

# SUPPLEMENTARY CONDITIONS

## Modifications to AIA Document A201-1997 OFD 00 72 23 CM/GC December 2007

The following supplements modify, change, delete from or add to "General Conditions of the Contract for Construction", AIA Document A201, 1997 Edition, for all General Work (OFD 00 72 23 CM/GC) December 2007 issue. Where an Article, Paragraph, Subparagraph or Clause of General Conditions is modified or deleted by Supplementary Conditions unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

### TITLE PAGE

TITLED REFERENCE: Delete that designated and substitute with the following: "Tennessee Department of General Services projects utilizing CM/GC Agreement"

THE OWNER: Delete that designated and substitute with the following: "State of Tennessee, Department of General Services"

### 3 CONTRACTOR

**3.4** Add subparagraphs 3.4.5.5 through 3.4.5.7 as follows:

**3.4.5.5** The Contractor shall reaffirm this attestation, in writing, by submitting to the Owner a completed and signed copy of the standard form entitled "Personnel Used in Contract Performance" with each application for payment. This form is provided in the Contract Documents. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

**3.4.5.6** Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

**3.4.5.7** The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the Owner.

**3.10** Delete subparagraphs 3.10.4 and 3.10.5, and substitute subparagraphs 3.10.4 through 3.10.7 as follows:

#### **3.10.4 Scheduling Agent**

At any time during the course of the Work, Owner may provide the services of a Construction Scheduling Agent. If provided, such services will be set forth in the specification of Progress Schedules. If provided, the purpose of such services is to assist in producing a progress schedule for the Work; however, no express or

implied guarantee or warranty is provided by the Owner regarding the suitability of the derived schedules, and the Contractor retains full responsibility for the suitability of the schedules and for conforming to them. Contractor shall cooperate fully in developing a schedule, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

#### **3.10.5 Commissioning Agent**

At any time during the course of the Work, Owner may utilize the services of a Commissioning Agent to have selected building systems commissioned. If utilized, such services and systems will be set forth in the specifications of Commissioning Requirements. If utilized, the purpose of such services is to ensure that all building systems perform interactively according to the design intent as indicated by the Contract Documents and the Owner's operational needs. The Commissioning Agent will direct the commissioning process. Contractor shall cooperate fully in the commissioning process, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

#### **3.10.6 Hazardous Materials Agent**

At any time during the course of the Work, Owner may utilize the services of a Hazardous Materials Agent to perform assessment of possible hazardous materials encountered by the Contractor in performance of the Work. If utilized, such services will be set forth in the specifications of Hazardous Materials Assessment Requirements. If utilized, the purpose of such services is to determine the appropriate course of action to contend with such materials in accordance with the Contract Documents. Contractor shall cooperate fully in the assessment process, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

#### **3.10.7 Disaster Recovery Agent**

At any time during the course of the Work, Owner may utilize the services of a Disaster Recovery Agent to perform emergency disaster recovery services at the project site relating to Contractor performance of the Work, or other circumstances. Time being of the essence, such work will be to mitigate material damages that has occurred with the intent to lessen costs potentially to the Contractor and Owner. Contractor shall cooperate fully in the disaster recovery process, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

**3.18** Delete subparagraph 3.18.1, and substitute as follows:

**3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, and agents and employees of the Owner from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, (other than the Work itself), but only to the extent caused by the willful or negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. Contractor agrees to indemnify the Designer and Designer's consultants based on the willful or negligent acts or omissions of the Contractor, except that Contractor shall not indemnify the Designers and Designer's consultants based on design mistakes and errors or omissions.

**3.21** Add paragraph 3.21 as follows:

**3.21 Security of Protected Information**

**3.21.1** Contractor is required to comply with policies, conditions and rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, which includes protection of the security of information identified as protected health information (PHI).

**3.21.2** If Contractor is notified of the presence of PHI contained in facilities identified in the Work, then Contractor shall transmit such notice to all employees, subcontractors, material suppliers, and other affiliates of the Contractor allowed access to such facilities during the course of the Work.

**3.21.3** All individuals notified per the requirements of this paragraph shall not read, examine, remove, or otherwise interfere with PHI. They shall not allow access to PHI, or disclose the contents of PHI, to any other person. All such individuals with knowledge of an unauthorized disclosure of PHI shall notify either an appropriate State official or a manager of the Contractor with responsibility for notifying the appropriate State official.

**3.22 Records**

**3.22.1** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

## **11 INSURANCE**

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**11.4.1** Delete first sentence and substitute:

The Contractor shall purchase from and maintain, with a company or companies licensed to do business in Tennessee by the Department of Commerce and Insurance, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum plus value of subsequent Contract modifications for the covered project at the site on a replacement cost basis.

**11.4.1.1** Delete the last two sentences and substitute: Any deductibles shall be the responsibility of the Contractor.

**11.4.1.2** Delete clause.

**11.4.1.4** Delete the clause in its entirety and substitute: This property insurance shall cover portions of the work stored off the site and also portions of the work in transit. The Contractor shall present a certificate of insurance demonstrating coverage of the property stored off the site or in transit at the time payment for that portion of the work is presented.

**11.4.2** At beginning of first sentence delete "The Owner shall purchase..." and substitute "The Contractor shall purchase..."

**11.4.6** Substitute all references to "Owner" with "Contractor", and substitute all references to "Contractor" with "Owner".

**11.4.8** Delete clause.

**11.4.9** At the end of the paragraph delete "after notification of a change in the work in accordance with Article 7."

**END**