AGREEMENT FOR CONSTRUCTION/MAINTENANCE SERVICES

Project:

This Agreement for Construction/Maintenance Services (this "Agreement") is dated as of _____ by and between President and Trustees of Williams College, having an address at Williamstown, MA. ("Owner"), and _____, having an address at _____ (the "Contractor").

WHEREAS, the Owner seeks to retain the services of a contractor to perform certain construction or maintenance activities as more fully described below, and the Contractor desires to provide such services to the Owner, each on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, and intending to be legally bound hereby, the Contractor and the Owner agree as follows:

1. General Terms and Conditions. Reference is hereby made to the General Terms and Conditions of this Agreement attached as Exhibit 1 hereto and made a part hereof (the "General Terms and Conditions"). The General Terms and Conditions are incorporated herein by reference as if set forth in full herein. Without limiting the generality of the foregoing, (a) all capitalized terms used in this Agreement without definition shall have the meanings ascribed to them in the General Terms and Conditions and (b) all capitalized terms used in the General Terms and Conditions without definition shall have the meanings ascribed to them in this Agreement.

2. Work Rules and Sustainability Principles. The Contractor, by executing this agreement, certifies that s/he has read and fully understands the Williams College Facility Work Rules (which can be found at www.williams.edu/admin/facilities/policies) and the Williams College Sustainability Principles (which can be found at www.williams.edu/resources/sustainability/policies.php). The Williams College Facility Work Rules and the Williams College Sustainability Principles are hereby made a part of this Agreement.

3. Basic Information.

(a) Project. The Project generally consists of _____. A detailed Scope of Work is set forth in Schedule A, attached hereto and made a part hereof. Where applicable, drawings, specifications and/or other existing documents describing the Project (the "Existing Drawings, Specifications and Related Documents") are listed or described on Schedule A.

(b) Contract Sum. The Contract Sum is shall not exceed $_____ . Payment shall be calculated based on the schedule and rates outlined in Schedule B.

(c) Contract Time. The Work Schedule is set forth in the Scope of Work in Schedule A hereto.

(d) Insurance. The Contractor shall carry insurance coverages as specified in Section 16 of the General Terms and Conditions in the following minimum coverage amounts:

(e) Workers' Compensation Insurance. Statutory benefits limits of the applicable labor code(s) and workers' compensation law(s).

(i) Commercial General Liability Insurance. $1,000,000 each occurrence and $2,000,000 aggregate.

(ii) Automobile Liability Insurance. $1,000,000.

(iii) Umbrella Liability Insurance. Umbrella liability insurance of not less than $2,000,000.

The deductible on any insurance policy required to be maintained by the Contractor hereunder shall not exceed $5,000.

4. Notices.

(a) The Owner's address for notices is as follows:

Attention:
Telephone:
Facsimile:
E-Mail:

(b) The Contractor's address for notices is as follows:

Attention:
Telephone:
Facsimile:
E-mail:

5. Authorized Representatives.

(a) The Owner's Representative(s) is/are .

(b) The Contractor's Representative(s) is/are .

The parties hereto have executed this Agreement as of the day and year first above written.

OWNER:

PRESIDENT AND TRUSTEES OF WILLIAMS COLLEGE

By:_____
Name:
Title:

CONTRACTOR:

_____
Name of Contractor

By:_____
Name:
Title:

Schedules and Exhibits

Schedule A Scope of Work
Schedule B Contract Sum

Exhibit 1 General Terms and Conditions

Schedule A

Scope of Work (including Work Schedule)

Schedule B

Contract Sum and Payment Schedule

Contract Sum. The Contract Sum shall in no event exceed _____ Dollars ($_____) without written amendment.

Payment Rates. Payment shall be calculated based on actual work performed and shall include all taxes, insurance, contributions, assessments, benefits. Travel time to and from the work site shall not be considered time worked. The following wage rates shall apply for the duration of the contract unless otherwise noted:

Position	***Hourly Rate***
Carpenter	
Laborer	
Equipment Operator	

Equipment. The cost of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work shall be calculated based on the actual hours used and shall include all insurance and overhead costs. Travel time to and from the work site shall not be considered time worked. The following rates shall apply for the duration of the contract unless otherwise noted:

Equipment	***Rate***
Backhoe	
Compressor	

Materials. The cost of a materials and supplies required for the work shall be calculated based on wholesale pricing with a Contractor mark-up of: . The Owner may require original invoices with any request for payment.

1. Payment Schedule. The Contract Sum shall be payable upon receipt of a payment request for work completed.

Exhibit 1

GENERAL TERMS AND CONDITIONS
OF
AGREEMENT FOR CONSTRUCTION/MAINTENANCE SERVICES

THESE GENERAL TERMS AND CONDITIONS OF THE AGREEMENT FOR CONSTRUCTION/MAINTENANCE SERVICES (these "General Terms and Conditions") form a part of that certain Agreement for Construction/Maintenance Services to which they are attached.

1. Definitions. The terms defined in this Section shall have the following meanings for purposes of these General Terms and Conditions when initially capitalized herein:

(a) "Agreement" means that certain Agreement for Construction/Maintenance Services to which these General Terms and Conditions are attached.

(b) "Contract Documents" means, collectively, (i) the Agreement, (ii) these General Terms and Conditions, (iii) all Schedules and Exhibits listed or described on the Agreement and (iv) all drawings, specifications, addenda and modifications describing the Work which are issued after the date hereof.

(c) "Work" means all labor, materials, equipment and/or services required to (i) design (if applicable), construct and complete the project described in, or in the documents listed on, Schedule A attached hereto and made a part hereof and (ii) to perform all other obligations of the Contractor under the Contract Documents. Any materials, equipment or construction required to produce the intended result shall be provided by the Contractor, whether or not specifically provided for in the Contract Documents.

Any words, phrases or terms defined in the text of these General Terms and Conditions shall have the meaning set forth therein for purposes of these General Terms and Conditions.

2. Contract Sum. The Owner agrees to pay the Contractor for the full and faithful performance of the Work and related costs a stipulated amount equal to the Contract Sum set forth in the Agreement. The Contract Sum shall be subject to additions and deductions for changes in the Work, and the Owner may deduct from the Contract Sum the value of any Work done which, in the good faith opinion of the Owner, is not in compliance with the Contract Documents. The Contract Sum shall be payable to the Contractor in accordance with the Payment Schedule, subject to the provisions of Section 13 of these General Terms and Conditions.

3. Allowances. The Contract Sum shall be increased or decreased, as applicable, by the amount that the Contractor's cost of providing any of the allowance items set forth in the Agreement exceeds or is less than, as applicable, the corresponding allowance amounts set forth in the Agreement. No allowances shall be paid without prior written approval by the Owner.

4. Contract Time. Contractor shall perform all of the work in accordance with the Work Schedule. Time is of the essence of the Contract Documents on the part of the Contractor. If Contractor is delayed at any time in the progress of the Work by the following causes, then the time within which Contractor is required to complete the Work (the "Contract Time") shall be reasonably extended by Change Order: an act or neglect of Owner, Owner's employees, or separate contractors employed by Owners; changes in the Work ordered by Owner; fire or unavoidable casualties; delay directed by Owner in writing; or other causes which Owner and Contractor agree justify delay. Notwithstanding anything to the contrary: (a) Contractor shall not be entitled to additional time for any act or neglect of Owner, Owner's employees or separate contractors employed by Owner unless Contractor shall have provided Owner with notice of such act or neglect within ten (10) days following such notice; (b) any claim by Contractor seeking additional time must be reported to Owner in writing within ten (10) days after the occurrence of the event giving rise to such claim; and (c) Contractor shall only be entitled to additional time if the delay (i) are not caused, or could not have

been avoided, by Contractor, (ii) could not be limited or avoided by Contractor's timely notice to Owner of the cause for the delay and (iii) has no concurrent or contributing cause for which Contractor would not be entitled to an extension of the Contract Time. If any of events described in this paragraph entitle Contractor to an extension of the Contract Time, the sole remedy of Contractor shall be such extension of the Contract Time and Contractor shall not be entitled to any adjustment of the Contract Sum, except as otherwise provided in the following sentence. If and to the extent that the Contract Time is extended on account of acts of Owner only, the Contract Sum shall be increased by Contractor's reasonable and verified additional costs of performing the Work to the extent directly and solely attributable to extensions of the Contract Time on account of the of acts of Owner.

5. Changes; Requests for Information.

(a) The Owner may at any time and without invalidating the Agreement, order additions, deletions or other revisions in the Work within the general scope of the Contract Documents, and the Contract Sum and the Work Schedule shall be adjusted accordingly. The Owner may initiate a request for a change by notice to the Contractor describing the change and requesting a proposal from the Contractor containing (i) drawings, specifications or other descriptive information as appropriate, and (ii) proposed adjustments in the Contract Sum, the Contract Time and/or the Work Schedule. If the Owner and the Contractor agree on the terms of the requested change, they shall sign a written contract amendment describing the changes and the adjustments in the Contract Time and Work Schedule.

(b) Any changes undertaken without the Owner's written authorization will not be recognized as a basis for an increase in the Contract Time or the Contract Sum. If the Contractor claims that any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and such instructions or orders are not accompanied by a written acknowledgment by the Owner that extra payment will be made or time extended, the Contractor shall promptly so notify the Owner in writing and should not proceed with the Work until the Contractor has received a further written order to proceed, except in cases of emergency affecting life or property. No claim for extra cost or time on account of such instructions shall be valid unless the Contractor has so notified the Owner, before proceeding, that the Contractor claims extra cost and time and has received the further written order by the Owner to proceed.

6. Permits, Fees and Compliance with Law. The Contractor shall secure all permits, licenses and inspections necessary for the execution and completion of the Work as part of the Contract Sum. All permit, license and inspection fees shall be included in the Contract Sum. The Contractor shall comply with the terms of all such permits and licenses and with all federal, state and municipal laws, statutes, ordinances, building codes, rules and regulations applicable to the Work.

7. Labor, Materials, Equipment, Etc. The Contractor shall provide and pay for all labor, materials, equipment, tools, machinery, water, heat, utilities, transportation and other facilities and/or services necessary for the proper execution of the Work. All costs and expenses for such items shall be included in the Contract Sum.

8. Taxes. The Contractor shall pay sales, consumer, use and other similar taxes, except to the extent that such taxes are not payable due to the status of the Owner as a nonprofit, tax-exempt entity. The Contractor shall not charge the Owner for state sales taxes, federal excise taxes and other taxes that are not payable due to the status of the Owner as a nonprofit, tax-exempt entity, and the Contract Sum shall be reduced to the extent that amounts for such taxes were included in the determination thereof.

9. Construction Procedures. 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.

10. Subcontracts. All contracts and agreements between Contractor and its subcontractors and suppliers for labor, materials or supplies relating to the Work shall allow assignment to the Owner, at the Owner's written election, following any termination of the Agreement and, in the alternative shall allow termination without penalty if the contract between Owner and Contractor is terminated for Owner's convenience. Contractor shall not subcontract or assign any work under the contract without Owner's written consent.

11. Progress Payments.

(a) The Owner shall make progress payments to the Contractor on account of the Contract Sum based on applications for payment, including all supporting documentation, submitted by the Contractor to the Owner. Each application for payment shall consist of the following items:

(i) A duly completed application for payment

(ii) All invoices for materials and/or supplies used in the execution of the work

(iii) Such other information, documentation and materials as the Owner may require to substantiate the Contractor's right to such payment.

Each Application for Payment shall be deemed to include a representation by the Contractor that, except as expressly disclosed to the Owner in writing in such Application for Payment: (1) the Contractor has paid all amounts owed to its Subcontractors and suppliers; (2) the Contractor has no knowledge that any party has filed or threatened to file a lien against the Project site; and (3) the Contractor has no knowledge of any basis on which it may assert a claim for an extension of the Contract Time or an increase in the Contract Sum. All progress payments shall be subject to retainage of ten percent (10%), which retainage shall be released with the final payment.

(b) The Owner shall have the right to review the Work to determine whether, in the Owner's good faith opinion, the progress of the Work has reached stage of completion indicated in the Contractor's application for payment. The Owner may withhold payment as the Owner in good faith deems necessary to protect the Owner from loss on account of defective Work not remedied, failure of the Contractor to make payments properly to subcontractors or suppliers, liens filed by the Contractor or its subcontractors or suppliers, or damage to the Owner or another contractor. Each payment due to the Contractor shall be made by the Owner within thirty (30) days of the date such payment becomes due in accordance with the requirements of this Section.

(c) A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

12. Substantial Completion; Punch List; Final Completion. Substantial Completion of the Work shall be achieved when (a) the Work is sufficiently complete in accordance with the Contract Documents so the Owner can commence beneficial use and/or occupancy of the Project as intended, (b) all Project systems included in the Work are operational as designed and specified, (c) all designated or required governmental inspections have been successfully completed, and certificates of occupancy have been obtained, in each case to the extent required to occupy and use the Project for its intended use, and (d) all final finishes required by the Contract Document are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy and/or use the Project on the Date of Substantial Completion and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's occupancy and/or use of the Project. As a further condition of Substantial Completion, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days following the Date of Substantial Completion or as otherwise agreed in writing by the Owner.

13. Contractor's Acceptance as Final Release. The acceptance by the Contractor of the final payment under the Agreement shall operate as a complete and unconditional release to the Owner of any and all existing or future claims or demands by the Contractor in connection with the Contract Documents and the Work performed hereunder.

14. Insurance.

(a) The Contractor and all subcontractors hired by the Contractor to complete portions of the Work shall specifically procure, pay for and maintain, in full force and effect until all amounts owed to the Contractor under the Contract Documents have been paid, and for such longer periods as may be required below, the following types of insurance and minimum coverage amounts written by insurers rated by A.M. Best & Co., with a minimum rating of (or equivalent to) A-V111 and qualified to do business in jurisdiction where the Project is located:

(i) Workers' Compensation Insurance. Workers' compensation insurance shall be provided as required by any applicable law .

(ii) Commercial General Liability Insurance. Commercial General Liability insurance covering all operations by or on behalf of the Contractor arising out of or connected with the Contract Documents and the Work providing insurance for bodily injury, property damage, personal injury and advertising injury, as those terms are defined by Commercial General Liability insurance policies, with limits (either alone or with excess liability coverage) of not less than the minimum amount(s) specified in the Agreement.

(iii) Automobile Liability Insurance. Business automobile liability insurance, including bodily injury, passenger liability (where applicable) and property damage for all vehicles, including but not limited to all owned, hired (or rented) and non-owned vehicles. The limits of liability shall not be less than the minimum amount(s) specified in the Agreement.

(iv) Umbrella Liability Insurance. Umbrella liability insurance of not less than the minimum amount(s) specified in the Agreement.

(b) Prior to commencing any Work, the Contractor shall furnish Owner with certificates of insurance giving evidence of the insurance and endorsements required by this Section. Owner and any lender or other party-in-interest identified by Owner shall be included as an additional insured under the Contractor's liability insurance policies and coverage afforded the Owner, each additional insured and each indemnified party shall be primary insurance. The Contractor shall also furnish certificates of insurance or policy binders evidencing renewal or replacement coverage to the Owner not less than twenty (20) calendar days prior to expiration of any such policies. Certificates of insurance shall provide for at least thirty (30) days' prior written notice to Owner of cancellation (unless cancellation is for nonpayment of premium, in which case 10 days' notice will suffice) or material modification, and shall delete the words "endeavor to" from the obligation to notify the certificate holder (Owner) of such cancellation or modification. Upon request of the Owner, the Contractor shall provide the Owner with a certified copy of any policy of insurance required by this Section.

(c) The insurance coverages and limits required under the Contract Documents are designed to meet the minimum requirements of the Owner. They are not designed as a recommended insurance program for the Contractor or its subcontractors; and meeting these minimum requirements does not relieve the Contractor of its obligations under the Contract Documents, at law or in equity.

(d) The Owner may elect at any time during the term of the Agreement to require the Contractor to procure and maintain other or additional insurance. Notice of such election shall be given at least sixty (60) days' prior to the effective date of the required modifications. The Contract Sum shall be increased by the actual additional costs incurred by the Contractor in securing any such additional insurance pursuant to a Change Order.

15. Indemnification.

(a) To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless Owner, Owner's representative(s), their respective subsidiary, affiliated and associated companies, and the directors, officers, shareholders, employees and agents of any of them, and their respective agents and servants (collectively, "Indemnitees"), and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Indemnified Claims"), including without limitation, costs of defense, settlement and attorneys' fees, attributable to: (i) injury to or death of any person and injury to or destruction of or loss of use of property (other than the Work itself), in whole or in part actually or allegedly arising out of or resulting from or related to performance of the Work, caused by the acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable; (ii) any and all penalties imposed on or alleged against Indemnitees or the Work on account of the violation of any law, order, or regulation by Contractor or any subcontractor except to the extent any such penalty is caused by an Indemnitee; (iii) any and all Claims actually or allegedly arising out of or resulting from the acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

(b) The Contractor shall bear any and all reasonable expense incurred by any Indemnitee because of any Indemnified Claim or other matter indemnified against hereunder, including without limitation, attorneys' and consultants' fees and expenses, court costs, and costs related to the defense of, or preparing for the defense against, any such Indemnified Claim. If any such Indemnified Claim has not been settled or discharged when the Work is finished, the Owner may withhold an amount equal to one hundred fifty percent of the outstanding Indemnified Claim until any such Indemnified Claim is paid or settled or the Contractor provides a bond, acceptable to the Owner, to satisfy such Indemnified Claim.

(c) In any and all Indemnified Claims against the Indemnitees by any employee of the Contractor any Subcontractor, sub-subcontractor, supplier, materialmen, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or sub-subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

(d) The Contractor shall further indemnify, defend, protect, and hold harmless the Indemnitees from and against any and all Indemnified Claims and shall bear any and all expense, whether incurred or paid, of any Indemnitee (including without limitation, attorneys' and consultants' fees and expenses, costs related to preparing for and/or defending any action and court costs) suffered, incurred or arising from the failure of the Contractor or those acting under him to conduct the Work in accordance with the laws, statutes, ordinances, and regulations of any governmental authority.

(e) Any sum or sums chargeable to the Contractor under this Section may, at the election of the Owner, be deducted from any payments otherwise due or to become due to the Contractor under this or any other contract between the Owner and the Contractor, or the Owner may sue the Contractor and recover damages therefor.

16. Liens. In the event that any direct or indirect subcontractor, supplier or any other party for whom the Contractor is responsible establishes a lien against the Project and/or the Project site, the Contractor shall, within five (5) days of receipt of notice from the Owner regarding such lien, cause the lien to be discharged (either by obtaining and recording a lien discharge bond from a surety and in a form acceptable to the Owner or otherwise) at no cost to the Owner. The Owner shall have the right to withhold all further payments to the Contractor until the lien is discharged. The Owner may either (a) apply amounts so withheld to discharging such lien or (b) retain such amounts until such lien is discharged or released by the Contractor or the lienor, and shall thereafter credit to the Contractor any amounts remaining after payment of the fees and expenses the Owner incurs in connection with such lien. The Contractor agrees to indemnify and hold harmless the Owner from all costs and expenses incurred by the Owner in connection with such liens.

17. Termination. The Owner shall have the right to terminate the Agreement with or without cause by and upon delivering written notice to the Contractor. In the event of such termination by the Owner for convenience, the Owner shall promptly pay the Contractor any compensation owed for Work completed in compliance with the requirements of the Contract Documents through and including the date of termination, and upon payment of such compensation, the Owner shall have no further obligations or liabilities to the Contractor. In the event of such termination by the Owner for cause (including, without limitation, if the Contractor defaults, fails to comply with the Contract Documents, provides defective or non-conforming Work, becomes insolvent or becomes the subject of bankruptcy proceedings), the Owner shall not be liable to the Contractor for any amounts, but the Contractor shall be liable to the Owner for all losses, damages and expenses resulting from such default.

18. Warranty; Contractor's Duty to Correct Defective or Nonconforming Work.

(a) The Contractor warrants and guarantees that (i) all materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, (ii) all Work will be in accordance with the requirements of the Contract Documents and will not be defective and (iii) all Work and the performance thereof shall comply with the applicable federal, state and local laws, rules and regulations (including, without limitation, those concerning health, safety and environmental standards and requirements) which bear upon the Contractor's performance of the Work. The warranties provided in this paragraph

shall be in addition to, and not in limitation of, any other warranty required by the Contract Documents or otherwise prescribed by law.

(b) The Contractor shall promptly correct defective or nonconforming Work after written request from the Owner provided such request is made within one year after the date of final payment (or such longer period for any portion of the Work covered under a separate warranty). Nothing contained in this paragraph shall be construed to establish a period of limitation with respect to obligations which the Contractor may have under the Contract Documents other than the specific obligation of the Contractor to promptly correct defective Work contained in this paragraph. Without limiting the generality of the foregoing, the provisions of this Section shall not limit the time within which the Owner may seek to enforce the Contractor's obligation to comply with the Contract Documents nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contract Documents other than the specific obligation of the Contractor to promptly correct defective Work contained in this paragraph.

19. Safety Precautions.

(a) Contractor shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Agreement. Contractor shall take all reasonable precautions for the safety of, and shall provide all 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, whether in storage on or off the site, under care, custody, or control of Contractor or Contractor's contractors; and (3) other property at or adjacent thereto. Contractor shall give notices and comply with applicable Laws bearing on the safety of persons or property or their protection from damage, injury or loss. Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by Contractor, a contractor of Contractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

(b) In performing the Work, Contractor shall exercise diligent efforts to protect the buildings and to cause all materials, supplies, systems and equipment which are delivered to the Project site from exposure to, and damage from, water. Without limiting the generality of the foregoing, Contractor shall (i) install temporary barriers adequate to prevent water entry to the building from openings in the roof, exterior walls or other applicable building elements to the extent related to the Work, (ii) cause all materials, supplies, systems and equipment which are delivered to the Project site to be stored in a safe and secure location, packaged in a watertight manner where possible, and stored in a manner which protects such items from inclement weather, the elements (including, without limitation, rain, snow and water damage) and other damage until such items are incorporated into the Work, and (iii) ensure that all plumbing components and exterior elements included within the Work are constructed and installed in accordance with the Contract Documents so as not to allow water leaks or penetration. In addition to (and not in limitation of) the indemnification obligations of Contractor set forth elsewhere in the Contract Documents, Contractor shall indemnify and hold harmless the Indemnitees to the fullest extent permitted by law from all claims, liabilities and losses arising out of or resulting from the failure of Contractor (or any subcontractor of any tier) to comply with the provisions of this paragraph. The foregoing indemnification shall include, without limitation, any claim, liability of loss attributable to (x) bodily injury, sickness, disease or death arising out of or relating to, and (y) the costs of any abatement, clean-up, removal and disposal (to the satisfaction of Owner) of, any mold, fungal growth, spores or the like which occurs at the Project site as a result of any failure by Contractor (or any subcontractor of any tier) to comply with the provisions of this paragraph.

(c) To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner and all of Owner's affiliates, members and employees, from all loss, cost and expense (including, without limitation, fines, penalties, sanctions and related costs and attorneys' fees) arising out of or resulting from Contractor's obligations or failure to comply with the obligations in this Section 21.

20. Disputes.

(a) Claims, disputes and other matters in question arising out of or relating to the interpretation, construction, or performance this Contract ("Claims") shall be resolved in accordance with this Section.

(b) Claims by the Contractor seeking extension of time, additional money or other relief must be reported to the Owner in writing within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. THE CONTRACTOR EXPRESSLY AGREES THAT FAILURE OF THE CONTRACTOR TO INITIATE A CLAIM WITHIN THE TIME LIMITS SPECIFIED IN THIS PARAGRAPH SHALL RESULT IN SUCH CLAIM BEING WAIVED. Claims must be initiated by written notice delivered to the other party containing a clear statement of the basis of the Claim and the relief sought by the claimant.

(c) Pending final resolution of a Claim except as otherwise agreed in writing, (i) the Contractor shall proceed diligently with performance of the Work without any interruption or delay and (ii) the Owner shall continue to make payments which are not in dispute in accordance with the Contract Documents.

(d) Any Claim arising at any time during or after the construction of the Project shall be resolved, if possible, by negotiations between duly authorized representatives of the Contractor and the Owner. If such duly authorized representatives are unable to resolve any Claim within ten days after written notice of such dispute together with all relevant supporting documentation is given by either party to the other, the matter may be submitted by either party to mediation. Each party shall bear its own attorney's fees and costs of the mediation and the parties shall share in the fees and expenses of the mediator. The mediation shall be held in Williamstown, Massachusetts, unless another location is mutually agreed upon or directed by the mediator. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The request for mediation may be made concurrently with the filing of a demand for legal or equitable proceedings but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed until the date that is thirty (30) days following the end of any unsuccessful mediation (unless stayed for a longer period by agreement of the parties or court order). Any dispute which is not resolved by mediation in accordance with this paragraph shall be subject to litigation by either party. Any suit by either party shall be brought only in the county and state where the Project is located. The parties hereto waive any argument that this venue is not appropriate or that the forum is inconvenient. The parties hereto waive all rights, if any, to a jury trial in any disputes arising from or relating to the Contract Documents. Each party shall be entitled to an order for specific performance of the requirements of this paragraph concerning negotiations between duly authorized representatives of each party empowered to finalize a binding resolution of the dispute and/or mediation of the dispute.

(e) Notwithstanding anything to the contrary, (i) in the event of any mediation, arbitration, or legal proceeding between the Owner and any third party arising out of or relating to the Project, the Contractor agrees that the Owner may join the Contractor in any such proceedings and that the Owner may consolidate any such proceedings with any proceeding between the Contractor and the Owner under the Contract Documents, and (ii) the Owner may make persons other than the Owner and the Contractor parties to any mediation, arbitration, or legal proceeding hereunder with respect to any claim, dispute or other matter in question arising out of the Project.

21. Limitation on Damages. The Contractor shall not be entitled to consequential or incidental damages in connection with any delays caused by the Owner, defaults by the Owner or termination of the Contract Documents (including, without limitation, damages for loss of anticipated profits on Work not performed or for missed opportunities for other work). Without limiting the generality of the foregoing, the Contractor shall have no claim for damages of any kind against the Owner on account of any delay in the commencement of the Work and/or any hindrance, delay or suspension of any portion of the Work, unless delays caused exclusively by the acts, omissions or negligence of the Owner, for which the Contract Time is extended in accordance with the Contract Documents, result in an aggregate extension of the Contract Time of more than thirty calendar days. In such event, the Owner shall pay to the Contractor an amount equal to the Contractor's reasonable and verified expenses for labor, materials and equipment directly attributable to such extensions of the Contract Time in excess of thirty calendar days. The right of the Contractor to receive reimbursement for such expenses shall be, at law and in equity, the Contractor's sole and exclusive damage remedy for delays.

22. Miscellaneous.

(a) Notices. Whenever any notice, demand or request is required or permitted under the Contract Documents, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial

courier for next business day delivery, to the addresses set forth in the Agreement and/or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile or e-mail to the number or e-mail address for each party set forth in the Agreement or to such other numbers as are specified by written notice given in accordance herewith (with a duplicate sent the same day by registered or certified mail, return receipt requested, or by nationally recognized commercial courier for next business day delivery). All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; and those given by facsimile or e-mail transmittal shall be deemed given on the date of facsimile transmittal. Any notice, demand or request not received because of changed address or facsimile number of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the date of facsimile transmittal, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

(b) Governing Law. The Contract Documents shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts (without regard to principles of conflicts of law).

(c) Entire Agreement. The Contract Documents represent the entire and integrated contract for services to be provided by the Contractor in connection with the Project, and supersede all prior negotiations, representations, agreements and proposals whether written or oral. The Contract Documents may be amended only by written instrument signed by both the Contractor and the Owner.

(d) Independent Contractor. Contractor, in the performance of its duties hereunder, shall be an independent contractor only, and not an agent, employee, partner or joint venturer of or with Owner, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor.

(e) Counterparts. The Agreement may be executed in several counterparts, and/or by execution of counterpart signature pages which may be attached to one or more counterpart, and all so executed shall constitute one Agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart. In addition, any counterpart signature page may be executed by any party wheresoever such party is located, and may be delivered by telephone facsimile transmission, and any such facsimile transmitted signature pages may be attached to one or more counterparts of the Agreement, and such faxed signature(s) shall have the same force and effect, and be as binding, as original signatures executed and delivered in person.

(f) Site and Local Conditions. By executing the Agreement, the Contractor represents that it has visited the Project Site, become familiar with the local conditions upon which the Work is to be performed, verified the nature and quality of the Work involved, is familiar with all conditions which may be encountered and has correlated the Contractor's observations with the requirements of the Contract Documents. Contractor shall provide prompt written notice of any Claim arising from unknown or unforeseen conditions at the Project site promptly before conditions are disturbed.

(g) Successors and Assigns; Assignment. The Owner and the Contractor, respectively, bind themselves and their successors, assigns and legal representatives to the other party to the Contract Documents and to the successors and assigns of such other party with respect to all covenants of the Contract Documents. Notwithstanding the foregoing, the Contractor shall not subcontract the Work or assign the Contract Documents without the written consent of the Owner. If either party makes an assignment, that party shall nevertheless remain legally responsible for all obligations under the Contract Documents, unless otherwise agreed by the other party.

(h) Authorized Representatives. Any consent, approval, authorization or other action required or permitted to be given or taken under the Contract Documents by the Owner or the Contractor, as the case may be, shall be given or taken by one or more of the authorized representatives of each. For purposes of the Contract Documents: (1) the authorized representatives of the Owner shall be any one or more of the parties listed as "Owner's Representatives" in the Agreement; and (2) the authorized representatives of the Contractor shall be any one or more of the parties listed as "Contractor's Representatives" in the Agreement. Any party hereto may from time to time designate other or replacement authorized representatives to the other party hereto. The written statements and representations of any

authorized representative of the Owner or the Contractor shall be binding upon the party for whom such person is an authorized representative, and the other party hereto shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action which he proposes to take.

(i) Headings. The use of headings, captions and numbers in the Contract Documents are solely for the convenience of identifying and indexing the various provisions in the Contract Documents and shall in no event be considered otherwise in construing or interpreting any provision in the Contract Documents.

(j) Severability. If any term, covenant, condition or provision of the Contract Documents, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of the Contract Documents or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(k) Non-Waiver. Except as otherwise provided in Section 22(b) of these General Terms and Conditions: (i) failure by either party to complain of any action, non-action or default of the other party shall not constitute a waiver of any aggrieved party's rights hereunder; and (ii) waiver by either party of any right arising from any default of the other party shall not constitute a waiver of any other right arising from a subsequent default of the same obligation or for any other default, past, present or future.

(l) Rights Cumulative. All rights, remedies, powers and privileges conferred under the Contract Documents on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law or equity.

(m) Advertising or Publication. Neither the Contractor nor any subcontractor shall cause or allow the name of Owner or any affiliate of Owner to be used in any advertising or promotional literature, or in any articles in any publication, without prior written approval by Owner.

(n) Exaggerated Liens. The Contractor acknowledges and agrees that the Owner will suffer damages in the event that the Contractor files a lien without reasonable basis for the value claimed (an "Exaggerated Lien"). If, in any action or proceeding, it is determined that the Contractor has filed an Exaggerated Lien, the Contractor shall be liable for damages to the Owner arising therefrom (including, without limitation, the amount of any premium for a bond given to obtain the discharge of the Exaggerated Lien, interest on any money deposited for the purpose of discharging the lien, the cost of any letter of credit to secure any bond given to obtain the discharge of the Exaggerated Lien, attorney's fees for services in securing the discharge of the Exaggerated Lien, and an amount equal to the difference by which the amount claimed to be due or to become due as stated in the Statement of Account exceeded the amount actually due or to become due thereon.

(o) Other Items Relating to Work. The Contractor shall allow no smoking at the Project site at any time. The Contractor shall be responsible for the conduct of its employees, suppliers, and subcontractors on or around the Project site. Conduct judged to be abusive or harassing will be grounds for immediate dismissal from the Project.

(p) Restricted Work Days. No work shall be carried out on any Project on the days listed on Schedule E attached hereto and made a part hereof except with the Owner's prior written approval.

[End of General Terms and Conditions]