises Operations (including X, C and U coverages as applicable).
  - 2 Independent Contractors' Protective.
  - 3 Products and Completed Operations.
  - 4 Personal Injury Liability with Employment Exclusion deleted.
  - 5 Broad Form Contractual, including specified provision for Contractor's obligation under Paragraph 9.17.
  - 6 Owned, non-owned and hired motor vehicles.
  - 7 Broad Form Property Damage, including Completed Operations.



- 9 All non-professional liability insurances shall be written on an occurrence basis.

**17.1.a Certificate of Insurance:**

The Contractor and its subcontractors shall submit with the signed contract as proof of insurance, two (2) copies of their insurance companies' "Certificates of Insurance". The certificates are to be completed in each and every category by the Contractor's and subcontractor's insurance companies and signed by authorized agents of the insurance companies. The following shall be named as additional insured:

- a) PACE University
- b) Lower Manhattan Development Corporation
- c) Richard Rice Architects

The Contractor and its subcontractors shall not commence any work under this contract until such "Certificates of Insurance" are in the hands of and approved by Owner.

**17.2** The insurance required by Subparagraph 17.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

**17.3** The insurance required by Subparagraph 17.1 shall be written for not less than the following limits, or greater if required by law:

- 1. Workers' Compensation:
  - a. State: Statutory.
  - b. Applicable Federal  
(E.g., Longshoremen's): Statutory
  - c. Employer's Liability:
    - (1) Per Accident: Statutory, but not less than \$1,000,000 (2)

(2) Disease, Policy Limit: Statutory, but not less than \$1,000,000

(3) Disease, Each Employee: Statutory, but not less than \$1,000,000

2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Complete Operations; Broad Form Property Damage). The Owner and the Architect/Engineer shall be named as "additional insured" on this Comprehensive or Commercial General Liability policy and on the Subcontractor's policies of any tier.

a. Bodily Injury:

(1) Each Occurrence: \$1,000,000

(2) Aggregate: \$2,000,000

b. Property Damage:

(1) Each Occurrence: \$1,000,000

(2) Aggregate: \$2,000,000

c. Products and Completed Operations to be maintained for at least five (5) years after final payment:

(1) Each Occurrence: \$1,000,000

(2) Aggregate: \$2,000,000

d. Property Damage Liability Insurance shall provide X, C and U coverage.

e. Broad Form Property Damage Coverage shall include Completed Operations.

3. Broad Form Contractual Liability, including specific provision for Contractor's obligations as stated herein, including claims for bodily

injury or illness brought by Contractor's or Subcontractors' employees against Owner, and claims brought against Owner for

failing in its General Supervision of Contractor and Subcontractors of any tier (may be included as coverage under Comprehensive or Commercial General Liability policy):

a. Bodily Injury:

(1) Each occurrence: \$1,000,000

(2) Aggregate: \$2,000,000

b. Property Damage:

(1) Each occurrence: \$1,000,000

(2) Aggregate: \$2,000,000

4. Personal Injury, with Employment Exclusion deleted (may be included as coverage under Comprehensive or Commercial General Liability policy):

a. Each occurrence: \$1,000,000

b. Aggregate: \$2,000,000

5. Business Auto Liability (covering owned, non-owned and hired vehicles, and applying excess over the limits carried by Contractor's employees on any personal vehicles that are driven onto Owner's property)

a. Bodily Injury:

(1) Each Person: \$1,000,000

(2) Each Occurrence: \$1,000,000

b. Property Damage:

(1) Each Occurrence: \$1,000,000

6. If the General Liability coverages are provided by a Commercial Liability policy the:

- a. General Aggregate shall be not less than \$2,000,000 and it shall apply, in total, to this Project only.
- b. Fire Damage Limit shall be not less than \$1,000,000 any one Fire.
- c. Medical Expense Limit shall be not less than \$5,000 on any one person.

7. Umbrella Excess Liability:

- a. \$ 10,000,000 over primary insurance.
- b. \$ 10,000 maximum retention for self-insured hazards each occurrence.

All insurance required by this section 17.3, other than the Umbrella Excess policy itself shall be listed as underlying insurance in this Umbrella Excess Liability policy. The Umbrella Excess policy must provide full limit coverage for all coverages provided by the underlying policies on exactly the same terms as the underlying insurance.

8. Owner's and Architect/Engineer's Protective Liability Insurance: The Contractor will furnish and maintain during the entire period of construction an Owner's Protective Liability Policy written in the name of the Owner and Architect/Engineer with the following limits of liability:

- a. Bodily Injury
  - (1) Each Occurrence: \$ 10,000,000
  - (2) Aggregate: \$ 10,000,000
- b. Property Damage:
  - (1) Each Occurrence: \$ 10,000,000

(2) Aggregate: \$ 10,000,000

9. Aircraft Liability (owned and non-owned) when Aircraft are used in the performance of the Contract: \$ 1,000,000. When this policy is required it must be included as underlying insurance in the Excess Umbrella policy, and Owner and the Architect/Engineer shall be named as "additional insured".
10. Watercraft Liability (owned and non-owned) when Watercraft are used in the performance of the Contract: \$ 1,000,000. When this policy is required it must be included as underlying insurance in the Excess Umbrella policy, and Owner and the Architect/Engineer shall be named as "additional insured".

**17.4** Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required of Contractor by this Article 17 shall contain a provision that coverages afforded under the policies will not be canceled, materially reduced or allowed to expire until at least 30 days' prior written notice has been given to the Owner and Architect/Engineer. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD Form 25S will be acceptable.

**17.5** Certificates of Insurance for the above coverage's and the Owner's Protective Policy shall be submitted to the Architect/Engineer for transmittal to the Owner prior to the start of construction. If the "Additional Insured" have other insurance, which is applicable to the loss, it shall be on an excess of contingent basis. The amount of any insurance company's liability under the policies specified herein shall not be reduced by the existence of such other insurance. Contractor's certificates shall be in duplicate on standard ACORD forms. Contractor's insurance policy shall be primary insurance for Owner and the other additional insureds listed in Paragraph 17.1(a) with regard to claims arising under this

Project and shall not require participation or contribution from any other insurance which may be carried by or be available to such additional insureds.

## **17.6 MISCELLANEOUS REQUIREMENTS**

**17.6.1** All insurance coverages required of Contractor and Subcontractors shall be provided by insurance companies having policy holder ratings no lower than "A" and financial ratings not lower than "XII" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract.

**17.6.2** The required limits of liability may be met by using a Split-Limit or a Combined Single Limit basis. However, the total limit of liability shall not be less than that stated in the requirements.

## **ARTICLE 18**

### **CORRECTION OF WORK**

**18.1** If any portion of the Work is covered contrary to the Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer's observation and be replaced at the Contractor's expense without change in the Contract Time.

**18.1.1** If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to its being covered, the Architect/Engineer may request to see such work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless such condition was caused by the Owner, in which event the Owner shall be responsible for payment of such costs.

**18.2** The Contractor shall promptly correct Work rejected by the Architect/Engineer or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements of the Contract Documents within a period of one year from the later of the issuance of a

final Certificate of Occupancy or other final governmental approval, the date of Substantial Completion of the Contract or by terms of an applicable special warranty required by the Contract Documents. The provisions of the Article 18 apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor.

**18.3** The Contractor hereby grants to the Owner for a period of one (1) year following the date of final completion of the Work, its warranty of the quality and adequacy of all the Work including, without limitation, all labor, materials, and equipment provided by the Contractor and its Subcontractors of all tiers in connection with the Work. Upon completion of the Work, the Contractor shall assign or cause to be assigned to the Owner all manufacturers' and other warranties with respect to all Work, including, without limitation, all materials and equipment which are to be incorporated into the Project premises.

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

**18.5** Nothing contained in this Article 18 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time periods of one year as described in Paragraphs 18.2 and 18.3 relate only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**18.6** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring removal and correction, in which case the Contract Sum will be reduced by an amount to be determined in the reasonable discretion of the Owner upon consultation with the Architect/Engineer. Such adjustment shall be effected whether or not final payment has been made.

Notwithstanding any other provision of this Article 18, the Contractor shall be liable for correction of and damages arising from faulty or defective work or latent defects discovered after substantial completion. The one (1) year's limitation and warranty periods referred to in this Article 18 shall not be applicable to Contractor's liability for correction of and damages arising from such latent defects.

## **ARTICLE 19**

### **MISCELLANEOUS PROVISIONS**

**19.1** This Agreement shall be governed by the laws of the State of New York. Litigation of all disputes between the parties arising from or in connection with this Agreement shall be conducted in a court of appropriate jurisdiction in the State of New York, County of New York.

**19.2** As between the Owner and the Contractor, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued:

1. Not later than the date of Substantial Completion for acts or failures to act occurring prior to the relevant date of Substantial Completion;
2. Not later than the date of issuance of the final Statement for Payment for acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Statement for Payment;
3. Not later than the date of issuance of the final Certificate of Occupancy or other pertinent final governmental approval or certification, with respect to acts or failures to act subsequent to the dates of substantial completion and final Statement for Payment and prior to the issuance of the final Certificate of Occupancy or other final governmental approval or



certification;

4. Not later than the date of the relevant act of failure to act by the Contractor for acts of failures to act occurring after the dates of the final Statement for Payment, or final Certificate of Occupancy other governmental approval or certification;
5. With respect to faulty or defective work or latent defects discovered after substantial completion, not later than the date of discovery of the defect; and
6. With respect to Contractor's indemnification obligation, not later than the date of entry of a final judgment against Owner or final assessment of liability or fine or penalty against Owner.

To Owner: Alice Seifert, Director of Purchasing  
PACE University  
235 Elm Road  
Briarcliff Manor, New York 10510

With simultaneous copies to:

Executive Vice President for Finance &  
Administration/Treasurer  
235 Elm Road  
Briarcliff Manor, New York 10510

and

Pace University Counsel  
1 Pace Plaza  
New York, New York 10038

To Contractor:

**19.4** The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the

other, nor shall the Contractor assign any monies due or to become due to the Contractor hereunder, without the previous written consent of the Owner.

## **19.5 TESTS**

**19.5.1** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be inspected, tested or approved, the Contractor shall give the Architect/Engineer timely notice of its readiness, and of the date arranged so the Architect/Engineer may observe such inspection, testing or approval. The Contractor shall provide independent Technical Agencies to perform specific inspections and tests or shall perform inspections and tests with his own forces as required by the Contract Documents. The Contractor shall bear all costs of such inspections, tests and approvals unless otherwise provided.

**19.5.2** If after the commencement of the work the Architect/Engineer or public authorities having jurisdiction, determines that any work requires special inspection, testing, or approval which Subparagraph 19.5.1 does not include, the Architect/Engineer will, upon written authorization from the Owner, recommend that the Contractor order such special inspection, testing or approval. Such Inspections, tests or approvals will be made by a prequalified, Independent Testing Laboratory to be selected by the Owner and Architect/Engineer. The Contractor shall give notice as in Subparagraph 19.5.1, if such special inspection or testing reveals a failure of the work to comply (1) with the requirements of the Contract Documents or (2) with respect to the performance of the work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including the Architect/Engineer's additional services made necessary by such failure. Representatives of the testing laboratory shall have access to the work at all times.

**19.5.3** Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by the Contractor to the Architect/Engineer.

**19.5.4** If the Architect/Engineer wishes to observe the inspections, test or approvals required by the Paragraph 19.5, the Architect/Engineer will do so promptly and, where practicable, at the source of supply.

**19.5.5** Neither the observations of the Architect/Engineer during the Construction Phase, nor inspections, tests or approvals by persons other than the Contractor shall

relieve the Contractor from its obligations to perform the work in accordance with the Contract Documents.

**19.6** The Contractor shall not use the name or trademarks of Pace University in its advertising or promotional material without prior written consent of Pace University in each instance. Except as specifically permitted in this Agreement, the Contractor shall not incur any obligation or expense for or on behalf of the Owner without the Owner's prior written consent in each instance.

**19.7** The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained elsewhere in the Contract Documents) as an inducement to the Owner to execute this Agreement, that:A. It is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the Work and perform its obligations hereunder;

B. It is authorized to do business in the State of New York and properly licensed by all necessary governmental, quasi-governmental, public and quasi-public authorities having jurisdiction over it and over the Work and the site of the Project; and

C. Its execution of the Agreement and its performance hereunder are within its duly authorized powers and authority.

D. It is knowledgeable of the applicable laws, codes, ordinances, rules, regulations, orders and permitting requirements of governmental bodies having jurisdiction over the Project, pertaining to the means or methods of performing the Work, it has sufficient personnel to perform the Work and that all personnel providing services have the background, training, expertise and experience to perform properly the services to be delivered under this Agreement.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor's liability hereunder shall survive the Owner's final acceptance of and payment for the Work. All representations and warranties set forth in this Article 19 shall survive the final completion of the Work or the earlier termination of this Agreement.

**19.8** When compliance with two or more requirements is indicated in any of the Contract Documents and when these requirements conflict in quantity or quality, the Contractor shall comply with the most stringent requirement unless specifically indicated otherwise in the Contract Documents. In addition, when provisions in two or more of the Contract Documents are complementary, the more detailed provision shall control over the more general provision. It is the intent of the Contract Documents, and they shall be so construed, to require a high quality of Work and shall include all items necessary to produce the results intended by the Contract Documents and desired by the Owner.

**19.9** Whenever any provision of the Contract Documents conflicts with any agreements or regulations of any kind in force among members of any trade association, unions, or councils, which regulate what Work shall be included in the Work of particular trades, the Contractor shall make all necessary arrangements to reconsider any such conflict without delay or cost to the Owner and without recourse to the Architect/Engineer or the Owner, and the Contractor shall take action reasonably necessary without cost to the Owner to provide for the elimination of such conflict and the restoration of harmony among trades.

**19.10** The Contractor shall attend progress meetings to discuss matters pertaining to the performance of the Work, including without limitation, procedures, progress, problems and scheduling. Such meetings shall be held as frequently as the Owner reasonably requires.

**19.11** The Contractor agrees to perform the Work without causing any:

A. Increase in the cost of constructing any improvements in connection with the Project premises; or

B. Delay or unreasonable interference with any construction Work being performed by others in connection with the Project premises, or any portion thereof.

**19.12** Contractor shall supply and maintain at the Project Site, a "Daily Log Book" in which each of Contractor's supervisors of Work shall sign in and sign out of, and shall indicate the following information:

A. The date;

B. The number of workers at the Work site on said date; and

- C. The specific portions of the Work completed on said date and the area(s) of the Building upon which said portions of Work were performed.

**19.13** The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect/Engineer and consistent with the highest professional standards, to utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to enable the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with the requirements of the Contract Documents.

## **ARTICLE 20**

### **TERMINATION OF THE CONTRACT**

**20.1** If the Contractor is declared a bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed, or if it defaults or fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the cost thereof, including compensation for the Architect/Engineer's services and expenses make necessary thereby, from the payment then or thereafter due the Contractor. Alternatively, at the Owner's option, and upon recommendation by the Architect/Engineer that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect/Engineer's services and expenses made necessary thereby, such excess shall be paid to the Contractor, but if such costs exceed such unpaid balance, the

Contractor shall pay the difference to the Owner, provided that in no event shall such payment cause the Guaranteed Maximum Price, if any, to be exceeded.

**20.2 Suspension by the Owner for Convenience**

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

**20.2.2** An adjustment shall be made for increases in the cost of performance of the Contract, including Contractor's Fee on the increased cost of performance, caused by suspension delay or interruption. No adjustment shall be made to the extent:

1. That performance is, was or would have been suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. That an equitable adjustment is made or denied under another provision of this Contract.

**20.2.3** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

This Agreement entered into as of the day and year first written above.

PACE UNIVERSITY

CONTRACTOR

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Toby Winer  
Vice President Finance & Administration  
/Associate Treasurer

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