
DESIGN-BUILD CONTRACT
Guaranteed Maximum Price
Specialized Men's Prison Facility

This “**AGREEMENT**” is made as of the 15th day of April in the year of 2022 (the “**Effective Date**”) by and between the Authority (as defined below) and the DB Contractor (as defined below).

The Authority and the DB Contractor agree as set forth below.

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ARTICLE 1
DEFINITIONS; CONSTRUCTION & INTERPRETATION

1.1 KEY TERMS

The following key terms shall have the meanings set forth in this Section 1.1 (Key Terms). Capitalized terms used in this Agreement but not defined in this Section 1.1 shall have the meanings set forth in Section 1.4 (Defined Terms) below.

The “**Authority**”:

Alabama Corrections Institution Finance Authority
c/o Department of Finance
State of Alabama
State Capitol
600 Dexter Avenue, Suite N-200
Montgomery, Alabama 36130
Attention: Finance Director

The “**Authority**” is referred to throughout the Contract Documents as if singular in number and refers to the Authority and its authorized representatives, including the ADOC as described below. The Authority Representative(s) designated by Authority as of the Effective Date in accordance with Subsection 6.2.1 (The Authority: Administration and Cooperation) are as set forth in Exhibit K (Authorized Representatives of State-Related Parties).

The “**DB Contractor**”:

Caddell Construction Co. (DE), LLC
445 Dexter Avenue, Suite 11000
Montgomery, AL 36104
Attention: Randy Denham, Senior Project Manager.

The “**DB Contractor**” is referred to throughout the Contract Documents and refers to the DB Contractor and its authorized representatives.

The “**ADOC**”:

Alabama Department of Corrections
301 S. Ripley Street
Montgomery, Alabama 36104

Addressees for notices:

John Q. Hamm, Commissioner; and
Jenny Abbott, Director of Facilities Management

In addition, copy all notices regarding Claims, disputes, suspension, or termination to:

Carrie Ellis McCollum, General Counsel

The “**ADOC**” is referred to throughout the Contract Documents as if singular in number and refers to the ADOC and its authorized representatives (which, as of the Effective Date, are

as set forth in Exhibit K (Authorized Representatives of State-Related Parties).

As of the Effective Date, the Authority has delegated to the ADOC certain rights and duties in relation to the Project, and the ADOC may act on behalf of the Authority for purposes of the Contract Documents at any time in accordance with the authority granted to the ADOC pursuant to the (a) Intergovernmental Agreement, dated November 2, 2021, between the Authority and State, acting by and through the ADOC, relating to the Specialized Men's Prison Facility, and (b) Resolution Delegating Administrative and Reporting Duties and Obligations to the Alabama Department of Corrections, duly adopted by the Authority at its meeting on November 2, 2021. For the avoidance of doubt, references to the "**Authority**" in this Agreement include the ADOC acting on behalf of the Authority in accordance with the foregoing delegations.

The "**State**":

The State of Alabama

"**State Parties**"

means and refers to the Authority, the ADOC, the Alabama Department of Finance, including its Division of Construction Management, and their respective members, directors, officers, employees, assigns, and representatives.

The "**Program Manager**":

Hoar Program Management, LLC
2 Metroplex Drive Suite 300
Birmingham, AL 35209
Attention: Michael Lamb, Senior Program Manager
Phone: (205) 503-3843
Email: MLamb@HPMLeadership.com

or such other person or entity as the Authority (or the ADOC, as Authority Representative) may subsequently designate by written notice to the DB Contractor.

"**State-Related Parties**"

means and refers to the State Parties, the Program Manager, any Lenders or other Project financing parties, and any Separate Contractors, and their respective parents, subsidiaries, affiliates, directors, partners, members, shareholders, officers, managers, employees, consultants, agents, successors, assigns, and representatives.

The "**Project**":

Specialized Men's Prison Facility
2961 Marion Spillway Road
Deatsville, Alabama 36022

The Project consists of the total design, construction, and build-out of a new specialized men's prison facility on State-owned land in Elmore County pursuant to Act 2021-546 (the "**Specialized Men's Prison Facility**" or the "**Facility**"), including certain other related improvements identified in the

Contract Documents, of which the Work to be performed under the Contract Documents (as such Work is defined therein) may be the whole or part, and that may include work, services, and/or procurement by the State Parties or their Separate Contractors.

“Act 2021-546”:

Act 2021-546 of the First Extraordinary Session of the 2021 Alabama Legislature

The Final Completion Deadline

that is guaranteed by the DB Contractor (subject to adjustments in the Contract Time in accordance with this Agreement) shall be as set forth in the FGMP Amendment, but is expected to be no later than 1,382 days following the Notice to Proceed with Design Phase Work issued by the Authority.

The **“IGMP”**

is \$623,646,000.00.

The **“Design Phase Sum”**

is \$41,903,305.00.

The **“DB Contractor’s Fee”**

means, except as limited by the FGMP, 4% of the Cost of the Work

The **“Contract Documents”**

are enumerated as follows: (a) this Agreement; (b) all exhibits hereto; (c) the Facility Documents; (d) the Construction Documents (once approved by the Authority as provided in Subsection 7.3.2.4 (Complete Construction Documents)); (e) Modifications, including the GMP Amendment(s); and (f) Work Package Authorization(s).

The Contract Documents do not include any other documents, including any advertisement or invitation to bid, instructions to bidders or addenda thereto, sample forms, or other information furnished by any of the State Parties or their representatives in anticipation of receiving bids or proposals or relating to bidding requirements, or the DB Contractor’s bid or proposal.

In the event of a conflict or inconsistency among the Contract Documents, the following order of precedence shall govern the interpretation of such documents:

- (i) Modifications post-dating the FGMP Amendment;
- (ii) The FGMP Amendment;
- (iii) Any other GMP Amendment or other Modification;
- (iv) This Agreement between the Authority and the DB Contractor;
- (v) Exhibit P (Financing-Related Conditions) to this Agreement;

- (vi) The exhibits to this Agreement other than Exhibit A (Project Criteria) and Exhibit P (Financing-Related Conditions);
- (vii) The Facility Documents;
- (viii) The Work Package Authorization(s);
- (ix) The Construction Documents, once approved by the Authority as provided in Subsection 7.3.2.4 (Complete Construction Documents); and
- (x) The Project Criteria as set forth in Exhibit A to this Agreement;

provided, however, that, to the extent that the Construction Documents include deviations from the requirements of the Project Criteria (as such criteria may be amended by Modification), if the DB Contractor did not direct specific attention, in writing, to such deviations when the Construction Documents were submitted for review and approval pursuant to Section 7.3 (Design Development Services), or the Authority has not otherwise expressly authorized such deviations from the Project Criteria in writing, then the Project Criteria shall control over the Construction Documents, subject to the following paragraph.

Despite the order of precedence set forth above, if there is any conflict, ambiguity or inconsistency between any of the provisions of this Agreement or the other Contract Documents with respect to the same subject matter, the provision of the Contract Documents that establishes the higher standard of safety, reliability, durability, performance, or service will prevail. Notwithstanding the foregoing sentence, computed or figured dimensions shall take precedence over scale dimensions, and large-scale Drawings shall take precedence over small-scale Drawings.

The “**Facility Documents**”

means and refers to the Applicable Facility Lease Provisions and Facility Rules and Regulations.

The “**Facility Lease**”:

The Lease to be entered into by and between the Authority and ADOC, as it may be amended from time to time, pursuant to which the Facility will be leased by the Authority to the ADOC.

The “**Applicable Facility Lease Provisions**”:

means and refers to those provisions of the Facility Lease that are applicable to this Contract or the Work hereunder, as set forth in Exhibit Q (Applicable Facility Lease Provisions).¹

¹ **Note:** Applicable Facility Lease Provisions to be identified and set forth in Exhibit Q by an Amendment to the Contract agreed by the parties. Applicable Facility Lease Provisions with respect to the design of the Facility shall

“Facility Rules and Regulations”

means and refers to the policies and procedures (or portion thereof, where only a portion is referenced or otherwise indicated) of the ADOC with respect to the following, as applicable to the Project or the Work (including any site visits or other activities by DB Contractor at existing ADOC facilities):

- (i) Facility access, security, safety, and operational conditions;
- (ii) Critical incident response, emergencies, and evacuations;
- (iii) Personnel identification, badges, and criminal history; and
- (iv) Alcohol, tobacco, and drug use;

as such policies and procedures are set forth in the Administrative Regulations issued by ADOC, as they may be amended from time to time.

be fully consistent with the Project Criteria. Any Project criteria that are in the Facility Lease will match those that are set forth in Exhibit A, and the Facility Lease will provide that the parties to the Facility Lease will not amend the Project criteria therein in a manner that will be materially inconsistent with the Project Criteria, as such may be modified (or the design developed further) under this Contract.

1.2 EXTENT AND INTENT OF CONTRACT; EXECUTION

1.2.1 The Contract Documents form this “**Contract**” for the performance of the Work. This Contract represents the entire and integrated agreement between the Authority and the DB Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

1.2.2 The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In the event the DB Contractor believes there to be an irreconcilable ambiguity or inconsistency between any of the Contract Documents, it shall immediately notify the Authority and the Program Manager of the same in writing stating the particulars of such ambiguity or inconsistency and the DB Contractor’s proposed resolution of the same.

1.2.3 This Agreement may be amended only by written instrument signed by both the Authority and the DB Contractor. The Contract Documents may be modified only by written Modification. In addition, notwithstanding anything to the contrary that may be contained in any of the Contract Documents (including the Facility Documents), the Contract Time and each GMP may only be adjusted to the extent expressly provided in this Agreement.

1.2.4 In performing its duties and obligations under this Contract, the DB Contractor shall, at all times, act in the capacity of an independent contractor and shall not in any respect be deemed to be (or to act as) an agent of any State Party for any purpose or reason whatsoever.

1.2.5 The Contract Documents shall not be construed to create a contractual relationship of any kind between the Authority and a Subcontractor, or between any persons or entities other than the Authority and the DB Contractor. In confirmation and furtherance of the foregoing, no Subcontractor shall be deemed or construed as a third-party beneficiary of this Contract.

1.3 GOVERNING LAW AND JURISDICTION

This Contract shall be governed by, and construed and enforced in accordance with, the Laws of the State, without regard to principles of conflicts of laws that would require the application of the laws of another jurisdiction. With respect to any dispute not subject to the jurisdiction of the Board of Adjustment, the Authority and the DB Contractor agree that the exclusive jurisdiction and venue for any legal action or proceeding, at Law or in equity, that is permitted to be brought by a party in court arising out of this Agreement shall be in the Circuit Court of Montgomery County, Alabama. Nothing in this Section 1.3 shall be construed as a waiver of immunity by the Authority or any other State Party.

1.4 DEFINED TERMS

1.4.1 “**Act 2021-546**” has the meaning set forth in Section 1.1 (Key Terms).

1.4.2 “**ADA**” means and refers to the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, including the ADA Amendments Acts of 2008, 42 U.S.C. § 12001 *et seq.*, and the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.*, and the rules and regulations promulgated thereunder.

1.4.3 “**ADA Consent Decree**” has the meaning set forth in Subsection 7.3.1.3 (ADA and Litigation Compliance).

1.4.4 “**ADOC**” has the meaning set forth in Section 1.1 (Key Terms).

1.4.5 “**Agreement**” means and refers to this written Agreement between the Authority and the DB Contractor for the Work on the Project, dated as of the Effective Date.

- 1.4.6** “**Allowances**” means and refers to the amounts (if any) included in the GMP for particular items for which actual costs are not known as of the GMP Effective Date.
- 1.4.7** “**Alternate**” means and refers to a variation in Contract Document requirements on which a separate price is requested. If the Alternate is accepted, the variation will become a part of this Contract, and the amount of money quoted will be added or deducted from the applicable GMP to determine the revised GMP. Prices for Alternates accepted as of the GMP Effective Date will already be incorporated in the applicable GMP.
- 1.4.8** “**Applicable Facility Lease Provisions**” has the meaning set forth in Section 1.1 (Key Terms).
- 1.4.9** “**Application for Payment**” means and refers to the DB Contractor’s application to the Authority for payment under this Contract as set forth in Section 5.3 (Applications for Payment).
- 1.4.10** “**Authority**” has the meaning set forth in Section 1.1 (Key Terms).
- 1.4.11** “**Authority Representative**” has the meaning set forth in Subsection 6.2.1 (The Authority: Administration and Cooperation).
- 1.4.12** “**Braggs Litigation**” has the meaning set forth in Subsection 7.3.1.3 (ADA and Litigation Compliance).
- 1.4.13** “**Braggs Orders**” has the meaning set forth in Subsection 7.3.1.3 (ADA and Litigation Compliance).
- 1.4.14** “**Business Day**” means any day other than a Saturday, Sunday, or any other day on which departments and agencies of the State are not open for the transaction of normal business.
- 1.4.15** “**Change Assessment**” has the meaning set forth in Section 10.2 (Authority-Initiated Change Orders) of Exhibit J (Special Conditions of the Program Manager).
- 1.4.16** “**Change in Law**” means and refers to the enactment, adoption, promulgation, amendment, modification, or change in interpretation by a Governmental Authority of any Law that is applicable to the performance of the Work, or any such change in the Facility Rules and Regulations (if any) applicable to the performance of the Work, in each case occurring after the Effective Date, excluding, however, any such change in Law or new Law passed or adopted but not yet effective as of the Effective Date of which the DB Contractor had, or reasonably should have had, knowledge; it being also expressly understood and agreed by the parties hereto that a change in any income tax Law or any Law by which a tax is levied or assessed on the basis of the DB Contractor’s income, profits, revenues or gross receipts shall not be a Change in Law.
- 1.4.17** “**Change in the Work**” has the meaning set forth in Subsection 13.1.1 (Changes in the Work: General Provisions).
- 1.4.18** “**Change Order**” has the meaning set forth in Subsection 13.2.1 (Change Orders).
- 1.4.19** “**Change Proposal**” has the meaning set forth in Section 10.2 (Authority-Initiated Change Orders) of Exhibit J (Special Conditions of the Program Manager).
- 1.4.20** “**Change Request**” has the meaning set forth in Section 10.3 (DB Contractor-Initiated Requests) of Exhibit J (Special Conditions of the Program Manager).
- 1.4.21** “**Claim**” has the meaning set forth in Subsection 12.1.1 (Claims: General Provisions).

- 1.4.22** “**Commissioning Agent**” means and refers to such person(s) or entity(-ies) as the Authority (or ADOC, as its representative) may identify to the DB Contractor as the Separate Contractor(s) performing commissioning activities in respect of the Work, as such activities may be further described in the Project Criteria, Special Conditions, or Design-Build Documents.
- 1.4.23** “**Confidential Information**” has the meaning set forth in Subsection 7.19.1 (*Confidential Information*).
- 1.4.24** “**Construction Change Directive**” has the meaning set forth in Subsection 13.7.1 (*Directed Changes in the Work*).
- 1.4.25** “**Construction Documents**” has the meaning set forth in Subsection 7.3.2.3 (*Construction Documents*).
- 1.4.26** “**Construction Phase**” has the meaning set forth in Subsection 2.1.5 (*Construction Phase*).
- 1.4.27** “**Construction Phase Work**” means the Work of the Construction Phase.
- 1.4.28** “**Contract**” has the meaning set forth in Subsection 1.2.1 (*Extent and Intent of Contract; Execution*).
- 1.4.29** “**Contract Documents**” has the meaning set forth in Section 1.1 (*Key Terms*).
- 1.4.30** “**Contract Sum**” has the meaning set forth in Subsection 4.1.1 (*Contract Sum*).
- 1.4.31** “**Contract Time**” has the meaning set forth in Subsection 3.1.1 (*Contract Time*).
- 1.4.32** “**Contractor Agent**” means and refers to any person for whom the DB Contractor is responsible under this Contract, including (a) the DB Contractor, (b) its Subcontractors at any tier (including Design Professionals), (c) any other persons performing any of the Work, (d) their respective directors, officers, executives, shareholders, general managers, employees, consultants, estimators, agents (including purchasing or contracting agents), superintendents or supervisory personnel, successors, assigns, and invitees, and (e) any other party directly or indirectly employed by the foregoing or for whose acts any of them may be legally or contractually responsible or liable.
- 1.4.33** “**Contractor Contingency**” has the meaning set forth in Subsection 4.1.6 (*Contractor Contingency*).
- 1.4.34** “**Cost of the Work**” has the meaning set forth in Subsection 4.2.1 (*Costs to be Reimbursed*).
- 1.4.35** “**DCM**” means and refers to the Alabama Department of Finance, Division of Construction Management.
- 1.4.36** “**DCM Manual of Procedures**” means and refers to the *Manual of Procedures of the State of Alabama Department of Finance, Real Property Management, Division of Construction Management, 2021 Edition* (dated as of August 2021).
- 1.4.37** “**DB Contractor**” has the meaning set forth in Section 1.1 (*Key Terms*).
- 1.4.38** “**DB Contractor’s Fee**” has the meaning set forth in Subsection 4.1.3 (*The DB Contractor’s Fee*) and shall be in the amount set forth in Section 1.1 (*Key Terms*).

- 1.4.39** “**DB Contractor’s Representative**” has the meaning set forth in Subsection 7.11.1.1 (Key Personnel).
- 1.4.40** “**Design-Build Documents**” shall mean and refer to the Schematic Design Documents, the Design Development Documents, and the 65% complete, 90% complete, and 100% complete Construction Documents, once each is approved by the Authority as provided in Section 7.3 (Design Development Services).
- 1.4.41** “**Design Development Documents**” has the meaning set forth in Subsection 7.3.2.2 (Design Development Documents).
- 1.4.42** “**Design Fee**” has the meaning and shall be in the amount set forth in Subsection 4.1.2.1(a) (Design Phase Sum).
- 1.4.43** “**Design Materials**” has the meaning set forth in Section 20.1 (Ownership and Use of Documents).
- 1.4.44** “**Design Package**” has the meaning set forth in Subsection 7.3.2 (Development of Design Packages).
- 1.4.45** “**Design Phase**” has the meaning set forth in Subsection 2.1.4 (Design Phase).
- 1.4.46** “**Design Phase Sum**” has the meaning set forth in Subsection 4.1.2.1 (Design Phase Sum) and shall be in the amount set forth in Section 1.1 (Key Terms).
- 1.4.47** “**Design Phase Work**” means the Work of the Design Phase.
- 1.4.48** “**Design Professional**” is a qualified, licensed design or engineering professional who is not an employee of the DB Contractor, but is retained by the DB Contractor, or employed or retained by anyone under contract with the DB Contractor or a Subcontractor, to furnish design or engineering services required under the Contract Documents.
- 1.4.49** “**Design Schedule**” shall mean and refer to the schedule for the Design Phase attached hereto as Attachment 1 (Design Schedule) to Exhibit D (Project Schedule), setting forth the dates by which the DB Contractor is obligated to submit to the Authority the various Design Packages relating to the Project, including the Design Development Documents and the 65% complete, 90% complete, and 100% complete Construction Documents submissions.
- 1.4.50** “**Drawings**” means and refers to the graphic and pictorial portions of the Contract Documents, wherever located and whenever prepared by an appropriate design professional and approved by the Authority (including such portions of the Design-Build Documents once approved by the Authority as provided in Section 7.3 (Design Development Services)), showing the design, location, dimensions, and details of the Work for the Project, and generally including plans, elevations, profiles, sections, details, schedules, or diagrams.
- 1.4.51** “**Enabling Works**” include, without limitation, clearing and grubbing, rough grading, erosion control, gravel parking and office areas, jobsite roadways, construction entrances to site, jobsite fencing, and construction laydown areas. Utilities to be included in the “Enabling Works” are sanitary sewer service, water service, water storage tank, electrical service, and natural gas service to the Site.

- 1.4.52** “**Enabling Works Contractor**” means and refers to W.S. Newell & Sons, Inc., or such other contractor(s) as the Authority may subsequently identify to the DB Contractor as the Separate Contractor(s) performing Enabling Works.
- 1.4.53** “**Enabling Works Designer**” means and refers to Goodwyn Mills Cawood, LLC, or such other designer(s) as the Authority may subsequently identify to the DB Contractor as the Separate Contractor(s) performing engineering and design services in respect of Enabling Works.
- 1.4.54** “**Environment**” means soil, land surface or subsurface strata, ambient air (indoor or outdoor), soil, surface water, groundwater, drinking water, stream sediments, biological resources (including endangered, threatened and sensitive species), natural systems (including ecosystems), interior or exterior of any building or improvement, or historic, archeological, or paleontological resources.
- 1.4.55** “**Environmental Claim**” means any Legal Action, Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any person or entity alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification, and injunctive relief) arising out of, based on, or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Permits issued thereunder.
- 1.4.56** “**Environmental Law**” means and refers to any Law, policy, code, Facility Documents requirement, or Permit requirement now or hereafter in effect, as the same may be amended from time to time, that relates to or imposes liability or standards of conduct concerning environmental quality, health, public and worker safety, pollution, Hazardous Materials, contamination, cleanup, or the protection of human health or the Environment, including, without limitation, the following federal statutes, as amended, and each of their State and local counterparts: Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300(f) *et seq.*; the Federal Emergency Management Agency, National Flood Insurance Act of 1968/The Flood Disaster Protection Act of 1973; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 11001 *et seq.*; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. § 7401 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; the Fish and Wildlife Coordination Act, 16 U.S.C. § 661 *et seq.*; the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*; the Coastal Zone Management Act, 33 U.S.C. § 1451 *et seq.*; the Alabama Water Pollution Control Act, Ala. Code § 22-22-1 *et seq.*; the Alabama Solid Wastes and Recyclable Materials Management Act, Ala. Code § 22-27-1 *et seq.*; the Alabama Air Pollution Control Act, Ala. Code § 22 28 1 *et seq.*; the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code § 22 30 1 *et seq.*
- 1.4.57** “**Excusable Event**” has the meaning set forth in Subsection 12.2.3 (Excusable Events).
- 1.4.58** “**Facility**” has the meaning set forth in Section 1.1 (Key Terms).

- 1.4.59** “**Facility Documents**” has the meaning set forth in Section 1.1 (Key Terms).
- 1.4.60** “**Facility Lease**” has the meaning set forth in Section 1.1 (Key Terms).
- 1.4.61** “**Facility Rules and Regulations**” has the meaning set forth in Section 1.1 (Key Terms).
- 1.4.62** “**FGMP**” means and refers to the final guaranteed not-to-exceed amount payable by the Authority to the DB Contractor for the performance of all Work on the Project, developed in accordance with Section 4.1 (Compensation for The Work).
- 1.4.63** “**FGMP Amendment**” has the meaning set forth in Subsection 4.1.5.8 (FGMP Amendment).
- 1.4.64** “**FGMP Effective Date**” is the date set forth in the FGMP Amendment as the date on which the amendment becomes effective and the FGMP becomes guaranteed by the DB Contractor.
- 1.4.65** “**FGMP Proposal**” has the meaning set forth in Subsection 4.1.5.5 (FGMP Proposal).
- 1.4.66** “**Final Completion**” has the meaning set forth in Section 14.3 (Final Completion).
- 1.4.67** “**Final Completion Deadline**” has the meaning set forth in Section 3.1 (Contract Time), as further described in Section 3.3 (Final Completion).
- 1.4.68** “**Force Majeure**” has the meaning set forth in Subsection 12.2.3(b) (Excusable Events).
- 1.4.69** “**General Conditions Items**” has the meaning set forth in Subsection 4.2.9.1 (General Conditions Costs).
- 1.4.70** “**General Conditions Schedule**” means and refers to the schedule of General Conditions Items set forth in Attachment 2 (General Conditions Schedule) to Exhibit B (IGMP Schedule of Values) hereto.
- 1.4.71** “**GMP**” means and refers to the guaranteed, not-to-exceed amount payable by the Authority to the DB Contractor for the performance of the applicable portion of the Work, as set forth in the applicable GMP Amendment or Work Package Authorization. No GMP shall include State Contingency, except at the express direction of the Authority.
- 1.4.72** “**GMPEffective Date**” is the date set forth in the applicable GMP Amendment or Work Package Authorization as the date on which the amendment or authorization becomes effective.
- 1.4.73** “**GMP Amendment**” has the meaning set forth in Subsection 4.1.5.4 (Design/Cost Estimation and Adjustments). For the avoidance of doubt, “GMP Amendment” includes, without limitation, the FGMP Amendment.
- 1.4.74** “**GMP Proposal**” has the meaning set forth in Subsection 4.1.5.2 (Work Package GMP Proposal).
- 1.4.75** “**Governmental Authority**” means and refers to any national, federal, state, county, municipal or local government, agency, authority, or court, or any department, board, bureau, or instrumentality thereof.
- 1.4.76** “**Hazardous Materials**” means and refers to any contaminant, pollutant, waste, element, chemical, compound, material, or substance, whether solid, liquid, or gaseous, which at any time is defined, listed, classified, or otherwise regulated in any way under, any Environmental Laws, or any other such substances or conditions which may create any unsafe or hazardous condition

or which causes or poses a threat to human health or safety or the Environment. The term **“Hazardous Materials”** shall be interpreted in the broadest sense under this Agreement and the Environmental Laws and shall include the following materials: (a) hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous material”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “radioactive materials”, “bio-hazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substance”, “toxic waste”, “toxic material”, or any other term or expression intended to define, list, or classify substances by reason of properties harmful to health, safety, or the Environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP toxicity” or “EP toxicity”, or words of similar import under any applicable Environmental Laws); (b) any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto; (c) any drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; (d) any flammable substances or explosives; (e) any radioactive materials; (f) any asbestos or asbestos-containing materials; (g) any lead and lead-based paint; (h) any radon or radon gas; (i) any methane gas or similar gaseous materials; (j) any urea formaldehyde foam insulation; (k) electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls; (l) pesticides; (m) any per- or polyfluoroalkyl substances; (n) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any Governmental Authority, or which may or could pose a hazard to the health and safety of the owners, operators, or any Persons in the vicinity of the Project or to the Environment; and (o) soil, or surface water, or ground water contaminated with Hazardous Materials as defined above.

- 1.4.77 **“IGMP”** is set forth in Section 1.1 (Key Terms) and represents the maximum amount that the Authority will pay for all Work on the Project.
- 1.4.78 **“Increased Cost”** has the meaning set forth in Subsection 13.4.3 (Increased Cost-Plus Fee Method).
- 1.4.79 **“Intellectual Property Rights”** means all patents, copyrights, trademarks, service marks, trade secrets, and all similar and related intellectual property rights protected under any Law.
- 1.4.80 **“Interim Project Milestone”** means and refers to an established date for completion of a Work element or task in the completion of a Work Package or of the Project overall prior to Final Completion, as such dates are identified in the Schedule (as it may be modified in accordance with this Agreement).
- 1.4.81 **“Law”** means and refers to any constitution, charter, statute, treaty, act, common or statutory law, ordinance, regulation, code, rule, executive order, order, decree, circular, permit, judgment, directive, ruling, decision, guideline, resolution or declaration of any Governmental Authority, or any interpretation or application thereof by any such Governmental Authority.
- 1.4.82 **“Legal Action”** shall mean any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law or in equity.

- 1.4.83** “**Lender,**” if applicable, means and refers to any construction or permanent lenders or bondholders providing financing to the Authority for the Project, and their respective representatives and agents, including any designated trustee, paying agent, or collateral agent, as further described in Exhibit P (Financing-Related Conditions) hereto.
- 1.4.84** “**Liquidated Damages**” has the meaning set forth in Subsection 3.5.2 (Liquidated Damages for Delay).
- 1.4.85** “**Modification**” means and refers to (a) a written amendment to this Agreement signed by both parties, (b) a Change Order, or (c) a Construction Change Directive.
- 1.4.86** “**Notice to Proceed**” means and refers to a written notice issued by the Authority to the DB Contractor authorizing the DB Contractor to commence the Work as set forth therein.
- 1.4.87** “**Order**” shall mean any decree (consent or otherwise), injunction, order, ruling, writ, quasi-judicial decision or award, or administrative decision or award of any federal, state, local, foreign or other court, arbitrator, tribunal, administrative agency, or Governmental Authority.
- 1.4.88** “**OSHA CS Standard**” has the meaning set forth in Subsection 8.3.3 (Safe and Secure Use of Site).
- 1.4.89** “**Permits**” means all building permits and any and all other permits, registrations, licenses, certifications, authorizations, inspections, approvals, consents, and governmental fees necessary for the proper execution and completion of the Work.
- 1.4.90** “**PREA**” has the meaning set forth in Subsection 8.5.9 (PREA).
- 1.4.91** “**Preconstruction Conference**” has the meaning set forth in Section 2.4.3 (Project Meetings) of Exhibit J (Special Conditions of the Program Manager).
- 1.4.92** “**Preconstruction Services Fee**” has the meaning and shall be in the amount set forth in Subsection 4.1.2.1(b) (Design Phase Sum).
- 1.4.93** “**Pre-Existing Hazardous Materials**” means the presence or Release of Hazardous Materials at the Site first occurring prior to the date the Authority provides the DB Contractor with access to the Site.
- 1.4.94** “**Preliminary Completion**” has the meaning set forth in Section 14.1 (Preliminary Completion).
- 1.4.95** “**Product Data**” has the meaning set forth in Subsection 7.14.1.2 (Shop Drawings, Product Data and Samples).
- 1.4.96** “**Professional Standard**” means and refers to (a) for all design services under this Agreement, the professional skill and care ordinarily provided by a competent design professional practicing under the same or similar circumstances and professional licenses as expeditiously as is prudent considering the ordinary professional skill and care of a competent design professional, and (b) for all other Work, the practices, methods, standards and performance of the Work in accordance with the degree of judgment and skill that is ordinarily possessed and exercised by (and generally accepted as being appropriate for) construction professionals of good standing and who are performing work for projects that are of similar scope, locale, nature, and complexity, and under the same or similar circumstances and conditions, as the Project.
- 1.4.97** “**Program Manager**” has the meaning set forth in Section 1.1 (Key Terms).

- 1.4.98** “**Project**” has the meaning set forth in Section 1.1 (Key Terms).
- 1.4.99** “**Project Criteria**” shall mean and refer to the criteria developed by or for the Authority and the ADOC to describe the program requirements and objectives for the Project, including use, space, price, time, site, and expandability requirements, as well as submittal requirements and other requirements governing the DB Contractor’s performance of the Work, as such criteria and requirements are set forth or referenced in Exhibit A (Project Criteria) hereto. The Project Criteria may include conceptual documents, design criteria, performance requirements, preliminary drawings, technical specifications, and other Project-specific technical materials and requirements.
- 1.4.100** “**Project Management System**” has the meaning set forth in Section 2.2 of Exhibit J (Special Conditions of the Program Manager).
- 1.4.101** “**Project Record Documents**” has the meaning set forth in Section 7.1 of Exhibit J (Special Conditions of the Program Manager).
- 1.4.102** “**Punch List**” has the meaning set forth in Subsection 14.1.3 (Preliminary Completion Documentation).
- 1.4.103** “**Quality Control Plan**” has the meaning set forth in Section 4.4 of Exhibit J (Special Conditions of the Program Manager).
- 1.4.104** “**Release**” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing, or allowing to escape or migrate into or through the Environment.
- 1.4.105** “**Remedial Action**” means, with respect to a Release of Hazardous Materials or Environmental Claim, the implementation and completion of any remedial, removal, response, construction, closure, disposal, or other corrective actions, including any monitoring, reporting, or permitting, or any pollution control equipment installation or operation, required under Environmental Laws to fully correct or resolve such Environmental Claim or remove such Hazardous Materials.
- 1.4.106** “**RFI**” means and refers to a request for information.
- 1.4.107** “**Safety Officer**” has the meaning set forth in Subsection 8.2.3.1 (Safety Personnel).
- 1.4.108** “**Samples**” has the meaning set forth in Subsection 7.14.1.3 (Shop Drawings, Product Data, and Samples).
- 1.4.109** “**Savings**” has the meaning set forth in Subsection 4.1.8.1 (Savings).
- 1.4.110** “**Schedule**” has the meaning set forth in Subsection 3.4.1 (Schedule). As of the Effective Date, the term “**Schedule**” refers to the Design Schedule for the Project, the Final Completion Deadline, and any Interim Project Milestone dates set forth in Exhibit D (Project Schedule) hereto.
- 1.4.111** “**Schedule of Values**” has the meaning set forth in Section 4.5 (Schedule of Values).
- 1.4.112** “**Schematic Design Documents**” has the meaning set forth in Subsection 7.3.2.1 (Schematic Design).
- 1.4.113** “**Self-Performed Work**” has the meaning set forth in Subsection 10.6.1 (Self-Performed Work).

- 1.4.114** “**Senior Officer**” means and refers to (a) in the case of the DB Contractor, its chief executive officer, president, chief operating officer, or any senior vice president or vice president, and (b), in the case of the Authority, the President, Vice President, or Secretary of the Authority.
- 1.4.115** “**Separate Contractors**” means and refers to any contractor, other than the DB Contractor or its Subcontractors, retained by any of the State Parties to provide logistics, planning, pricing, auditing, design, investigation, site work, construction, installation, testing, or commissioning services in connection with other portions of the Project or operations on the Site under a contract separate and apart from this Contract. Separate Contractors known or anticipated as of the Effective Date are identified in Subsection 11.1.1 (Construction by the Authority or ADOC or by Separate Contractors).
- 1.4.116** “**Shop Drawings**” has the meaning set forth in Subsection 7.14.1.1 (Shop Drawings, Product Data, and Samples).
- 1.4.117** “**Site**” means the area of the property for the Facility that is available to the DB Contractor for the performance of the Work on the Project, either exclusively or in conjunction with others (including Separate Contractors) performing work on the Project, as further set out in the Contract Documents.
- 1.4.118** “**Special Conditions**” means and refers to, as context requires, Exhibit J (Special Conditions of the Program Manager) and/or the conditions and requirements set forth in such Exhibit.
- 1.4.119** “**Specifications**” means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship required for the Work, and requirements for the performance of related services, including any Specifications identified in the Project Criteria set forth in Exhibit A (Project Criteria) hereto, and including those Specifications set forth in the Design-Build Documents once approved by the Authority as provided in Section 7.3 (Design Development Services).
- 1.4.120** “**State**” has the meaning set forth in Section 1.1 (Key Terms).
- 1.4.121** “**State Contingency**” has the meaning set forth in Subsection 4.1.5.1(g) (IGMP).
- 1.4.122** “**State Parties**” has the meaning set forth in Section 1.1 (Key Terms).
- 1.4.123** “**State-Provided FF&E**” has the meaning set forth in Subsection 6.4.2 (State-Provided FF&E).
- 1.4.124** “**State-Related Parties**” has the meaning set forth in Section 1.1 (Key Terms).
- 1.4.125** “**Subcontract**” has the meaning set forth in Subsection 10.4.1 (General Subcontract Terms) and includes purchase orders and purchase agreements.
- 1.4.126** “**Subcontract Price**” means and refers to the total amount to be paid to a Subcontractor pursuant to a Subcontract for Work, materials or equipment in accordance with the terms of the Contract Documents.
- 1.4.127** “**Subcontractor**” means and refers to any person or entity that is performing a portion of the Work, whether pursuant to a contract with the DB Contractor or another Subcontractor, and includes Design Professionals, sub-subcontractors and subconsultants at any tier, suppliers, vendors, and materialmen unless expressly indicated otherwise. The term “**Subcontractor**” does not include Separate Contractors or their subcontractors. The term “**Subcontractor**” is

used throughout the Contract Documents to refer to a Subcontractor or an authorized representative of the Subcontractor.

- 1.4.128** “**Taxes**” means any and all forms of taxation, charges, duties, imposts, levies, and rates whenever imposed by any Governmental Authority, including income tax, withholding taxes, sales and use taxes, business and occupation taxes, excise taxes, real estate excise taxes, corporation tax, capital gains tax, capital transfer tax, inheritance tax, rates, water rates, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security, or other similar contributions, and generally any tax, duty, impost, levy, or rate, or other amount, and any interest, penalty, or fine in connection therewith.
- 1.4.129** “**Unforeseeable Conditions**” means conditions at the Site that are (a) concealed physical conditions that differ materially from those indicated in the Contract Documents and any reports or other documents prepared by, on behalf of or presented to the DB Contractor prior to the Effective Date in relation to the Site, or (b) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of a similar nature and in a similar setting as those contemplated by the Contract Documents.
- 1.4.130** “**Unit Prices**” means and refers to agreed prices per unit, if any, for particular materials, equipment or other items to be provided by the DB Contractor as part of the Work, including any quantity limitations with respect thereto.
- 1.4.131** “**Vendor Specifications**” has the meaning set forth in Subsection 6.4.2.1 (Review of Vendor Specifications).
- 1.4.132** “**Work**” means and refers to all design, engineering, procurement, construction, and other services and items that are necessary or appropriate to design, construct, execute, and complete the Project in accordance with the Contract Documents, whether completed or partially completed, and includes all labor, supervision, materials, equipment, services, and things provided or to be provided by the DB Contractor to fulfill the DB Contractor’s obligations, including those items set forth on Exhibit A (Project Criteria) to this Agreement. The “**Work**” shall not include any procurement, construction or other services or items that the Authority expressly indicates in writing shall be excluded from the DB Contractor’s scope of Work, which may include services or items provided by the Authority or the ADOC or by a Separate Contractor in connection with other portions of the Project or other construction or operations at the Site.
- 1.4.133** “**Work Package**” has the meaning set forth in Subsection 2.1.5 (Construction Phase).
- 1.4.134** “**Work Package Authorization**” has the meaning set forth in Subsection 4.1.5.3 (Work Package Authorizations).
- 1.4.135** “**Work Package Savings**” has the meaning set forth in Subsection 4.1.5.5(b) (FGMP Proposal).

1.5 CONSTRUCTION & INTERPRETATION OF THE CONTRACT

1.5.1 Terms capitalized in this Agreement include (a) those terms that are specifically defined in this Agreement or (b) the titles of numbered provisions and identified references to Articles, Sections, and Subsections in the document.

1.5.2 The headings and captions used in the Contract Documents are inserted for reference and convenience only, and the same shall not limit or construe the articles, sections, subsections, or paragraphs to which they apply or otherwise affect the interpretation thereof.

1.5.3 Unless otherwise stated in the Contract Documents, words or abbreviations that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.5.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise defined.

1.5.5 In the interest of brevity, the Contract Documents frequently omit such modifying words as “all” and “any” and such articles as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5.6 In this Contract, the word “including” (or “include” or “includes”) means “including without limitation” and shall not be considered to set forth an exhaustive list.

1.5.7 Terms that are defined herein in the singular shall have the corresponding plural meaning when used in the plural, and vice versa, where the context so requires.

1.5.8 In the event of any inconsistency or discrepancy between written words and specific numbers, the description of any such figures by written words shall govern.

1.5.9 Unless specified otherwise, all statements of or references to dollar amounts or money in this Contract are to the lawful currency of the United States of America.

ARTICLE 2 **THE WORK**

2.1 THE WORK OF THIS CONTRACT

2.1.1 General Obligation. The DB Contractor shall perform the services and execute the Work described in the Contract Documents and as is reasonably inferable therefrom as being necessary to produce the results indicated in the Contract Documents.

2.1.2 Intent of the Contract Documents. The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work by the DB Contractor, including all such items and services that are consistent with, contemplated by, or reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein.

2.1.3 Labor and Materials. The DB Contractor shall provide and pay for all design, labor, procurement, materials, equipment, tools, 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.

2.1.4 Design Phase. The “**Design Phase**” includes all Work set forth in Sections 7.1 (Review of Project Criteria and Site Conditions), 7.2 (Professional Services), and 7.3 (Design Development Services), as well as all other Work identified as “design” or “preconstruction” work or services in Exhibit A (Project Criteria) and elsewhere in the Contract Documents, and includes the development and preparation of Design Packages, Work Packages, and GMP Proposals for each Work Package Authorization for the Project, as well as the preparation of the ultimate FGMP Proposal and finalization of the FGMP Amendment.

2.1.5 Construction Phase. The “Construction Phase” consists of all Work described in the Contract Documents other than the Design Phase Work. Construction Phase Work will be authorized in one or more phases or trade packages (each such phase or package, a “Work Package”) by the Authority’s issuance of a Work Package Authorization in accordance with Subsection 4.1.5.3 (Work Package Authorizations).

2.1.5.1 Work Package Breakdown. Based on the Work Package breakdown structure developed by the DB Contractor, reviewed by the Program Manager, and approved by the Authority, the DB Contractor shall prepare Design Packages as necessary to allow the Work Package scope to be defined in detail and a GMP Proposal (including Schedule) for delivery of each Work Package, for review by the ADOC and Program Manager and approval by the Authority.

2.1.5.2 No DB Contractor Right to Construct. By entering into this Agreement, the Authority is not obligating itself to authorize Construction Phase Work by the DB Contractor on any component of the Project or, once the Authority has issued a Work Package Authorization, to continue to authorize Construction Phase Work on any additional Work Package or other component of the Project.

- (a) If the Authority declines to authorize the DB Contractor to proceed with any Construction Phase Work at all, this Agreement shall be terminated for the Authority’s convenience in accordance with Article 16 (Termination or Suspension of the Contract).
- (b) If the Authority decides not to continue to authorize Construction Phase Work on any additional components of the Project after one or more Work Package Authorizations has been issued, the Authority shall provide notice to the DB Contractor that no additional Construction Phase Work will be authorized. Upon receipt of such notice, unless the Authority otherwise directs, the DB Contractor shall cease all Work under this Agreement except for the Work necessary to furnish 100% Construction Documents for the Project and to complete Work Packages for which the DB Contractor has previously received a Work Package Authorization.
- (c) Unless the Authority has otherwise terminated the DB Contractor’s right to proceed, the DB Contractor shall remain obligated to complete all Work Packages for which it has received and agreed to a Work Package Authorization in accordance with Subsection 4.1.5.3 (Work Package Authorizations) and shall be entitled to receive compensation for completion of authorized Work Packages in accordance with the applicable Work Package Authorizations.

2.2 RELATIONSHIP OF PARTIES

2.2.1 The DB Contractor acknowledges that this Agreement and the various Contract Documents are based on a relationship of trust and confidence established with the Authority and the other State Parties. The DB Contractor accepts this relationship and agrees at all times to act in a professional capacity on behalf of the Authority and the ADOC in providing design and construction services, all with the objective of constructing the Project efficiently and in a manner to provide for timely completion and occupancy of the Project. However, nothing in this Subsection 2.2.1 or any other provision of the Contract Documents is intended to create, by implication or otherwise, a fiduciary duty on the part of the DB Contractor to any of the State Parties.

2.2.2 The DB Contractor agrees that its Project management staff will function as part of the Project team, consisting of the Authority’s representatives, representatives of the other State Parties, the Program Manager, and the DB Contractor’s representatives, and that the DB Contractor will facilitate construction of the Project in the most expeditious manner consistent with the requirements of first quality and the Contract Documents. The DB Contractor covenants with the State to furnish the DB Contractor’s best skill

and judgment and to cooperate in all respects with the State Parties to further the interests of the Authority, the ADOC, and the State in the delivery of the Project.

2.3 DB CONTRACTOR COVENANTS AND RESPONSIBILITIES

2.3.1 The DB Contractor covenants and agrees that it shall duly and properly perform and complete the Work in accordance with the Contract Documents and all applicable Laws and Permits. The DB Contractor shall be solely responsible for, and shall have control over, all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work.

2.3.2 The DB Contractor covenants and agrees that it has the necessary skills, expertise, and training to perform the Work and shall supervise, coordinate, and direct the Work using the DB Contractor's best skill, judgment, and attention.

2.3.3 The DB Contractor covenants and agrees to cooperate with the State Parties to further the interests of the State in the delivery of the Project. The DB Contractor shall cooperate with and assist the Authority and the other State Parties (and their advisors, consultants, attorneys, employees, agents, and representatives, including the Program Manager) at all times during the term of this Contract so as to complete the Project in an efficient, timely and economical manner.

2.3.4 All services performed by the DB Contractor or its Subcontractors pursuant to this Contract (including the Work) shall be performed (a) in accordance with the Contract Documents, (b) with care and diligence, (c) in accordance with the Professional Standard, and (d) as expeditiously and economically as is consistent with the best interests of the State and with the preceding standards.

2.3.5 The DB Contractor covenants and agrees that all construction services shall be undertaken and performed by qualified construction contractors, vendors, and suppliers that, when applicable, are licensed to perform the relevant portion of the Work.

2.3.6 The DB Contractor shall, at all times during the term of this Contract, keep sufficient personnel employed so that the services to be performed by the DB Contractor hereunder are completed in an efficient, prompt, economical, and professional manner.

2.3.7 The DB Contractor shall be responsible to the State Parties for acts and omissions of the DB Contractor, its Subcontractors, and their respective agents and employees, as well as any other individuals or entities performing portions of the Work or claiming by, through or under the DB Contractor.

2.3.8 The DB Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents by the activities or duties of any other consultant retained by the State in its administration of the Contract or by tests, inspections, or approvals required or performed by persons other than the DB Contractor.

2.3.9 The DB Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

2.3.10 The DB Contractor shall obtain from each of the Design Professionals and, as appropriate, the other Subcontractors and shall furnish to the Authority and Program Manager, certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable Laws governing the design of the Project, and (iii) are furnished in compliance with the Professional Standard; and (b) that the State Parties shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. Neither the DB Contractor, nor the Design

Professionals, nor any other design professionals from whom certification is requested shall be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of their respective agreements with the Authority or the DB Contractor.

2.4 COMPLIANCE OBLIGATIONS

2.4.1 Compliance Obligation

The DB Contractor acknowledges and agrees that the Work must be performed in accordance with the Facility Documents. In connection with its performance of the Work, the DB Contractor shall perform and comply with all applicable obligations, duties, responsibilities, and requirements of the Facility Documents, in each case unless otherwise indicated by the Authority in writing.

2.4.2 Rights of the State Parties

The following terms and conditions shall apply with respect to all State Parties:

- (a) The State Parties and their respective representatives shall have the right to enter the Site and inspect the progress of the Work in accordance with the Facility Documents and shall have all other rights described in the Contract Documents.
- (b) The DB Contractor acknowledges and agrees that all warranties and guarantees provided by the DB Contractor pursuant to the Contract Documents shall inure to the benefit of the State Parties.
- (c) The DB Contractor shall, if so directed by the Authority, coordinate the purchase, installation, and/or inspection of any portion of the Work (including materials or equipment therefor) with any other State Party and its designees.

2.4.3 Third-Party Communications

If the DB Contractor determines it is necessary or advisable to contact or give notice to, or respond to communications from, any third party (other than the ADOC, the Program Manager, or its Subcontractors) in connection with the Work or the Project, the DB Contractor shall first notify the Authority and ADOC. If applicable Law does not require that notice or response immediately be given, the DB Contractor shall obtain the prior written consent of the Authority and ADOC before contacting or otherwise communicating with any third party (other than the ADOC, the Program Manager, or its Subcontractors).

2.4.4 Special Terms and Conditions

Special conditions of the Program Manager required for performance of the Work are set forth in Exhibit J (Special Conditions of the Program Manager) hereto. Any other special terms and conditions in respect of the Facility Documents or Project financing, if applicable, shall be as set forth in Exhibit P (Financing-Related Conditions) or Exhibit Q (Applicable Facility Lease Provisions) hereto, as applicable.

2.5 NO LIMIT ON FEDERAL OR STATE OFFICIALS

2.5.1 Nothing in this Contract shall in any way limit the constitutional and statutory powers, duties, and rights of federal officials or elected State officials.

2.5.2 Nothing in this Contract shall preclude, and the DB Contractor shall not interfere with, any review or oversight of the Work, the Project, the Site, or the Facility that any federal official, court, independent monitor appointed by any court order, or their respective designees, may desire to conduct. The DB

Contractor shall cooperate with any such review or oversight as directed by, and in coordination with, the Authority and ADOC (or as otherwise required by Law).

2.5.3 The DB Contractor shall promptly inform the Authority and ADOC of any communications regarding the Work, the Project, the Site, or the Facility received by the DB Contractor from any government official, court representative, court-appointed independent monitor, or any of their respective designees described in Subsection 2.5.1 or 2.5.2 above and shall notify the Authority and ADOC before responding to any such communication in accordance with Subsection 2.4.3 (Third-Party Communications).

ARTICLE 3

CONTRACT TIME AND SCHEDULE

3.1 CONTRACT TIME

3.1.1 The “**Contract Time**” is the period of time, including authorized adjustments, allotted in the Contract Documents for achieving Final Completion of the Work, with the deadline for the DB Contractor to achieve Final Completion of the Work (subject to adjustments in the Contract Time in accordance with this Agreement) being the “**Final Completion Deadline**.”

3.1.2 By executing this Agreement or a GMP Amendment, the DB Contractor confirms that the then-established Contract Time is a reasonable period for performing the Work within the applicable GMP.

3.2 COMMENCEMENT OF THE WORK

3.2.1 The Contract Time shall commence at the time for the commencement of Design Phase Work as set forth in Exhibit D (Project Schedule). At commencement of the Contract Time, the DB Contractor shall proceed with adequate forces to complete the Design Phase Work in accordance with the Project Schedule set forth in Exhibit D (Project Schedule).

3.2.2 No Construction Phase Work will be authorized to commence under this Contract until the DB Contractor has complied with the requirements of Subsection 4.1.5.2 (Work Package GMP Proposal) and the Authority has issued a Work Package Authorization in accordance with Subsection 4.1.5.3 (Work Package Authorizations). The DB Contractor shall commence performance of the Construction Phase Work authorized pursuant to Work Package Authorization upon, and not prior to, the date for commencement of such Work set forth in such Work Package Authorization. Upon such date, the DB Contractor shall proceed expeditiously with adequate forces to complete the authorized scope of Construction Phase Work so as to achieve Final Completion of the Work within the Contract Time.

3.2.3 Construction Phase Work may commence prior to completion of 100% Construction Documents as authorized by Work Package Authorization or GMP Amendment, with Design and Construction Phases proceeding concurrently.

3.2.4 The commencement of the Contract Time shall not be postponed by the failure of the DB Contractor or any Contractor Agent to proceed immediately upon appropriate authorization.

3.2.5 Notwithstanding the foregoing, the DB Contractor shall not knowingly, except by agreement or instruction of the Authority in writing, prematurely commence the Work or operations on the Site or elsewhere prior to the effective date of any insurance required by Article 17 (Insurance) and Exhibit I (Insurance and Bonding Requirements) to be furnished by the DB Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

3.3 FINAL COMPLETION

3.3.1 The time limit stated in the Contract Documents for achievement of Final Completion, as documented and confirmed by the most recent Work Package Authorization, GMP Amendment, or later Modification, is of the essence of the Contract. The DB Contractor shall diligently and expeditiously prosecute the Work and shall achieve Final Completion of the entire Work by the Final Completion Deadline (such deadline being subject to adjustments in the Contract Time as provided in this Agreement).

3.3.2 The date of Final Completion is the date determined by the Authority, in consultation with the ADOC and with the advice of the Program Manager, in accordance with Section 14.3 (Final Completion) as set forth in the certificate of Final Completion.

3.3.3 The Final Completion Deadline shall be as set forth in the FGMP Amendment. As of the Effective Date, the parties agree that such Final Completion Deadline (subject adjustments in the Contract Time as provided in this Agreement) is expected to be no later than the time specified in Section 1.1 (Key Terms).

3.4 SCHEDULE

3.4.1 The DB Contractor shall diligently prosecute the Work in accordance with the DB Contractor's schedule for the Project approved by the Authority and set forth in Exhibit D (Project Schedule), as such schedule may be updated, supplemented or otherwise modified pursuant to the most recent applicable Work Package Authorization, GMP Amendment, or other Modification (the "**Schedule**"). The Design Schedule, setting forth the schedule for the DB Contractor's performance of design development services as provided in Section 7.3 (Design Development Services), is attached as Attachment 1 (Design Schedule) to Exhibit D (Project Schedule).

3.4.2 The Schedule shall at all times comply with the Final Completion Deadline and shall identify and track the progress of the Work against all established Interim Project Milestone dates, including any Interim Project Milestone dates set forth in the Schedule (as such dates be adjusted in relation to adjustments of the Contract Time or otherwise modified in accordance with this Agreement). The DB Contractor shall prosecute the Work, and shall cause its Subcontractors to prosecute the Work, so that the portion of the Work completed at any point in time shall be not less than is required in order for Final Completion to be achieved in accordance with the Schedule.

3.4.3 Without altering, revising or otherwise changing the Contract Time or any established Interim Project Milestone deadlines, the DB Contractor shall, on a monthly basis, prepare and submit an updated detailed Schedule to the Program Manager for its review and to the Authority for its approval. Notwithstanding anything to the contrary contained in the Contract Documents, the Final Completion Deadline and any Interim Project Milestone dates therefor may only be revised pursuant to a Work Package Authorization, GMP Amendment, or other Modification. All Schedules shall be provided in critical path format, with the critical path clearly and accurately shown. Schedules shall be provided in both PDF and native (.XER or .MPP) file formats.

3.4.4 Once every two weeks, the DB Contractor shall submit to the Program Manager and Authority a Schedule report, prepared in a manner and format satisfactory to the Authority, including:

- (a) A detailed description of the progress of the Project, including a critical path chart illustrating the progress that has been made;
- (b) A statement of any significant Project issues which remain unresolved, and a list of the DB Contractor's observations and suggested recommendations or resolutions as to the same;

- (c) An updated report as to the DB Contractor's adherence to the Schedule and GMP, and specifically addressing whether the Project is on schedule or behind schedule, on budget or over budget, and describing actions being taken to correct schedule delays and budget overruns; and
- (d) A summary of any significant Project events that are scheduled to occur during the following two weeks.

3.4.5 The DB Contractor shall cooperate with the State Parties and the Program Manager in scheduling and performing the DB Contractor's Work to avoid conflict with, delay in, or interference with the work of Separate Contractors or the construction or operations of the forces of the State Parties.

3.5 DELAY

3.5.1 Recovery Schedule. If the rate of progress is such that the total amount of Work or the degree of completion of the Work accomplished by the DB Contractor within any time period required by the Schedule or the Contract Documents is less than the amount therein specified to be completed within such time period (as such time periods are adjusted for Excusable Events or a Change in the Work in accordance with this Agreement), or such that the Authority is reasonably concerned that Final Completion may not be timely achieved, the Authority may notify the DB Contractor of the same. The DB Contractor shall, within seven days of receipt of any such notice from the Authority, submit a proposed recovery schedule to the Authority, with a copy to the Program Manager. The proposed recovery schedule should, at a minimum, demonstrate the means by which the DB Contractor intends to recapture lost time and achieve Final Completion within the Contract Time. Upon the Authority's approval of the proposed recovery schedule, the DB Contractor shall implement the proposed recovery schedule immediately. If the Authority, acting reasonably (including on the reasonable advice of the Program Manager), does not agree that the DB Contractor has demonstrated in the proposed recovery schedule its ability to recapture lost time and achieve Final Completion within the Contract Time, the Authority may, without prejudice to any other right or remedies it may have, take one or more of the following actions:

- (a) Require the DB Contractor to employ such extraordinary measures as are necessary to bring the Work into conformity with a Schedule that reflects timely achievement of Final Completion, including requiring the DB Contractor to increase its work force and work overtime and extra shifts (at the DB Contractor's sole cost and expense);
- (b) Withhold progress payments, or portions thereof, until such time as the Work is in conformity with a Schedule that reflects timely achievement of Final Completion; and
- (c) Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the Work, and expedite the same (at the DB Contractor's sole cost and expense).

If the rate of progress of the Work is behind schedule due to an Excusable Event or a Change in the Work, the DB Contractor may pursue recourse in accordance with Article 12 (Claims; Excusable Events; Site Conditions) or Article 13 (Changes in the Work), respectively.

3.5.2 Liquidated Damages for Delay. The DB Contractor acknowledges that the Work is urgently needed by the State Parties. Further, the parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix with precision the actual damages that the State Parties would incur should the DB Contractor delay in achieving Final Completion by the Final Completion Deadline. Accordingly, the parties agree that, in the event that the DB Contractor fails to achieve Final Completion by the Final Completion Deadline (regardless of any recovery schedule agreed pursuant to Subsection 3.5.1 (Recovery Schedule)), then, for each day that Final

Completion is delayed following the Final Completion Deadline, the Authority shall be entitled to recover from the DB Contractor, as liquidated damages for such delay, and not as a penalty, and the DB Contractor shall pay to the Authority, “**Liquidated Damages**” in an amount equal to a daily rate calculated to provide 6% of the FGMP per annum (or if no FGMP has been agreed, then 6% per annum on the sum of all agreed GMPs); *provided, however*, that in no event shall the DB Contractor’s aggregate liability for Liquidated Damages exceed an amount equal to the sum of 180 days of Liquidated Damages. Any Liquidated Damages shall be due and payable by the DB Contractor to the Authority upon demand, and, at the Authority’s option, the Authority shall be entitled to offset any Liquidated Damages in whole or in part against amounts otherwise owed by the Authority to the DB Contractor hereunder. The parties acknowledge and agree that the Liquidated Damages relate solely to the DB Contractor’s failure to achieve Final Completion by the Final Completion Deadline and to no other duty or obligation of the DB Contractor under this Agreement, and shall be the State Parties’ sole and exclusive damages for DB Contractor’s failure to achieve Final Completion by the Final Completion Deadline, or any other delay in achievement of any Interim Project Milestone beyond the date established therefor under the Contract Documents. The parties further agree that the Liquidated Damages are not a penalty, but instead are a good faith and reasonable estimate of the damages and loss that the State Parties would suffer in the event the DB Contractor fails to achieve Final Completion by the Final Completion Deadline.

ARTICLE 4

DB CONTRACTOR’S COMPENSATION

4.1 COMPENSATION FOR THE WORK

4.1.1 Contract Sum

In consideration of the timely and complete performance of the Work, the Authority shall pay the DB Contractor, in current funds, the “**Contract Sum**” consisting of the Design Phase Sum as set forth in Subsection 4.1.2.1 (*Design Phase Sum*), *plus* the Cost of the Work as defined in Section 4.2 (*Cost of the Work*), *plus* the DB Contractor’s Fee as set forth in Section 4.1.3 (*The DB Contractor’s Fee*). The Contract Sum shall not exceed the IGMP, except pursuant to an amendment to this Agreement authorized in accordance with State Law.

4.1.2 Design Phase Compensation

4.1.2.1 *Design Phase Sum.* In consideration of the timely and complete performance of the Design Phase Work and the DB Contractor’s other Design Phase obligations under the Contract Documents, the Authority shall pay to the DB Contractor, and the DB Contractor shall accept as payment in full by the Authority for such Work, the Design Phase Sum, consisting of (a) \$38,874,067.00 (the “**Design Fee**”) for all Work necessary and appropriate to design the Facility and all other work and services of the Design Professionals, *plus* (b) \$3,029,238.00 (the “**Preconstruction Services Fee**”) for all other Design Phase Work, including cost estimating, scheduling, subcontracting, and procurement, through development of the FGMP and execution of the FGMP Amendment (excluding Construction Phase Work authorized pursuant to Work Package Authorization). Payment of the Design Phase Sum shall be subject to the maximum payment schedule set forth in Attachment 3 (*Preconstruction Phase Maximum Payment Schedule*) to Exhibit B (*IGMP Schedule of Values*).

4.1.2.2 *Design Phase Costs of the Work.* During the Design Phase, the DB Contractor shall also be compensated for Costs of the Work incurred by the DB Contractor to procure and maintain insurance and bonds required to be furnished by the DB Contractor during the Design Phase pursuant to Article 17 (*Insurance*) and Exhibit I (*Insurance and Bonding Requirements*).

4.1.2.3 Design Phase Payments. No later than the second day of each calendar month, the DB Contractor shall submit an Application for Payment to the Authority for payment for Design Phase Work performed in the preceding month in an amount equal to the sum of:

- (a) A portion of the Design Fee calculated as *the lesser of* (x) the percentage of the applicable phase of design Work that has been actually and properly completed, *and* (y) the maximum amount payable for the applicable phase of design as set forth in the maximum payment schedule in Exhibit B (IGMP Schedule of Values), Attachment 3 (Preconstruction Phase Maximum Payment Schedule), *less* amounts previously paid for such design phase; *plus*
- (b) A portion of the Preconstruction Services Fee calculated as *the lesser of* (x) the value of the other Design Phase Work actually and properly completed in the previous month, based on the IGMP Schedule of Values, *and* (y) the maximum amount of the Preconstruction Services Fee payable for the previous month; *plus*
- (c) The amount of any Costs of the Work incurred during the preceding month and payable during the Design Phase pursuant to Subsection 4.1.2.2 (Design Phase Costs of the Work), *plus* an amount for the DB Contractor's Fee computed on any such Costs of the Work.

4.1.2.4 Applications for Payment. Each Application for Payment of the Design Phase Sum and Costs of the Work incurred during the Design Phase shall comply with the applicable requirements of Section 5.3 (Applications for Payment) and shall be supported by such information substantiating the DB Contractor's right to payment as the Authority shall require (including the information required pursuant to Subsection 5.3.5 (Applications for Payment)).

4.1.3 The DB Contractor's Fee. The "DB Contractor's Fee," in the amount set forth in Section 1.1 (Key Terms), shall be the DB Contractor's complete fee compensation (which includes the DB Contractor's profit) for the Construction Work and, together with the Design Phase Sum (which includes the DB Contractor's profit for the Design Phase Work) and the payment for the Cost of the Work (subject to the FGMP), shall constitute the DB Contractor's sole compensation for its costs (including overhead) and payment for profit arising from or attributable to the performance of the Work. For clarity, the DB Contractor's Fee shall not be charged on top of the Design Phase Sum.

4.1.4 Guaranteed Maximum Price

4.1.4.1 Work Package GMPs. Pursuant to each Work Package Authorization issued in accordance with Subsection 4.1.5.3 (Work Package Authorizations), the Authority will authorize payment up to the agreed not-to-exceed amount, or GMP, payable for the Work to be performed under such Work Package Authorization. The GMP amount authorized by each Work Package Authorization will ultimately be included in the FGMP in accordance with Subsection 4.1.5 (Work Package Authorizations and GMP Development).

4.1.4.2 Final GMP. There shall be a final, guaranteed, not-to-exceed amount payable by the Authority to the DB Contractor for performance of all Work on the Project (the "FGMP"), which shall be in the amount necessary for the proper completion of the Work in accordance with the Contract Documents. The FGMP shall be determined in accordance with Subsection 4.1.5 (Work Package Authorizations and GMP Development) and shall be established pursuant to the FGMP Amendment issued in accordance with Subsection 4.1.5.8 (FGMP Amendment). The Contract Sum is guaranteed by the DB Contractor not to exceed the FGMP set out in the FGMP Amendment, subject to additions and deductions to the Contract Sum and FGMP by subsequent Modification as provided in the Contract Documents.

4.1.4.3 Authorization Required for Costs of the Work. Prior to the FGMP Effective Date, the DB Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work except: (a) pursuant to Subsection 4.1.2.2 (Design Phase Costs of the Work); (b) as the Authority may specifically authorize in an executed Work Package Authorization; or (c) as the Authority may otherwise specifically authorize in writing.

4.1.4.4 Limit on Authority's Payment Obligations. The Authority's payment obligations will not exceed (a) the IGMP, (b) then-current GMP(s) established pursuant to Work Package Authorization or GMP Amendment, or (c) once the FGMP Amendment is issued, the FGMP established thereby. Any costs and expenses incurred beyond the applicable GMP in performing and completing the Work shall be borne by the DB Contractor alone.

4.1.5 Work Package Authorizations and GMP Development

4.1.5.1 IGMP. The IGMP set forth in Section 1.1 (Key Terms) represents the maximum amount payable by the Authority for the performance of all Work on the Project. The IGMP has been calculated as the sum of the following, as estimated or proposed in good faith by the Authority:

- (a) The Cost of the Work for the entirety of the Project, including all General Conditions Items and Allowances;
- (b) An amount for the DB Contractor's Fee based on the estimated Cost of the Work;
- (c) An amount for Contractor Contingency equal to 5% of the estimated Cost of the Work;
- (d) Any Alternates approved by the Authority;
- (e) The Design Phase Sum;
- (f) The cost to the DB Contractor for bonds and insurance required pursuant to this Agreement, as applicable to those items identified in clauses (a)-(e) above; and
- (g) A "State Contingency" equal to \$1,890,078.00, which such amount is included in the IGMP for the purpose of protecting the State's budget for the Project against unanticipated costs, and which shall be used solely at the direction of the Authority, in its discretion.

4.1.5.2 Work Package GMP Proposal. For each Work Package for which construction is anticipated to be authorized prior to issuance of the FGMP Amendment, in accordance with Work Package breakdown approved by the Authority or as otherwise as agreed by the parties, the DB Contractor shall, upon approval by the Authority of appropriate Design Packages for the scope of Work included in the Work Package, prepare and submit a GMP Proposal to the ADOC and Program Manager, for review by them and review and approval by the Authority. Each "GMP Proposal" shall consist of a proposed GMP for the applicable portion of the Work and any adjustments to the bases of the IGMP related thereto (it being understood that the total amount of the IGMP shall not be exceeded).

- (a) The GMP Proposal shall include: (i) a detailed Schedule of Values, organized by trade categories or systems, allocating the proposed GMP for the Work Package as described in Subsection 4.1.5.3 (Work Package Authorizations); (ii) a list of Drawings and Specifications (including all addenda) that were used in preparation of the GMP Proposal; (iii) a proposed Schedule for the Work Package, including a date for Preliminary Completion thereof; (iv) a list of the clarifications and assumptions used in preparation of the GMP Proposal; (v) a statement of any Work to be self-performed by the DB Contractor, (vi) a "cost difference" column or other explanation comparing the GMP Proposal values

with those used to establish the IGMP; and (vii) such other information as the Authority may reasonably request.

- (b) Except as otherwise agreed by the Authority, the estimate of the Cost of the Work included in the GMP shall be based on bids or proposals solicited for the applicable Work Package and approved in accordance with Article 10 (Subcontracting). The DB Contractor shall provide supporting documentation for its estimate of the Cost of the Work, including all Subcontractor bids, trade categories, labor rates, professional staff estimates, materials quantities, fixed prices, Taxes, and insurance and bonding costs.
- (c) The GMP Proposal shall also include a time limit for issuance of the Work Package Authorization, which time limit shall not be less than 10 Business Days after the Authority's receipt of the GMP Proposal.

4.1.5.3 Work Package Authorizations. When the DB Contractor's GMP Proposal for any one or more Work Packages is approved by the Authority, it shall be set forth in a written "**Work Package Authorization**" issued by the Authority and counter-signed by the DB Contractor. Each Work Package Authorization shall set forth the following information with respect to each applicable Work Package (in a format equivalent to that which will be used for the FGMP Amendment):

- (a) The Work Package GMP;
- (b) A line-item Schedule of Values for the Work Package, prepared as provided in Subsection 4.1.5.2 (Work Package GMP Proposal), including:
 - (i) The estimated Cost of the Work for the Work Package;
 - (ii) A General Conditions Schedule with respect to the Work Package;
 - (iii) The DB Contractor's Fee with respect to the Work Package;
 - (iv) Any Contractor Contingency with respect to the Work Package;
 - (v) Any Allowance stipulated by the Authority, accompanied by a statement of the basis (*e.g.*, quantities, Unit Prices) of the Allowance; and
 - (vi) Any Alternates approved by the Authority;
- (c) A Schedule for completion of the Work in the Work Package, including Interim Project Milestone dates for Preliminary Completion and Final Completion of such Work;
- (d) A list of Drawings and Specifications, including all addenda thereto, used in preparation of the GMP, including a list of the clarifications and assumptions made to supplement the information contained in the Drawings and Specifications;
- (e) A description of the adjustments, if any, to the bases of the IGMP required by the Work Package Authorization (which adjustments may be formally established by GMP Amendment); and
- (f) Any other documentation and information required by the Authority.

4.1.5.4 Design/Cost Estimation and Adjustments. The DB Contractor shall regularly compare the IGMP and the current proposed GMP (which excludes the State Contingency) against (a) the Design-Build Documents, as they are further developed, (b) each Work Package developed and each Work Package

Authorization issued in accordance with Subsections 4.1.5.2 (Work Package GMP Proposal) and 4.1.5.3 (Work Package Authorizations), and (c) the Final Completion Deadline and any Interim Project Milestone dates established in the Schedule. Consistent with its review of the foregoing, the DB Contractor shall periodically propose adjustments to the estimated Cost of the Work and updates to the IGMP's other bases for the Authority's review and approval as often as mutually agreed by the DB Contractor and the Authority, which adjustments and updates, if agreed by the parties, may be documented in a written amendment executed by the Authority and the DB Contractor (a "**GMP Amendment**"). In the event that projected costs exceed the proposed GMP, the DB Contractor shall justify each cost exceeding projections, perform value engineering services in accordance with Subsection 7.3.4 (Value Engineering Services), and develop a plan to implement reasonable strategies to create economies and reduce costs to meet the IGMP and/or the GMP proposed in the GMP Proposal, as applicable, which plan shall be subject to review by the ADOC and Program Manager and review and approval by the Authority. If during the Design Phase Work, the Authority, with the advice of the ADOC and Program Manager, reasonably believes that the cost to the Authority to deliver the Project may exceed the IGMP, the Authority may amend the Project Criteria and/or direct the DB Contractor to modify the Project design and revise the current Design-Build Documents so as to achieve cost savings and bring the cost to deliver the Project under the IGMP. Such Work shall be performed by the DB Contractor as a service included in the Design Phase Work and without additional compensation to the DB Contractor, except to the extent that a Change in the Work directed by the Authority is the cause for the IGMP to be exceeded.

4.1.5.5 FGMP Proposal. Within 30 days following approval by the Authority of 65% complete Construction Documents for the Project (or at such other time as is agreed by the parties), the DB Contractor shall prepare and submit to the ADOC and Program Manager, for review and comment by them and the Authority, a GMP Proposal for the proposed FGMP for the entire Work (the "**FGMP Proposal**"). The FGMP Proposal shall include all items described in subparagraph (a) of Subsection 4.1.5.2 (Work Package GMP Proposal) and shall be supported in accordance with subparagraph (b) of such Subsection (in each case, as the requirements of such clauses may be applied to the entire Work). The FGMP Proposal shall be developed based upon, and shall refine and supplement, the IGMP and the current Design-Build Documents, with any unused State Contingency and any anticipated Work Package Savings (as defined in subparagraph (b) below) from the IGMP accruing 100% to the Authority in the form of a reduction in the overall FGMP amount. The DB Contractor shall make good faith, commercially reasonable efforts to submit an FGMP Proposal that is less than or equal to the IGMP, but shall not be required to submit an FGMP Proposal that is less than the IGMP. In the event that the FGMP Proposal submitted exceeds the IGMP, the Authority and the DB Contractor shall proceed in accordance with Subsection 4.1.5.11 (Modifications to FGMP Proposal) or Subsection 4.1.5.12 (Inability to Agree on FGMP) herein.

- (a) For the avoidance of doubt, the FGMP, as the final maximum price guaranteed by the DB Contractor, shall not include the State Contingency, which shall remain under the control of the Authority for the benefit of the State Parties.
- (b) The DB Contractor shall note those portions of the FGMP that are the subject of previously approved Work Package Authorizations. If the sum of the Cost of the Work for any Work Package that is the subject of a previously approved Work Package Authorization (including a reasonable, good faith estimate of the Cost of the Work for any portion of any such Work Package that is not yet complete) and the DB Contractor's Fee thereon is, or is expected to be, less than the GMP for such Work Package established in the Work Package Authorization, the difference shall be "**Work Package Savings.**"

4.1.5.6 Review of FGMP Proposal. The DB Contractor shall meet with the Authority, the ADOC, and the Program Manager to review the FGMP Proposal. If any State Party has any comments to the FGMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, the Authority (or ADOC, as Authority Representative) shall endeavor to provide such comments or findings to the

Program Manager, for transmission to the DB Contractor, as soon as reasonably practicable. The DB Contractor shall make appropriate adjustments to the FGMP Proposal, its bases, or both, and return an updated FGMP Proposal package to the ADOC and Program Manager for review and comment by the Program Manager, the ADOC, and the Authority.

4.1.5.7 Refinement of FGMP Proposal. The DB Contractor shall update and refine the FGMP Proposal by comparing the proposed FGMP against a revised estimate of projected costs prepared (a) at the approval by the Authority of 100% complete and approved Construction Documents for the entire Work (or earlier if agreed by the parties) and (b) upon receipt and acceptance of Subcontract bids for each Work Package (or for all major trade items included therein) in accordance with Subsection 10.2.3 (Subcontract Bidding and Award). In the event that projected costs exceed the FGMP in the FGMP Proposal, the DB Contractor shall justify each cost exceeding projections, perform value engineering services in accordance with Subsection 7.3.4 (Value Engineering Services), and develop a plan to implement reasonable strategies to create economies and reduce costs to meet the FGMP established in the FGMP Proposal. Any such plan shall be subject to review and comment by the ADOC and Program Manager and approval by the Authority.

4.1.5.8 FGMP Amendment. Following completion of negotiations and upon the Authority's approval of the FGMP Proposal, the FGMP and its basis shall be incorporated into this Contract by a GMP Amendment, in substantially the form attached as Exhibit C (Form of FGMP Amendment), executed by the Authority and the DB Contractor (the "**FGMP Amendment**"). The FGMP Amendment shall set forth and establish:

- (a) The FGMP;
- (b) The line-item Schedule of Values for the Work, prepared in accordance with Subsection 4.1.5.5 (FGMP Proposal), that allocates the components of the FGMP, including:
 - (i) The estimated Cost of the Work on which the FGMP is based;
 - (ii) A final General Conditions Schedule for all General Conditions Items on the Project;
 - (iii) The DB Contractor's Fee;
 - (iv) An agreed amount for Contractor Contingency, based on an evaluation of the remaining risk of the Work as of the FGMP Effective Date, which such amount shall not be less than 3% of the estimated Cost of the Work;
 - (v) Any Allowance stipulated by the Authority, accompanied by a statement of the basis (*e.g.*, quantities, Unit Prices) of the Allowance;
 - (vi) Any Alternates approved by the Authority; and
 - (vii) The Design Phase Sum;
- (c) The Final Completion Deadline (and Contract Time) and the Schedule, including any agreed Interim Project Milestone dates;
- (d) A list of Design-Build Documents used in preparation of the FGMP, including a list of the Drawings and Specifications (as well as all addenda thereto), and a list of any clarifications and assumptions made to supplement the information contained in the Drawings and Specifications; and

- (e) Any other documentation and information reasonably required by the Authority.

4.1.5.9 FGMP Amendment Supersedes. Upon the FGMP Effective Date, the FGMP Amendment shall supersede any previously issued GMP Amendments or Work Package Authorizations (including the GMPs, Schedules of Values, and Schedules set forth therein).

4.1.5.10 Expiration of FGMP Proposal. If the Authority and the DB Contractor do not mutually agree upon and execute the FGMP Amendment on or before the date specified in the FGMP Proposal for such execution, the FGMP Proposal shall not be effective.

4.1.5.11 Modifications to FGMP Proposal. If the Authority refuses or fails to timely approve the FGMP Proposal, or rejects the FGMP Proposal, or the parties fail to timely execute the FGMP Amendment, the Authority may suggest modifications to the FGMP Proposal. If such modifications are accepted in writing by the DB Contractor, the parties shall proceed with executing the FGMP Amendment (reflecting such modifications) in accordance with Subsection 4.1.5.8 (FGMP Amendment) above.

4.1.5.12 Inability to Agree on FGMP. If the Authority determines, in its discretion, that the parties are unable or unwilling to timely agree upon an FGMP, the Authority will have the right to, at its election, take one or more of the following actions:

- (a) Direct the DB Contractor to continue to participate in value engineering exercises in accordance with Subsection 7.3.4 (Value Engineering Services) so that the DB Contractor can submit another FGMP at a reduced cost, in which case the Authority shall decide whether to accept the revised FGMP Proposal or terminate this Agreement. With respect to any such revised FGMP Proposal, the Authority shall have the same rights to proceed or terminate as set forth in Subsection 4.1.5.11 (Modifications to FGMP Proposal) and this Subsection 4.1.5.12. If the proposed FGMP will cause the IGMP to be exceeded, the Authority may amend the Project Criteria and/or direct the DB Contractor to make good faith, commercially reasonable efforts to modify the Project design and revise the Design-Build Documents so as to achieve sufficient cost savings to bring the cost to deliver the Project under the IGMP. Work performed by the DB Contractor pursuant to this Subsection 4.1.5.12(a) shall be performed by the DB Contractor as a service included in the Design Phase Work and without additional compensation to the DB Contractor, except to the extent that a Change in the Work directed by the Authority is the cause for the IGMP to be exceeded.
- (b) Direct the DB Contractor to proceed under one or more Work Package Authorizations issued in accordance with Subsection 4.1.5.3 (Work Package Authorizations), without terminating this Agreement consistent with Subsection 2.1.5.2(b) (No DB Contractor Right to Construct).
- (c) Terminate this Agreement in accordance with Article 16 (Termination or Suspension of the Contract), it being understood that the parties' failure to timely agree on an FGMP, notwithstanding the DB Contractor's good faith, commercially reasonable efforts to negotiate a mutually agreeable FGMP Proposal in accordance with this Subsection 4.1.5 (Work Package Authorizations and GMP Development), shall not, by itself, constitute grounds for the Authority to terminate this Contract for cause pursuant to Section 16.5 (Termination by the Authority for Cause), but shall allow the Authority to terminate this Contract without cause pursuant to Section 16.3 (Termination by the Authority for Convenience).

4.1.5.13 Design Phase Work Inclusive of GMP Development. The DB Contractor agrees that the preparation and submission of Work Package GMP Proposals and the FGMP Proposal as required under this Subsection 4.1.5 (Work Package Authorizations and GMP Development), and negotiation of the FGMP Amendment, is part of the DB Contractor's required Design Phase Work.

4.1.5.14 Open-Book Process. The State Parties, and the Program Manager on their behalf, shall each be entitled to full access to the details of the DB Contractor's process for developing any proposed Work Package breakdown, Schedule of Values, Work Package bid documents, Work Package GMP Proposal, Work Package Authorization, GMP Amendment, FGMP Proposal, and FGMP Amendment, including all supporting documentation as described in Subsection 4.1.5.2(b) (Work Package GMP Proposal).

4.1.6 Contractor Contingency

4.1.6.1 A GMP shall include a "Contractor Contingency" for the purpose of reasonably protecting the DB Contractor's FGMP budget and the Schedule against unanticipated costs incurred in order to complete the Work in accordance with the Contract Documents. The Contractor Contingency shall be used to cover unanticipated construction costs that are properly reimbursable as a Cost of the Work but which do not provide the basis for a Change Order. Such costs may include costs due to unanticipated market conditions; construction cost escalation for labor or materials; errors in estimating; delay or acceleration costs, including overtime for acceleration, that are not attributable to an Excusable Event (and therefore are subject to a Claim and Change Order); impacts of COVID-19 (that are not an Excusable Event); Subcontractor defaults or deficiencies not otherwise recoverable from bonds or insurance; net buyout overruns; interface omissions between Work Packages; and any other reason not attributable to the DB Contractor's negligence.

4.1.6.2 The DB Contractor's use of the Contractor Contingency shall be subject to the Authority's written approval, which shall not be unreasonably withheld or delayed; *provided, however*, that the Authority's prior written approval shall be required for any use of more than \$50,000 of Contractor Contingency in any given month. The DB Contractor will provide a monthly accounting to the Authority of all expenses associated with the proposed or approved utilization of the Contractor Contingency.

4.1.6.3 To the extent the DB Contractor utilizes the Contractor Contingency during any particular month, it shall be entitled to charge the DB Contractor's Fee on the Contractor Contingency expended during that month. The DB Contractor's Fee shall be charged only on Contractor Contingency sums actually expended by the DB Contractor.

4.1.6.4 The Contractor Contingency is not intended for use in upgrading or enlarging the scope of the Work. At no time shall it be used for Changes in the Work authorized pursuant to Article 13 (Changes in the Work) or for any matter for which the DB Contractor is entitled an increase in the GMP or Contract Time under the terms of the Contract Documents, which such changes may only be accomplished by Change Order or, as applicable, Construction Change Directive.

4.1.6.5 As the DB Contractor is able to fix the Cost of the Work through binding price commitments from Subcontractors or from executed Subcontracts, any buyout savings from the estimated Cost of the Work included in the GMP shall accrue to the Contractor Contingency. As the DB Contractor's risk of unforeseen losses is further reduced by net buyout savings and the completion of portions of the Work, the parties shall periodically, at mutually agreeable times, execute a Change Order reducing the Contractor Contingency by an agreed amount; *provided, however*, that the Contractor Contingency shall not be reduced for purposes of calculating Savings to be shared by the Authority and DB Contractor pursuant to Subsection 4.1.8 (Savings).

4.1.6.6 Upon the reduction of the Contractor Contingency as described in Subsection 4.1.6.5 above (and subject to the proviso with respect to the calculation of Savings set forth in such Subsection), the parties may agree by Change Order (or failing such agreement, the Authority may direct by Construction Change Directive) that (a) the GMP shall be reduced by the amount the Contractor Contingency is reduced, or (b) notwithstanding Subsection 4.1.6.4 above, the reduction in the Contractor Contingency be used to pay for a Change in the Work authorized pursuant to Article 13 (Changes in the Work).

4.1.7 Allowances

4.1.7.1 The DB Contractor acknowledges and agrees that each GMP includes all Allowances (if any) specified for the applicable portion of the Work. Allowances may be used as determined by the Authority. If used, Allowances shall cover the cost to the DB Contractor of materials and equipment delivered at the Site, unloading and handling costs at the Site, labor costs, installation costs, and all required Taxes and Permits, less applicable trade discounts, unless otherwise expressly indicated by the Contract Document establishing the Allowance. The DB Contractor's markups for overhead and profit, general conditions costs, and all other expenses contemplated for stated Allowance items are included in the DB Contractor's Fee and General Conditions Schedule, not in the Allowances amounts.

4.1.7.2 Whenever costs are more or less than the applicable Allowance amount set forth in the Work Package Authorization or FGMP Amendment, as applicable, the GMP will be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the Allowance amount set forth in the Work Package Authorization or FGMP Amendment, as applicable.

4.1.8 Savings

4.1.8.1 If at Final Completion the sum of:

- (a) The Design Phase Sum, *plus*
- (b) The Cost of the Work, substantiated and verified as provided in Article 5 (Payments), and excluding Changes in the Work paid from Contractor Contingency pursuant to Subsection 4.1.6.6 (Contractor Contingency), *plus*
- (c) The DB Contractor's Fee on such Cost of the Work,

is less than the FGMP (as it may be adjusted pursuant to this Agreement), the difference shall be considered savings hereunder ("**Savings**").

4.1.8.2 Any Savings shall be shared between the Authority and the DB Contractor as follows:

- (a) Aggregate Savings equal to or less than \$10,000,000 shall be shared equally between the Authority and DB Contractor (50% / 50%);
- (b) Of any aggregate Savings in excess of \$10,000,000, 25% of such Savings shall accrue to the DB Contractor and 75% of such Savings shall accrue to the Authority; and
- (c) Notwithstanding the foregoing, the DB Contractor's share of Savings shall not exceed \$7,500,000, and any Savings in excess of that amount shall accrue to the Authority.

4.2 COST OF THE WORK

4.2.1 Costs to be Reimbursed. The term "**Cost of the Work**" shall mean those costs necessarily incurred by the DB Contractor in good faith and in the proper performance of the Work. Such costs shall be the actual costs (a) at rates set forth in this Section 4.2 (Cost of the Work) and Exhibit B (IGMP Schedule

of Values) hereto, (b) if not specifically set forth herein, then at rates set forth in the applicable Work Package Authorization or FGMP Amendment, or (c) if not specifically set forth in any of the foregoing, then at rates not higher than the standard paid at the place of the Project except with the Authority's prior written consent. The Cost of the Work shall include only the items set forth in this Section 4.2 (Cost of the Work).

4.2.2 Labor Costs

4.2.2.1 The Cost of the Work shall be calculated based on actual costs of trade construction workers (including necessary overtime) directly employed by the DB Contractor to perform construction Work at the Site or, with the Authority's approval only, at off-site workshops. Wages paid must meet the minimum hourly rates established by applicable Law as appropriate to the particular Work performed. Payments will not be made unless the DB Contractor has received written concurrence from the Authority for the DB Contractor to self-perform such Work in accordance with Subsection 10.6.1 (Self-Performed Work).

4.2.2.2 Except to the extent such costs are General Conditions Items as described in Subsection 4.2.9 (General Conditions Costs), which are intended to be paid in accordance with that Subsection, the Authority will reimburse the DB Contractor for costs, based on approved rates (as set forth in Attachment 1 (Hourly Rates) to Exhibit B (IGMP Schedule of Values), or as otherwise approved by the Authority), of the DB Contractor's supervisory and administrative personnel when stationed at the Site or as otherwise approved by the Authority. Charges by these personnel will be authorized only when Work-related duties are performed at the Site. No personnel stationed at the DB Contractor's home or branch office shall be charged to the Cost of the Work without the prior written approval of the Authority. All non-field office-based DB Contractor support personnel who will provide services and advice from time to time will be considered to be covered by the DB Contractor's Fee unless otherwise authorized in writing by the Authority.

4.2.2.3 Approved rates and actual costs shall include costs paid or incurred by the DB Contractor for Taxes, insurance, contributions, assessments, and benefits required by Law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits, such as sick leave, medical and health benefits, holidays, vacations, pensions, and 401(k) programs, *provided* such costs are based on wages and salaries included in the Cost of the Work.

4.2.2.4 If overtime pay is approved in writing by the Authority, overtime wages paid to salaried personnel will be reimbursed at the actual rate of overtime pay paid to the individual, which shall not exceed the individual's straight time rate. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid the overtime worked.

4.2.3 Subcontractor Costs

4.2.3.1 The Cost of the Work shall include payments made by the DB Contractor to Subcontractors in accordance with the requirements of the Subcontracts. The terms of any such Subcontracts must conform to the requirements of the Contract Documents. Payments will not be made unless the DB Contractor has received written concurrence from the Authority for the Subcontractor to perform the Work in accordance with Article 10 (Subcontracting) hereof.

4.2.3.2 The DB Contractor shall provide the Authority advance notice and get the Authority's written concurrence for any proposed Subcontract change order that is likely to materially affect the GMP. Overhead/profit markups for Subcontract change orders shall only be allowed as provided in Subsection 13.5.3 (Markups for Additional Work) hereof.

4.2.4 Actual Costs of Materials, Machinery, Equipment, Temporary Facilities, and Related Items

4.2.4.1 The Cost of the Work shall include the actual costs (including transportation, installation, maintenance, dismantling, and removal) of materials, machinery, and equipment incorporated or to be incorporated into the Work, as well as materials, machinery, equipment, and temporary facilities purchased for use during construction of the Project (including fuel, operator cost, and preventative maintenance, overhauls, and repairs). The Authority has the right to confirm that costs submitted do not exceed fair market value and pay only fair market value if costs submitted are not reasonable. Unused excess materials, if any, shall be delivered to the Authority at Final Completion. The Authority shall not pay for quantities of excess materials in excess of reasonable contingency amounts. If the Authority directs sale of any equipment, the proceeds from the sale will be credited to the Project.

4.2.4.2 All losses resulting from lost, damaged, or stolen tools and equipment (including rental equipment) shall be the sole responsibility of the DB Contractor and not the Authority, and the cost of such losses shall not be reimbursable as a Cost of the Work.

4.2.4.3 The DB Contractor shall maintain a detailed equipment inventory of all job-owned equipment worth \$1,000 or more when put into service on this Project. This inventory shall be submitted to the Authority upon request. For each piece of equipment, the inventory should contain signed documentation of the following: original receipt of the equipment at the Site, removal of the equipment from the Site, original purchase price or acquisition cost, acquisition date, mileage or hour reading at acquisition and disposition, and final disposition. Prior to Final Completion, the DB Contractor shall transfer possession of the remaining job-owned equipment to the Authority. At the Authority's option, the DB Contractor may keep any such equipment for an appropriate credit to the Authority against the Contract Sum, as mutually agreed by the parties.

4.2.5 Rental Costs

4.2.5.1 The Cost of the Work shall include rental costs for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the DB Contractor at the Site, whether rented from the DB Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling, and removal. Rental costs for such DB Contractor- or Subcontractor-owned equipment or equipment rented from third parties will be paid only as provided in the following subsections:

- (a) *Rental Costs for Contractor-Owned Equipment:* Rental charges for each piece of DB Contractor- or Subcontractor-owned special tools or equipment (including tools or equipment owned by any of their affiliates, subsidiaries or other related parties) will be reimbursed at 90% of the published rates for such tools or equipment, based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of DB Contractor- or Subcontractor-owned tools or equipment at issue, reimbursement shall be based upon 90% of local prevailing rental rates.
- (b) *Rental Costs for Equipment Not Owned by Contractor:* The aggregate rental charges that the Authority will reimburse for equipment that is not owned by the DB Contractor, its Subcontractors, or any of their affiliates, subsidiaries, or other related parties, and that is rented from third parties for use in proper completion of the Work shall not exceed 100% of the fair market value of each such item at the time of its commitment to the Work. Such aggregate limitation will apply, and no further rental charges shall be reimbursed, even if a piece of equipment is taken off the Project and is later replaced by a similar piece of

equipment. Upon the request of the Authority, the DB Contractor shall provide a lease versus purchase analysis, along with appropriate supporting documentation, to justify the reason for renting the equipment rather than purchasing it. The DB Contractor must obtain the Authority's prior written approval before entering into any lease/purchase arrangement or seeking reimbursement of lease/purchase rental charges as a Cost of the Work.

- (c) *Maintenance and Repair of Rental Equipment:* All costs incurred for minor, routine, and preventative maintenance and minor repairs of rented equipment shall be reimbursed at actual costs. Replacement or repairs of a capital nature are considered to be covered by the rental rates, and the cost of such replacement or repairs shall not be reimbursable as a Cost of the Work.

4.2.5.2 Rental equipment shall be paid for on an hourly, daily, weekly or monthly rate (or some combination), whichever is in the Authority's best interest. Payment will not be made for the equipment while it is inoperative due to breakdowns or for time during which repair work is performed. Payment for rentals will include time required to move equipment to the Site from the nearest available rental source and to return it to the source.

4.2.6 Site Office Costs. The DB Contractor's actual and reasonable costs incurred in setting up and running a Site office as described in Subsection 7.15.6 (Use of Site) and the Project Criteria shall be reimbursable as a Cost of the Work.

4.2.7 Travel And Subsistence Costs. If approved in advance by the Authority, the DB Contractor shall be compensated for its personnel traveling to the Site at a mutually agreed weekly rate as set forth in the Schedule of Values. For travel other than to the Site, reimbursement shall be made only with the prior approval of the Authority. All travel expenses must comply with the requirements of the *State of Alabama Fiscal Policy and Procedures Manual* in order to be eligible for reimbursement.

4.2.8 Miscellaneous Costs. Miscellaneous Costs of the Work include:

4.2.8.1 That portion of premiums paid by the DB Contractor for any insurance and bonds required pursuant to Article 17 (Insurance) and Exhibit I (Insurance and Bonding Requirements) hereto that are directly attributable to this Contract. All premiums for required insurance shall be considered to be included within the Cost of the Work. All reimbursements for premiums for required insurance and bonds shall reflect the actual net costs to the DB Contractor, including, without limitation, cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, captive insurance company credits, and volume rebates and free material credits earned with purchase of material or other goods and services charged to this Contract. Notwithstanding the foregoing, the required Commercial General Liability, Commercial Automobile Liability, Umbrella or Excess Liability, and Pollution Liability insurance coverages shall, collectively, be reimbursed at a rate of 1.25% of the Cost of the Work.

4.2.8.2 The cost of any deductible payable under any Builder's Risk Insurance Policy purchased and maintained by the DB Contractor pursuant to Exhibit I (Insurance and Bonding Requirements) hereto, if and to the extent that the insured loss was caused by a Force Majeure event or the act or omission of a third party. Notwithstanding the foregoing, the DB Contractor shall be solely responsible for the cost of any deductible payable under such Builder's Risk Insurance Policy to the extent the loss was caused by act or omission of DB Contractor, any Subcontractor, or any other Contractor Agent.

4.2.8.3 Self-insurance costs, only as provided in this Subsection 4.2.8.3. No charges for self-insurance will be considered as a reimbursable Cost of the Work unless the arrangements for self-insurance

are first disclosed in writing to the Authority along with a proposed methodology for determining reimbursement of an equitable portion of the actual out-of-pocket costs incurred to settle claims related to the Work. In no event shall reimbursement for self-insurance costs exceed the comparable costs of purchasing conventional insurance at conventional net or modified rates for similar volumes of work performed under similar conditions.

4.2.8.4 Payroll Taxes imposed by a Governmental Authority in relation to the Work.

4.2.8.5 Fees and assessments for Permits for which the DB Contractor is required to pay in accordance with the Contract Documents.

4.2.8.6 Fees for testing laboratories for tests required to be performed by or on behalf of the DB Contractor in accordance with the Contract Documents.

4.2.8.7 General Information Technology (IT) support, including onsite software and application administration, incurred in performance of the Work, reimbursed at a rate of 0.1% of the Cost of the Work.

4.2.8.8 Building Information Modeling (BIM) and Virtual Design & Construction technologies and deliverables provided for the Project, reimbursed at a rate of 0.1% of the Cost of the Work.

4.2.8.9 General health and safety support and governance provided to onsite safety personnel in connection with performance of the Work, reimbursed at a rate of 0.1% of the Cost of the Work.

4.2.8.10 Costs for electronic equipment and software directly related to the Site Security and Management Program.

4.2.8.11 Other necessary and reasonable costs incurred in the performance of the Work, if and only to the extent approved by the Authority.

4.2.9 General Conditions Costs

4.2.9.1 The Cost of the Work shall include certain general conditions and general requirements items to be performed or provided by the DB Contractor in exercising its administrative, supervisory, and management responsibilities under this Agreement, as identified in the General Conditions Schedule set forth in Attachment 2 (General Conditions Schedule) to Exhibit B (IGMP Schedule of Values) hereto (the “General Conditions Items”).

4.2.9.2 Reimbursement for full-time onsite management personnel as identified in the General Conditions Schedule shall be based upon agreed rates as set forth in Attachment 1 (Hourly Rates) to Exhibit B (IGMP Schedule of Values) hereto. Reimbursement for all other General Conditions Items shall be at actual cost as a Cost of the Work. A Change in the Work or Excusable Event shall not result in an increase in an established rate set forth in Attachment 1 (Hourly Rates) to Exhibit B (IGMP Schedule of Values) except in extraordinary circumstances documented by the DB Contractor in its Claim therefor.

4.2.9.3 No General Conditions Items shall be performed or provided by any Subcontractor, and no Subcontract Price shall include any cost for General Conditions Items, except as mutually agreed and set forth in the General Conditions Schedule set forth in Attachment 2 (General Conditions Schedule) to Exhibit B (IGMP Schedule of Values).

4.3 COSTS NOT TO BE REIMBURSED

The Cost of the Work does not include the following:

4.3.1 Salaries, wages, or other compensation of the DB Contractor's officers, executives, general managers, and any other personnel stationed at the DB Contractor's principal office or at offices other than the Site office, except as specifically provided in Subsection 4.2.2.2 (Labor Costs) hereof.

4.3.2 Bonuses paid to the DB Contractor's personnel or other discretionary or incentive compensation, unless approved in writing in advance by the Authority.

4.3.3 Costs for additional compensation not expressly approved, in writing, by the Authority pursuant to a Change Order or Construction Change Directive issued in accordance with Article 13 (Changes in the Work) hereof.

4.3.4 Costs incurred by the DB Contractor for any consultation or services rendered prior to the Effective Date unless otherwise authorized in writing by the Authority.

4.3.5 Expenses of the DB Contractor's principal office and offices other than the Site office, including costs of the DB Contractor's principal office computer services or other outside computer processing services, except to the extent the computer services are specific to the Project and not otherwise used by the DB Contractor in its other operations or projects. The DB Contractor should not plan to perform any such computer-related services at the Site office when such services or functions are normally performed at the DB Contractor's principal office or office other than the Site office or at other outside service locations.

4.3.6 Overhead and general expenses, except as captured in the General Conditions Schedule as provided in Subsection 4.2.9 (General Conditions Costs).

4.3.7 The DB Contractor's capital expenses, including interest on the DB Contractor's capital employed for the Work.

4.3.8 Any Taxes based on net income or capital, any franchise Taxes, any excess profit Taxes, or any other Taxes levied on the DB Contractor, its Subcontractors, or their businesses imposed in relation to the Project or this Contract, except as specifically provided in Subsection 4.2.8.4 (Miscellaneous Costs). For the sake of clarity, neither the Authority nor any other State Party shall be responsible for any Taxes that it is not explicitly required to pay by this Agreement.

4.3.9 Rental costs of machinery and equipment, except as specifically provided in Subsection 4.2.5 (Rental Costs).

4.3.10 Costs associated with the DB Contractor's failure to apply for, in a timely manner, any and all Permits for which the DB Contractor is responsible pursuant to the Contract Documents.

4.3.11 Costs incurred by the DB Contractor due to delays, other than reimbursable costs resulting from Excusable Events as provided in Section 12.2 (Excusable Events), or Changes in the Work as provided in Article 13 (Changes in the Work), but which instead are due to the failure of DB Contractor or its Subcontractors to coordinate their work with that of the Authority's Separate Contractors, if any, after agreeing to any Schedule referred to in this Contract or delays otherwise resulting from the DB Contractor's failure to comply with directives of the Authority not in conflict with the Schedule.

4.3.12 Any acceleration costs exceeding the Contractor Contingency, including any and all overtime wages, arising as a result of delay in carrying out the Work, except as otherwise provided in Section 12.2 (Excusable Events).

4.3.13 Costs incurred as a result of any inspection or test that reveals nonconforming or defective work not performed in accordance with the Contract Documents.

4.3.14 Costs of removing or replacing any defective or rejected Work not in accordance with the Contract Documents.

4.3.15 Costs resulting from the negligence or intentional acts of, or a default hereunder by, the DB Contractor, its Subcontractors or any other Contractor Agent, including the costs of (a) correcting defective or nonconforming Work, (b) disposal of materials and equipment wrongly supplied, (c) making good any damage to property and (d) all Remedial Actions related to Hazardous Materials that have been Released by the DB Contractor or any Contractor Agent or the presence or Release of Pre-Existing Hazardous Materials that have been knowingly or negligently exacerbated by the DB Contractor or any Contractor Agent.

4.3.16 Costs resulting from the failure of the DB Contractor or any Subcontractor to procure and maintain any insurance required by Article 17 (Insurance) and Exhibit I (Insurance and Bonding Requirements) hereto, which costs exceed the Contractor Contingency.

4.3.17 Losses and expenses for items not covered by insurance and any insurance deductibles if the loss is caused by the act or omission of the DB Contractor or a Contractor Agent. The DB Contractor shall be solely responsible for payment of all insurance deductibles and losses and expenses to items not covered by insurance, and these costs shall not be costs reimbursed by the Authority as a Cost of the Work or otherwise if the loss was caused by the act or omission of the DB Contractor or a Contractor Agent. For the sake of clarity, if the loss is caused by the act or omission of the DB Contractor or a Contractor Agent, the cost of any deductible payable under any Builder's Risk Insurance Policy purchased and maintained by the DB Contractor pursuant to Exhibit I (Insurance and Bonding Requirements) hereto shall not be reimbursed by the Authority as a Cost of the Work or otherwise.

4.3.18 Costs that would cause the GMP, as the same may be adjusted by Change Order, to be exceeded.

4.3.19 Costs associated with any Change Order or other written directive or response from the Authority, unless expressly approved in writing by the Authority or otherwise allowed by Article 13 (Changes in the Work) or any other provision of this Contract.

4.3.20 Costs for which Contractor Contingency funds could have been used, after all Contractor Contingency has already been used.

4.3.21 Costs payable from State Contingency funds, except at the express written direction of the Authority, in its sole discretion.

4.4 DISCOUNTS, REBATES, AND REFUNDS

The DB Contractor shall advise the Authority of all cash and trade discounts, rebates, and refunds available during or as a result of performance of the Work, including volume and subcontract rebates to which the DB Contractor may become entitled based in whole or in part upon the performance of the Work. All discounts, rebates, and refunds shall accrue to the Authority, and there shall be a commensurate reduction to the GMP (including a reduction in the FGMP by Change Order, as applicable). All trade discounts, rebates, and refunds, and all proceeds from the sale of surplus or salvaged materials and equipment, shall

accrue to the Authority by way of a reduction in the Cost of the Work, and the DB Contractor shall take such steps as shall be necessary to secure the same

4.5 SCHEDULE OF VALUES

The Schedule of Values allocates the Guaranteed Maximum Price among the various portions of the Work (the “**Schedule of Values**”). The Schedule of Values shall be used as a basis for reviewing the DB Contractor’s Applications for Payment, but shall not create a Guaranteed Maximum Price for each line item listed in the Schedule of Values. The Schedule of Values shall be prepared in such form and be supported by such data to substantiate its accuracy as the Authority may require. Upon the request of the Authority or the Program Manager, the DB Contractor shall provide a more detailed Schedule of Values identifying costs included in each line item.

4.5.1 Attached hereto as Exhibit B (IGMP Schedule of Values) is a preliminary Schedule of Values allocating the IGMP among the various portions of the Work. The Schedule of Values for the Project, allocating the FGMP among the various portions of the entire Work, shall be finally agreed in the FGMP Amendment.

4.5.2 Each Work Package Authorization will contain a more detailed Schedule of Values for the Work Package, allocating the GMP for the Work Package among the various portions of the Work for the Work Package.

4.5.3 No payment for Construction Phase Work shall be made until a Schedule of Values has been approved by the Authority and included in Exhibit D (Project Schedule), a Work Package Authorization, or a GMP Amendment, as applicable.

4.6 NO DUPLICATION

Notwithstanding the breakdown or categorization of any cost to be reimbursed pursuant to the Contract Documents, the DB Contractor hereby covenants and agrees that there shall be no duplication of payment for any items included in the Contract Sum (including the Design Phase Sum), notwithstanding any itemization, breakdown, or provision contained in the Contract Documents to the contrary.

4.7 ACCOUNTING RECORDS

4.7.1 The DB Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be satisfactory to the Authority and shall be maintained in accordance with generally accepted accounting principles.

4.7.2 The DB Contractor shall cause the Subcontractors to keep similar accounts and accounting and control systems in relation to Work performed.

4.7.3 At no charge to the State, the State Parties (and their respective auditors and legal counsel) shall be afforded access to, at all times during normal business hours, and shall be permitted to inspect, audit, and copy, the DB Contractor’s and its Subcontractors’ records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project, and the DB Contractor and its Subcontractors shall preserve these for a period of at least seven years after final payment or earlier termination of this Contract, or for such longer period as may be required by applicable Law. The State Parties may perform any inspection of such materials upon 48 hours’ prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The Authority shall have the right to perform, or cause to be performed, an audit of the DB Contractor’s accounting records during the term of this Contract or during the aforesaid seven-year period (as may be extended by applicable

Law). The DB Contractor shall include a provision substantially similar to this Subsection 4.7.3 in its Subcontracts. The Authority's audit rights with respect to unit rates, fixed percentages, or multipliers agreed to by the parties in the Contract Documents shall be limited to the application of said unit rates, fixed percentages, or multipliers, and shall not result in an audit of the makeup of the agreed to rates, percentages, or multipliers.

ARTICLE 5 **PAYMENTS**

5.1 PROGRESS PAYMENTS

5.1.1 Progress Payments. Based upon Applications for Payment and supporting documentation provided by the DB Contractor in accordance with the Contract Documents (including this Article 5 (Payments)), the Authority shall make progress payments to the DB Contractor for the Work on account of the Contract Sum as provided in this Section 5.1.

5.1.2 Pencil Draws. The DB Contractor shall submit a preliminary draft “pencil draw” of its proposed Application for Payment to the Program Manager and the Authority no later than five days prior to the date that the DB Contractor submits the actual Application for Payment, showing all amounts projected by the DB Contractor to be included in the proposed Application for Payment.

5.1.3 Applications for Payment

5.1.3.1 No later than the second day of each calendar month, the DB Contractor shall submit to the Program Manager and the Authority a duly executed, certified as accurate and itemized Application for Payment for Work completed, based upon the Schedule of Values.

5.1.3.2 The Program Manager shall, within 10 days after receipt thereof, review each properly submitted Application for Payment (with the exception of the final Application for Payment, which shall be reviewed by the Program Manager in accordance with Section 5.8 (Final Payment)) and (a) make a written recommendation to the Authority indicating the amount the Program Manager determines is properly due and/or (b) notify the Authority and DB Contractor in writing of the Program Manager’s recommendation (including the reasons for such recommendation) that the Authority withhold payment in whole or in part as provided in Section 5.6 (Withholding Payment).

5.1.3.3 The Program Manager’s recommendation to make a payment to the DB Contractor will constitute a representation by the Program Manager to the Authority, based on the Program Manager’s evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Program Manager’s knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The Program Manager’s recommendation to make a payment to the DB Contractor will further constitute a representation to the Authority that the DB Contractor is entitled to payment in the amount recommended. However, the issuance by the Program Manager of a recommendation for payment will not be a representation that the Program Manager has (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (b) reviewed construction means, methods, techniques, sequences, or procedures, (c) made a detailed examination of copies of requisitions received from Subcontractors or other data requested from the DB Contractor to substantiate the DB Contractor’s right to payment, or (d) made examination to ascertain how or for what purpose the DB Contractor has used money previously paid on account of the Contract Sum.

5.1.3.4 The recommendation by the Program Manager to the Authority in respect of the amount to be paid or withheld is a recommendation and is not binding on the Authority. The Authority may withhold or delay payment if, in the Authority’s opinion, it has legitimate reasons to do so, including for the reasons set out in Section 5.6 (Withholding Payment). The Authority shall, within 10 days after receipt

of the DB Contractor's Application for Payment, notify the Program Manager and DB Contractor in writing of the Authority's determination to (a) approve the Application for Payment, in whole or in part, indicating the amount that the Authority has determined is properly due (on the recommendation of the Program Manager or otherwise), and/or (b) decline to make timely payment of the full amount requested in the Application for Payment, indicating the amount to be withheld and the Authority's reasons for doing so (whether at the recommendation of the Program Manager or otherwise).

5.1.4 Payment by the Authority. *Provided* that an Application for Payment consistent with the requirements of this Agreement is received by the Program Manager and Authority not later than the second day of the calendar month, and the Authority approves such Application for Payment, the Authority shall make payment in the amount due to the DB Contractor not later than 30 days after the Authority's approval of the Application for Payment. The DB Contractor understands and agrees that approval of the Application for Payment by the Authority is required prior to payment.

5.1.5 Late Receipt of Application for Payment. If an Application for Payment is received by the Program Manager or the Authority after the date for such application set forth in Subsection 5.1.3 (Applications for Payment), or if the DB Contractor's pencil draw of its proposed Application for Payment is received by the Program Manager or the Authority after the date for such pencil draw set forth in Subsection 5.1.2 (Pencil Draws), then payment shall be made by the Authority as part of the next monthly progress payment, *provided* that the Application for Payment is consistent with the requirements of this Agreement and the Authority approves such Application for Payment.

5.2 RETAINAGE

5.2.1 Five percent of each Application for Payment will be retained by the Authority until 50% of the Work on the Project has been completed and accepted by the Authority (including payment for materials stored on the site or suitably stored and insured off-site); *provided, however*, there shall be no retainage withheld on the DB Contractor's insurance and bond costs, nor any amounts payable on account of the Design Phase Sum.

5.2.2 After 50% of the Work (including approved Change Orders) has been completed, the DB Contractor shall submit a notice to the Authority that no subsequent retainage should be withheld from subsequent Applications for Payment. Upon such request, the Authority will review the progress to date and the remaining Work. If it appears that the 50% of the Work has been properly completed, and no other reason for withholding payment exists under this Agreement in compliance with applicable Law, the Authority shall process subsequent progress payments no further retainage.

5.2.3 The Authority may approve release of any Subcontractor retainage amounts upon written request by the DB Contractor, but only to the extent that the particular Subcontractor has fully completed its scope of work and 35 days have elapsed since any work, including any Punch List Work, has been performed by such Subcontractor, or as otherwise required by applicable Law. If there is a good faith dispute as to any retainage payment due, the Authority may withhold from final payment an amount not to exceed the value of any such disputed item, or such other amount as is allowed under applicable Law.

5.2.4 Notwithstanding any provision of the Contract Documents to the contrary, the Authority shall comply with applicable Law regarding release to the DB Contractor of any retention withheld by the Authority.

5.3 APPLICATIONS FOR PAYMENT

5.3.1 Each Application for Payment shall be substantially in the form set forth in Exhibit M (Form of Application for Payment) hereto, with any additional information and supporting documentation appended as required pursuant to this Section 5.3. Each Application for Payment shall identify the Work Package Authorization under which the Work was performed, if applicable.

5.3.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month immediately preceding the month in which the Application for Payment is received.

5.3.3 Each Application for Payment for Construction Phase Work shall reflect the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment, which percentage shall be *the lesser of* (a) the percentage of the Work that has actually been completed, *and* (b) the percentage obtained by *dividing* (x) the expense that has actually been incurred by the DB Contractor on account of the Work for which the DB Contractor has made or intends to make actual payment prior to the next Application for Payment by (y) the share of the GMP amount allocated to the Work as set forth in the Schedule of Values.

5.3.4 Each Application for Payment shall specify any Contractor Contingency utilized during the period covered by the Application for Payment, providing a description of the scope of work for which the Contractor Contingency was utilized and identifying line items in the Schedule of Values to which the Contractor Contingency is being allocated.

5.3.5 Each Application for Payment shall be supported by such data substantiating the DB Contractor's right to payment as the Authority shall require and shall be accompanied by the following supporting documentation, all in form and substance satisfactory to the Authority and in compliance with all Laws, together with any additional supporting documentation required pursuant to Exhibit P (Financing-Related Conditions):

- (a) A duly executed and acknowledged sworn statement of the DB Contractor showing all Subcontractors with whom the DB Contractor has entered into Subcontracts, the amount of each such Subcontract, the amount requested for any Subcontractor in the Application for Payment, and the amount to be paid to the DB Contractor from such progress payment, together with similar sworn statements from all first-tier Subcontractors and, when requested by the Authority, from lower-tier Subcontractors;
- (b) Duly executed conditional (except with respect to the final Application for Payment) waivers of mechanics', materialmen's and construction liens from the DB Contractor and all Subcontractors, in the applicable forms set forth in Exhibit N (Forms of Lien Waiver) hereto, establishing payment or satisfaction of the payment requested by the DB Contractor in the previous Application for Payment. The final Application for Payment shall be accompanied by final and full waivers of lien, in the applicable forms set forth in Exhibit N (Forms of Lien Waiver), from all parties entitled to receive payment in connection with the performance of the Work;
- (c) Evidence satisfactory to the Authority to demonstrate that cash disbursements already made by the DB Contractor on account of the Cost of the Work equal or exceed progress payments already received by the DB Contractor, *less* that portion of those payments attributable to the DB Contractor's Fee; and
- (d) Such other information, documents and materials (i) as may be required by the Laws or customs of the State to protect the Authority from mechanics', materialmen's, construction,

or similar liens or claims, or (ii) as the Authority or any other State Party may reasonably request.

5.3.6 Where timesheets are required to be utilized as supporting documentation for Applications for Payment for Changes in the Work payable on the basis of hourly rates or otherwise on a time-and-materials basis as described in Subsections 13.4.2.3 (Available Methods for Adjustment), 13.4.3 (Increased Cost-Plus Fee Method), and 13.4.4 (Additional Conditions of Payment for Changed Work), the following procedures shall additionally apply:

- (a) The DB Contractor shall give reasonable advance notice (but, in any event, at least two Business Days' advance notice) to the Authority prior to commencing any Work for which timesheets are to be submitted.
- (b) For Work performed using timesheets, the DB Contractor shall, unless otherwise directed by the Authority, submit such timesheets to the Authority no later than the end of the week following the week in which such Work was performed.
- (c) All timesheets submitted to the Authority shall (i) reference the written instruction under which the Work was authorized and (ii) be signed by the relevant authorized supervisory personnel of the DB Contractor in charge of such work certifying that all information contained in such timesheet is true, complete, and accurate.

5.3.7 Applications for Payment may not include requests for payment of amounts the DB Contractor does not intend to pay to a Subcontractor because of a dispute or other reason.

5.3.8 The DB Contractor warrants that title to all Work covered by an Application for Payment will pass to the Authority no later than the time of payment. The DB Contractor further warrants that, upon submittal of an Application for Payment, all Work for which payment has been received from the Authority shall be free and clear of liens, claims, security interests, or encumbrances in favor of the DB Contractor, Subcontractors, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, and that no basis exists for the filing of any such lien, claim, security interest, or encumbrance.

5.3.9 In taking action on the DB Contractor's Applications for Payment, the Program Manager and the Authority shall be entitled to rely on the accuracy and completeness of the information furnished by the DB Contractor. No recommendation of the Program Manager, nor any approval or other determination by the Authority or any other State Party, with respect to an Application for Payment be deemed to represent that such person has made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with this Article 5 (Payments) or other supporting data, or that such person has made examinations to ascertain how or for what purposes the DB Contractor has used amounts previously paid on account of this Contract.

5.4 COMPUTATION OF PAYMENTS

5.4.1 Subject to other provisions of the Contract Documents, the amount of each Application for Payment for Construction Phase Work shall be computed as follows:

- (a) *Take* that portion of the GMP amount properly allocable to completed Work, as determined by multiplying the percentage completed for each portion of the Work by the share of the GMP amount allocated to that portion of the Work;

- (b) *Add* that portion of the GMP amount properly allocable to materials and equipment delivered and suitably stored on-site for subsequent incorporation in the Work or, with the Authority's prior written approval, suitably stored off-site as agreed;
- (c) *Add* the portion of the DB Contractor's Fee, if any, then payable for completed Work pursuant to the terms of Subsection 4.1.3 (The DB Contractor's Fee);
- (d) *Deduct* retainage in each Application for Payment as required by Section 5.2 (Retainage);
- (e) *Subtract* the aggregate of previous payments made by the Authority;
- (f) *Subtract* any prior overpayments indicated in the documentation required by Subsection 5.3.5(c) (Applications for Payment) to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Authority in such documentation; and
- (g) *Subtract* amounts, if any, that the Authority has withheld in accordance with Section 5.6 (Withholding Payment).

5.4.2 Applications for Payment may include requests for payment on account of Changes in the Work that have been properly authorized by a Construction Change Directive but are not yet included in a Change Order, including amounts authorized pursuant to an interim determination by the Authority in accordance with Subsection 13.7.6 (Disputed Directives).

5.5 PAYMENT FOR MATERIALS AND EQUIPMENT

5.5.1 Payment for materials and equipment stored on- or off-site shall be conditioned upon compliance by the DB Contractor with procedures satisfactory to the Authority to establish the Authority's title to such materials and equipment (free of any warehouseman's liens or claims) or to otherwise protect the interests of the Authority and ADOC, and shall include applicable insurance, storage, and transportation to the Site for such materials and equipment stored off-site. Materials must be verified by the ADOC or Program Manager on behalf of the Authority as being physically located at the agreed location and of acceptable quality before they may be included in an Application for Payment.

5.5.2 Except with the Authority's prior written approval, the DB Contractor will not be paid for advance payments to Subcontractors supplying materials or equipment that have not been delivered and stored at the Site.

5.5.3 Materials delivered to the DB Contractor at a location other than the Site may be approved by the Authority for progress payment only if the DB Contractor furnishes satisfactory evidence that the DB Contractor has acquired title to such materials and that the materials will be used in the Work.

5.6 WITHHOLDING PAYMENT

5.6.1 The Program Manager or ADOC may recommend withholding, and/or the Authority may withhold, a payment in whole or in part to the extent reasonably necessary to protect the Authority as set forth in this Section 5.6. When the reasons for withholding payment are removed, payment will be made for amounts previously withheld. The Authority shall not be deemed to be in default by reason of withholding payment (in whole or in part) while any of the grounds set forth in this Section 5.6 remain uncured, or due to a dispute in good faith regarding the applicability of this Section 5.6. Notwithstanding the foregoing, the Authority may not withhold from payment the balance of funds, if any, that are not subject to bona fide dispute.

5.6.2 Notwithstanding any other provision of the Contract Documents, the Authority may deny an Application for Payment, or withhold from any payment owing to the DB Contractor, an amount not to exceed 125% of the disputed amount (or such lesser amount as is the maximum permitted by applicable Law), if any one or more of the following conditions exists:

- (a) A bona fide, good faith dispute concerning the amount owed under an Application for Payment, which may or may not arise from any of the following:
 - (i) Any errors, regardless of cause, that may be discovered in any previous Application for Payment;
 - (ii) Failure to provide a Schedule of Values breakdown with the Application for Payment;
- (b) Except to the extent arising from the Authority's failure to make payments to the DB Contractor when properly due, failure of the DB Contractor or its Subcontractors to make payments properly to their Subcontractors for labor, materials, or equipment for Work performed or labor or materials furnished for the DB Contractor, which may include:
 - (i) Failure of the DB Contractor to provide satisfactory releases and lien waivers in accordance with the requirements of the Contract Documents;
 - (ii) Unpaid claims or liens filed by any Subcontractor, laborer, materialman, lien claimant, or other third party, or reasonable evidence indicating significant likelihood of the filing of such a claim or lien, except to the extent arising from the Authority's failure to make payments to the DB Contractor when properly due;
- (c) Damage to the Authority, another State Party, the Program Manager or a Separate Contractor, or a claim filed, or reasonable evidence of the probable filing of a claim by a third party, caused by or arising out of an act or omission by the DB Contractor or any Contractor Agent, which may include:
 - (i) Unpaid claims assessments for damage to the Facility or Site or the property of the Authority or another State-Related Party caused by or arising out of any act or omission by the DB Contractor or any Contractor Agent;
 - (ii) Unpaid fines levied against the Project or the Authority or the ADOC due to the acts or omissions of the DB Contractor or any Contractor Agent;
 - (iii) Unpaid amounts owed to the Authority for (i) fees and charges incurred by the Authority or the ADOC in relation to the Permits or (ii) use of State facilities and services in connection with the Work;
- (d) Defective work not remedied;
- (e) Unsatisfactory job progress or disputed Work, which may include:
 - (i) Persistent or otherwise material failure to carry out the Work and perform the DB Contractor's obligations in accordance with the Contract Documents;
 - (ii) Persistent failure to comply with the requirements regarding the Schedule, including the requirement to provide Schedule updates on a monthly or more frequent basis and other maintenance, monitoring, and updating requirements of the Contract Documents;

- (iii) Persistent or otherwise material failure of the DB Contractor to provide appropriate personnel in accordance with the requirements of the Contract Documents;
- (iv) Persistent failure to maintain up-to-date record Drawings at the Site as required under the Contract Documents;
- (v) Failure of the DB Contractor to provide the Authority and the ADOC with complete guarantees, manuals, instructions, technical information, and as-built plans in accordance with the requirements of the Contract Documents for any portion of the Work that has been completed and accepted by the Authority;
- (vi) Failure of the DB Contractor to maintain appropriate insurance coverages or provide appropriate evidence of insurance in conformance with the requirements of the Contract Documents;
- (vii) Persistent or otherwise material failure to comply with the requirements of the Facility Documents;
- (f) Reasonable evidence that the Work cannot be completed for the unpaid balance of the applicable GMP;
- (g) Reasonable evidence that the Work will not be completed within the Contract Time, or by the applicable Project Milestone deadline, and that the unpaid balance of the Contract Sum is insufficient to cover applicable Liquidated Damages;
- (h) A written request from the DB Contractor's surety to withhold payment; or
- (i) Any part of the payment owed to the DB Contractor is attributable to Work not performed in accordance with the Contract Documents.

5.6.3 The Authority shall have the right to deduct from any funds or monies due (or to become due) to the DB Contractor any amounts that are due from the DB Contractor to the Authority or ADOC as a result of any losses, costs, expenses, damages, obligations, or liabilities for which the DB Contractor is responsible pursuant to the terms and provisions of the Contract Documents. If, upon completion or termination of this Contract, sums due the DB Contractor are insufficient to pay charges against the DB Contractor, the Authority shall have the right to recover the balance from the DB Contractor or the DB Contractor's surety.

5.6.4 The DB Contractor shall continue to perform the Work despite any payments withheld pursuant to this Section 5.6. Any stoppage of work by the DB Contractor due to such a withholding of funds by the Authority pursuant to this Section 5.6 shall be a material breach of this Contract.

5.7 PAYMENTS TO SUBCONTRACTORS

5.7.1 Upon receipt of payment from the Authority, the DB Contractor shall promptly pay each first-tier Subcontractor, out of the amount paid to the DB Contractor on account of such Subcontractor's portion of the Work performed or materials suitably provided, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments made to the DB Contractor on account of such Subcontractor's portion of the Work. Such payment shall be made not later than seven days after the date the DB Contractor receives the Authority's payment, or sooner if required by applicable Law.

5.7.2 The DB Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its lower-tier Subcontractors in a similar manner.

5.7.3 The Authority shall not have an obligation to pay or to see to the payment of money to any Subcontractor of any tier.

5.7.4 The DB Contractor hereby agrees to indemnify, defend, and hold harmless State-Related Parties from and against any liens, claims, security interests, or encumbrances filed by the DB Contractor or any Subcontractor or anyone claiming by, through or under any of them, to the extent relating to any Work for which the DB Contractor has been paid by the Authority or otherwise by the State. In addition, to the extent the DB Contractor or the Authority becomes aware that any of the foregoing parties has filed or asserted a lien or claim, the DB Contractor agrees, within 10 days from the date the DB Contractor becomes aware of such lien or claim, to discharge the lien or claim, provide the Authority a bond in the amount of 125% of the lien or claim filed or asserted (or such lesser amount as is the maximum permitted by applicable Law), or provide such other security as may be reasonably requested by the Authority. If a bond is provided, any such bond shall be in form and substance and shall be issued by a surety that is satisfactory to the Authority and shall name such obligees as the Authority requests, which may include the State Parties. Notwithstanding the foregoing, at the time the DB Contractor receives final payment for the Work, the DB Contractor must provide final and full waivers of lien from all parties entitled to receive payment in accordance with Subsection 5.8.2 (Final Application for Payment), unless the Authority agrees, in its sole discretion, to accept a bond or other security as described in this Subsection 5.7.4 in relation to any party for whom a final and full lien waiver is not submitted.

5.8 FINAL PAYMENT

5.8.1 Conditions to Final Payment. The Authority shall make final payment to the DB Contractor of the entire balance of the Contract Sum found to be due and payable to the DB Contractor when:

- (a) The Contract has been fully performed by the DB Contractor, and Final Completion has occurred in accordance with Section 14.3 (Final Completion), as determined by the Authority;
- (b) A final Application for Payment and all supporting documentation have been submitted by the DB Contractor in accordance with this Section 5.8, and such information has been reviewed by the ADOC and Program Manager and the Authority;
- (c) The Program Manager has recommended to the Authority that, to the best of the Program Manager's knowledge, information and belief, that the entire balance of the Contract Sum as identified in the final Application for Payment is due and payable; and
- (d) The Authority has approved the final Application for Payment.

5.8.2 Final Application for Payment. Following the Authority's issuance of a certificate of Final Completion as described in Section 14.3 (Final Completion), the DB Contractor shall submit a final Application for Payment to the Program Manager and the Authority. Neither final payment nor any remaining retainage shall become due until the DB Contractor submits to the ADOC and Program Manager, and the Authority approves, a final Application for Payment and supporting documentation, including:

- (a) A final accounting of the Cost of the Work, based on the Schedule of Values, and delineated by Work Package Authorization and Change Order, as applicable;
- (b) An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Authority or the State Parties might be responsible or for which State property (including the Site and Facility) may be encumbered (less amounts withheld by the Authority) have been paid or otherwise satisfied;

- (c) Final and full waivers of lien, in the applicable forms set forth in Exhibit N (Forms of Lien Waiver), from all parties entitled to receive payment in connection with the performance of the Work, or a bond satisfactory to the Authority provided in accordance with Subsection 5.7.4 (Payments to Subcontractors);
- (d) A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 60 days' prior written notice has been given to the Authority;
- (e) A written statement that the DB Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (f) A consent of surety, if any, to final payment;
- (g) If required by the Authority, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Contract, to the extent and in such form as may be designated by the Authority; and
- (h) All other deliverables required under this Contract.

5.8.3 The amount of the final payment shall be calculated as follows:

- (a) *Take* the sum of the Design Phase Sum, the Cost of the Work substantiated by the DB Contractor's final accounting, and the DB Contractor's Fee; *provided, however*, that such sum shall not exceed the FGMP, and shall be limited by the Work Package GMPs established pursuant to each Work Package Authorization, except to the extent that such Work Package GMPs may have been modified by the FGMP Amendment or other later Modification;
- (b) *Subtract* amounts, if any, for which the Authority withholds payment, in whole or in part, as provided in Section 5.6 (Withholding Payment) or other provisions of the Contract Documents;
- (c) *Subtract* the aggregate of previous payments made by the Authority; and
- (d) *Add* any Savings due to the DB Contractor pursuant to Subsection 4.1.8 (Savings).

If the aggregate of previous payments made by the Authority exceeds the amount due the DB Contractor, the DB Contractor shall reimburse the difference to the Authority. If the aggregate of previous payments made by the Authority does not exceed the amount due to the DB Contractor, final payment shall be made by the Authority not more than 30 days after its approval of the final Application for Payment.

5.8.4 Notwithstanding the foregoing, final payment shall not become due and payable until (a) Final Completion has been achieved, (b) the Authority and the ADOC have received all warranties, manuals, schematics, drawings, and specifications reflecting "as built" conditions and such other items as the Authority may reasonably request, (c) all certificates of occupancy or other approvals required by any Governmental Authority or quasi-governmental authority have been submitted to the Authority, and (c) all other conditions to final payment set forth in the Contract Documents have been satisfied (including those set forth in this Section 5.8 (Final Payment)).

5.8.5 Acceptance of final payment by the DB Contractor or a Subcontractor shall constitute a waiver of all claims by that payee except those previously made in writing and identified by that payee as unsettled

at the time of final Application for Payment. The DB Contractor shall include a like provision in each Subcontract.

5.9 PAYMENTS NOT ACCEPTANCE OR WAIVER BY THE AUTHORITY

5.9.1 A progress payment on the Project made by the Authority shall not constitute acceptance by any State Party of Work not in accordance with the Contract Documents.

5.9.2 Final payment to Contractor by the Authority shall not constitute a waiver of claims by the Authority or any other State Party against the DB Contractor or any other person or entity with respect to the Work.

5.9.3 No inspection, order, measurement, approval, modification, payment, acceptance of Work or material (including acceptance of the entire Work), time extension, or possession of the Work or any part thereof shall be a waiver of any of the terms and conditions of this Contract, the powers reserved by the Authority, or any right of the Authority or any other State Party to damages or to reject the Work in whole or part.

5.10 FAILURE OF PAYMENT

5.10.1 If, through no fault of the DB Contractor, the Authority does not pay the DB Contractor the amount due on any approved Application for Payment by the date due as established pursuant to Section 5.1 (Progress Payments), then the DB Contractor may, upon 30 additional days' prior written notice to the Authority, if such failure is not cured within that 30-day period, suspend the Work until payment of the amount owing has been received.

5.10.2 The DB Contractor acknowledges that payments from the Authority may be delayed at the end of the State's fiscal year, and, notwithstanding anything to the contrary in the Contract Documents, any such delay in payment shall not be considered a breach by the Authority of its obligations under this Contract. If the Authority reasonably anticipates that such a delay in payment may occur, the Authority shall notify the DB Contractor as soon as reasonably practical.

5.10.3 Interest on late payments by the Authority (through no fault of the DB Contractor) shall be payable as required by State Law.

5.11 NO DEBT TO STATE

It is agreed that the terms and commitments contained herein shall not constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number XXVI. It is further agreed that if any provision of this Agreement shall contravene any statute or constitutional provision or amendment, either now in effect or which may during the course of this Agreement be enacted, then that conflicting provision in the Agreement shall be deemed null and void. All other terms and conditions shall remain in full force and effect.

5.12 APPROPRIATIONS

The parties acknowledge and agree that certain monetary obligations of the Authority under this Contract are subject to appropriation by the State Legislature. The Authority and ADOC shall exercise all reasonable efforts to cause the State Legislature to appropriate amounts sufficient to enable the Authority to pay the DB Contractor all amounts payable from appropriations pursuant to this Agreement.

5.13 STATE FISCAL POLICY AND PROCEDURES

All payments will be made in accordance with the State Fiscal Policy and Procedures Manual adopted by the State of Alabama Comptroller as of the date the Application for Payment is presented to the Authority. All payments shall be made by and through the STAARS system. The DB Contractor is required to be registered as a vendor in the State's STAARS accounting system in order to receive payment from the State. The DB Contractor is solely responsible for registering as a vendor through STAARS in order to effectuate any payment.

ARTICLE 6 **THE AUTHORITY**

6.1 THE AUTHORITY AS OWNER

The Authority is the "owner" of the Project.

6.2 ADMINISTRATION AND COOPERATION

6.2.1 The Authority shall designate, from time to time, one or more individuals who will act on behalf of the Authority in connection with the Project, together with the scope of their authority to render binding decisions or otherwise act on behalf of the Authority in relation to the Project. Such designations as of the Effective Date are as set forth in Exhibit K (Authorized Representatives of State-Related Parties). Such persons, when acting within the scope of their authority to render binding decisions related to the Project, are each referred to herein as an "**Authority Representative**." The DB Contractor shall cooperate with all persons designated by the Authority to act on its behalf.

6.2.2 Whenever the Authority's cooperation is required by the DB Contractor in order to carry out the DB Contractor's obligations under this Contract, the Authority agrees that it shall act in good faith in so cooperating with the DB Contractor.

6.3 CONTRACTOR CONTROL OF CONSTRUCTION

Neither the Authority, nor any other State-Related Party, shall have control over or charge of, nor shall any of them be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs, in connection with the Work.

6.4 INFORMATION AND SERVICES REQUIRED OF THE STATE PARTIES

6.4.1 Site Information. To the extent necessary for the Work and under the control of the State Parties, and not required by the Contract Documents to be provided by the DB Contractor for the Project, the State Parties will provide, or cause to be provided, to the DB Contractor certain drawings and plans relating to the Enabling Works, and reports and information regarding the Site and prior investigations conducted for the Project involving environmental and subsurface conditions.

6.4.2 State-Provided FF&E. The Authority shall be responsible to provide (or cause to be provided) the furniture, fixtures and equipment for the Project that is specified in Attachment 4 (State-Provided FF&E) to Exhibit A (Project Criteria) (the "**State-Provided FF&E**"). The DB Contractor's Work shall not include the design, manufacture, delivery to the Site, or installation of the State-Provided FF&E, but shall include inspection of the State-Provided FF&E on delivery and placement in the Facility, except to the extent that such work will be performed by the vendor or a State Party (or its designee). The DB Contractor acknowledges and agrees that it shall afford the State Parties and their vendors or other designees reasonable access to the Site to effectuate delivery and placement of the State-Provided FF&E prior to the security sweep required as a condition precedent to Final Completion.

6.4.2.1 Delivery of State-Provided FF&E. The Authority or the ADOC shall supply the State-Provided FF&E to the Site not later than the dates identified therefor in the Schedule appended to the FGMP Amendment. Once any portion of any State-Provided FF&E has been delivered to the Site, risk of loss and damage to such State-Provided FF&E shall thereupon be and remain with the DB Contractor until Final Completion, regardless of the passage of title therefor.

6.4.2.2 Inspection of State-Provided FF&E. Within 10 Business Days following delivery of any portion of the State-Provided FF&E to the Site (or within such longer period as is reasonably necessary, given the nature of the equipment), the DB Contractor shall thoroughly inspect such State-Provided FF&E. Following such inspection, the DB Contractor shall promptly notify the Authority and Program Manager of any defects or deficiencies discovered in the State-Provided FF&E. To the extent that a material design or manufacturing defect or deficiency in the State-Provided FF&E (or a portion thereof) is identified, the Authority shall cause (or authorize the Program Manager or DB Contractor to act on the Authority's behalf to cause) the vendor to remedy such defects or deficiencies as soon as reasonably practicable.

6.4.3 Reference Information Documents. Any information or documentation provided by the Authority (or by the ADOC or Program Manager on behalf of the Authority) to the DB Contractor relating to existing conditions upon, about or adjacent to the Site is provided only for the DB Contractor's information in developing its initial cost estimates and schedules, it being understood that the FGMP and Final Completion Deadline set forth in the FGMP Amendment will reflect the DB Contractor's own reviews and investigations as described in Section 7.1 (Review of Project Criteria and Site Conditions). No State-Related Party makes any representation or warranty as to, nor does any State-Related Party assume any responsibility whatsoever with respect to, the sufficiency, completeness, or accuracy of such information for purposes of the design of the Project or safe performance of the Work, and none of them makes any guarantee, either express or implied, that the conditions indicated in such information or documentation are representative of those existing at the Site or existing throughout the performance of the Work, and there is no guarantee against unanticipated or undisclosed conditions; *provided, however*, that the foregoing shall not abrogate any right of the DB Contractor to relief for Excusable Events or Changes in the Work in accordance with Articles 12 (Claims; Excusable Events; Site Conditions) and 13 (Changes in the Work), respectively. For the avoidance of doubt, it shall be the obligation of the DB Contractor to determine whether such information complies with applicable Laws.

6.5 THE AUTHORITY'S RIGHT TO STOP THE WORK

If the DB Contractor fails to correct defective or nonconforming Work as and when required under this Contract, persistently or materially fails to carry out Work in accordance with the Contract Documents, or persistently or materially fails, or refuses to provide, a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Project Milestone deadlines identified in the Schedule, the Authority may, by a written directive, order the DB Contractor to stop the Work or any portion thereof until the cause for such order has been eliminated. For the avoidance of doubt, a stoppage as provided in this Section 6.5 shall not apply to the DB Contractor's appropriate efforts to cure the defect, nonconformance, or failure, if the same is reasonably curable. The right of the Authority to stop the Work as provided in this Section 6.5 shall neither give rise to a duty on the part of the Authority to exercise this right for the benefit of the DB Contractor or any other person or entity, nor relieve the DB Contractor of any of its responsibilities and obligations under or pursuant to the Contract Documents. In confirmation and furtherance of the foregoing, the DB Contractor shall not have any claim for an increase in the GMP or an extension in the Contract Time due to stoppage in the Work as provided in this Section 6.5.

6.6 THE AUTHORITY'S RIGHT TO CARRY OUT THE WORK

If the DB Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a five-Business Day period after receipt of written notice from the Authority to commence and continue correction of such default or neglect with diligence and promptness, or fails within a five-Business Day period after receipt of written notice from the Authority to eliminate (or diligently commence to eliminate) the cause of any stop-work order issued under Section 6.5 (*The Authority's Right to Stop the Work*), the Authority may, without prejudice to any other rights or remedies the Authority may have (including declaring the DB Contractor in default), and with or without terminating this Contract, correct such deficiencies or cause them to be corrected. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the DB Contractor the cost of correcting such deficiencies, including compensation for the State Parties' and their respective consultants' and contractors' additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the DB Contractor are not sufficient to cover such amounts, the DB Contractor shall pay the difference to the Authority.

6.7 ADDITIONAL RIGHTS OF THE STATE PARTIES

6.7.1 The Authority shall have the right and the authority to reject Work that it determines to be defective or deficient or that otherwise does not conform to the Contract Documents.

6.7.2 The rights and remedies of the Authority and the other State Parties, as applicable, provided in this Article 6 (*The Authority*) shall be in addition to, and not in limitation of, any other rights and remedies otherwise available to the Authority or the other State Parties under the Contract Documents or at law or in equity.

ARTICLE 7 **DB CONTRACTOR**

7.1 REVIEW OF PROJECT CRITERIA AND SITE CONDITIONS

7.1.1 Execution of this Agreement by the DB Contractor is a representation that (a) the DB Contractor has carefully and thoroughly reviewed, analyzed, compared and familiarized itself with the Project Criteria (including any Drawings and Specifications set forth or referenced therein) and any other information furnished by or on behalf the Authority pursuant to Section 6.4 (*Information and Services Required of the State Parties*); (b) the DB Contractor has visited the area surrounding the Site, has become familiar with local conditions under which the Work is to be performed, and has correlated its observations with the Project Criteria and any other information furnished by or on behalf the Authority pursuant to Section 6.4 (*Information and Services Required of the State Parties*); and (c) the Project Criteria and any other information furnished by or on behalf of the Authority pursuant to Section 6.4 (*Information and Services Required of the State Parties*) contain all information, data, measurements, instructions, direction, and guidance (or such information, data, measurements, instructions, direction, and guidance are reasonably inferable from the Project Criteria and other information furnished by or on behalf of the Authority) as is necessary for the DB Contractor to prepare the Design-Build Documents and to complete the Work in accordance with the terms and provisions of this Contract and in the Contract Time. To the best of the DB Contractor's knowledge, the Project Criteria do not contain any errors, omissions, mistakes, discrepancies, or defects, and the DB Contractor covenants and agrees that it will not seek any adjustment to the GMP or the Contract Time based on any purported errors, omissions, mistakes, discrepancies, or defects in the Project Criteria. In the event that the DB Contractor discovers any error, omission, mistake, discrepancy, or defect or any variance from applicable Laws in the Project Criteria or in any other information furnished by or on behalf of the Authority pursuant to Section 6.4 (*Information and Services Required of the State Parties*), the DB Contractor shall promptly report the same to the Authority and the Program Manager. The

Authority and the DB Contractor shall then discuss such error, omission, mistake, discrepancy, defect, or variance from applicable Laws, and the Authority shall issue written directions specifying the mutually agreed resolution of the same. In confirmation and furtherance of the foregoing, the DB Contractor hereby waives any and all Claims based on an assertion that the Project Criteria (and any other information furnished by or on behalf of the Authority pursuant to Section 6.4 (Information and Services Required of the State Parties)) are inadequate, incomplete, contain less than the full scope of the Work for the completion of the Project, or contain any errors, omissions, mistakes, discrepancies, defects, or variances from applicable Laws, except to the extent that the DB Contractor reported to the Authority and the Program Manager a specific error, omission, mistake, discrepancy, defect, or variance from applicable Laws in the Project Criteria prior to the Effective Date.

7.1.2 The DB Contractor specifically represents that it has reviewed any geotechnical information provided by or on behalf of the Authority (subject to Subsection 6.4.3 (Reference Information Documents)) to the DB Contractor prior to the Effective Date and has taken into account all conditions described in any such geotechnical information, regardless of whether that condition appears at a location on the Site other than where it was discovered by the geotechnical investigation. The DB Contractor acknowledges that any such information has been provided by the Authority for informational purposes only in accordance with Subsection 6.4.3 (Reference Information Documents), and further acknowledges and agrees that, subject to DB Contractor's rights to any relief under Article 12 (Claims; Excusable Events; Site Conditions), such information cannot be relied upon to fulfill the DB Contractor's obligations under the Contract Documents, including its obligation for the design of the Project and its obligations to perform geotechnical investigations and any other reviews, investigations, or other diligence necessary to satisfy its other obligations under this Section 7.1.

7.1.3 The DB Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and familiarized itself as to the general and local conditions surrounding the Site that can affect the Project, the Site, or the performance of the Work, including:

- (a) Conditions bearing upon transportation, disposal, handling, and storage of materials and equipment;
- (b) The availability of labor, water, electric power, utilities, and roads;
- (c) The adequacy of the areas surrounding the Site for the performance of the Work, including for lay-down, storage, parking, street access, loading, and hoisting; and
- (d) The character of equipment and facilities needed preliminary to and during the performance of the Work.

7.1.4 The DB Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the DB Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, variances, or omissions discovered shall be reported to the Authority immediately.

7.1.5 The DB Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 7.14 (Shop Drawings, Product Data, and Samples).

7.1.6 The DB Contractor shall be strictly responsible for the proper layout, location, performance, and accuracy of the lines and levels required for the proper performance of the Work and for any loss or damage to the State resulting from the DB Contractor's failure to properly perform the same.

7.2 PROFESSIONAL SERVICES

The DB Contractor shall, consistent with applicable state licensing Laws, provide through qualified, licensed design and engineering professionals employed by the DB Contractor or procured from qualified, independent licensed Design Professionals, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications, and other design submittals to permit the DB Contractor to complete the Work consistent with the Contract Documents. All architectural, engineering, and other design professional services shall be performed in accordance with all applicable Laws and Permits, and the Professional Standard. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the Authority or any other State Party and any Design Professional.

7.3 DESIGN DEVELOPMENT SERVICES

7.3.1 DB Contractor Responsibility for Design

7.3.1.1 Preparation of Design-Build Documents. In accordance with the Design Schedule, the DB Contractor shall prepare, for written approval by the Authority, Design-Build Documents based on the Project Criteria and the IGMP. The Design-Build Documents shall include all Drawings, Specifications, schedules, diagrams, and plans, and such content and detail, as is necessary to obtain the Permits and to properly complete the construction of the Project, and shall provide information customarily necessary for the use of such documents by those in the building trades.

7.3.1.2 Professional Standard of Care. The DB Contractor covenants and agrees that the Design-Build Documents shall be prepared in accordance with the Professional Standard, shall be free from errors or omissions in accordance with the Professional Standard, and shall be in compliance with all applicable Laws. The DB Contractor shall, at no expense to any State Party, promptly modify any such documents that are not in accordance with such Laws, are inaccurate, or contain errors or omissions.

7.3.1.3 ADA and Litigation Compliance. It shall be the responsibility of the DB Contractor to ensure that the design and construction of the Facility comports with the applicable requirements of the ADA. Further, the DB Contractor acknowledges that the ADOC has entered into certain agreements incorporated into an “**ADA Consent Decree**” (as amended) in that lawsuit currently pending in the United States District Court for the Middle District of Alabama styled *Braggs, et al v Hamm, et al*, 2:14-cv-00601-MHT-WC (the “**Braggs Litigation**”). These agreements and the ADA Consent Decree generally provide, among other things, that the ADOC will comply with the provisions of the ADA in providing housing, health care (to include mental health care) and rehabilitative services and programs to inmates in its custody. The DB Contractor also acknowledges that the court has entered other orders and consent decrees containing remedial relief in the Braggs Litigation (the “**Braggs Orders**”), including, without limitation, the Phase 2A Omnibus Remedial Order, some which are or will be the subject of court and appellate review to determine whether such Braggs Orders are final, valid, enforceable, and/or must be altered, amended, or vacated. The requirements of the ADA Consent Decree (as amended) and the other Braggs Orders in the Braggs Litigation have been incorporated into the Project Criteria to extent existing as of the Effective Date, and the Authority expressly reserves its rights under Article 13 (Changes in the Work) in order to implement any Change in the Work required pursuant to other applicable requirements arising from the Braggs Litigation following the Effective Date. The DB Contractor shall cooperate with the State Parties regarding any monitoring and oversight activities conducted by the court or court-appointed personnel in connection with the Braggs Litigation.

7.3.1.4 Seal by A/E of Record. All Drawings and Specifications shall bear the signature and seal of a professional architect/engineer serving as the architect or engineer of record on behalf of the DB Contractor, which such professional shall be appropriately licensed in the State of Alabama.

7.3.1.5 State Party Review. The Authority's review and approval of Design Packages (as defined in Subsection 7.3.2 (*Development of Design Packages*) below) and the Design-Build Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither any review or comment by the Authority, any other State Party, or the Program Manager, nor any approval or acceptance by the Authority or the ADOC, of any Design Packages or Design-Build Documents shall be deemed to transfer any design liability from the DB Contractor to the State.

7.3.1.6 Copies of Design Packages. In addition to its obligations to prepare and submit submittals, including the Design Packages, in accordance with Exhibit J (*Special Conditions of the Program Manager*), the DB Contractor shall be responsible for furnishing copies of the Drawings and Specifications, at the request of any State Party, to each entity or person needing copies in connection with the Work.

7.3.2 Development of Design Packages. In preparing the Design-Build Documents, the DB Contractor shall, consistent with the Design Schedule and any other applicable provision of the Contract Documents, submit to the ADOC and Program Manager, for review by them and review and approval by the Authority, any such interim design submissions as are agreed by the parties, which interim design submissions may include design criteria, drawings, diagrams, and specifications setting forth the Project requirements (each such interim design submission being a "**Design Package**"). The DB Contractor shall, at a minimum, prepare the Design Packages described in this Subsection 7.3.2.

7.3.2.1 Schematic Design. Based on the Project Criteria, the DB Contractor shall prepare and submit to the ADOC and Program Manager, for review by them and review and approval by the Authority, complete "**Schematic Design Documents**" consisting of drawings and other documents describing the Project design objectives, space and equipment requirements and functional relationships, and illustrating the scale and relationship of Project components. The Schematic Design Documents must include at least the documents and information required by the DCM for a schematic plan submittal as described in the *DCM Manual of Procedures*. The DB Contractor acknowledges and agrees that the Schematic Design Documents must be consistent with, and further develop, the intent of the Project Criteria and must provide a schematic design for the Project that is reasonably practicable to deliver within the IGMP and Contract Time. In preparing the Schematic Design Documents, the DB Contractor shall review with the Authority and its designees the proposed site use and improvements, selection of building materials, building systems and equipment and shall verify facility dimensions and field conditions to the extent that the DB Contractor has not already done so in accordance with its obligations under Subsections 7.1.1 through 7.1.3 (*Review of Project Criteria and Site Conditions*). The Authority's written approval of the Schematic Design Documents must be obtained by the DB Contractor prior to the DB Contractor commencing any work on the Design Development Documents.

7.3.2.2 Design Development Documents. Based on the approved Schematic Design Documents, the DB Contractor shall prepare and submit to the ADOC and Program Manager, for review by them and review and approval by the Authority, complete "**Design Development Documents**" consisting of drawings and other documents that fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing and electrical systems, materials, and such other elements as may be appropriate. The Design Development Documents shall include at least the documents and information required by the DCM for a preliminary plan submittal as described in the DCM Manual of Procedures. The DB Contractor acknowledges and agrees that the Design Development Documents must be consistent with, and develop in detail, the intent of the approved Schematic Design Documents and must provide a design for the Project that is reasonably practicable to deliver within the IGMP and Contract Time. Without altering, modifying or otherwise revising the IGMP or any applicable GMP, the DB Contractor shall also submit, for the Authority's review and approval, a refinement of the Schedule of Values that reflects the preceding documents. Written approval of the Design Development Documents by

the Authority must be obtained by the DB Contractor prior to the DB Contractor commencing any work on the Construction Documents.

7.3.2.3 Construction Documents. Based on the approved Design Development Documents, the DB Contractor shall prepare and submit to the ADOC and Program Manager, for review by them and review and approval by the Authority, 65% complete, 90% complete, and then 100% complete, Construction Documents. The “**Construction Documents**” shall consist of working Drawings and Specifications setting forth in detail the requirements for the construction of the Project, shall include all Drawings and Specifications, and such content and detail, as is necessary to obtain required Permits and regulatory approvals and to properly complete the construction of the Project, and shall provide information customarily necessary for the use of such documents by those in the building trades. The 65% complete Construction Documents shall include at least the documents and information required by the DCM for an intermediate plan submittal as described in the DCM Manual of Procedures, and the 90% complete Construction Documents shall include at least the documents and information required by the DCM for a final plan submittal as described in such manual. The DB Contractor acknowledges and agrees that (a) the 65% complete Construction Documents must be consistent with, and develop in detail, the intent of the approved Design Development Documents, (b) the 90% complete Construction Documents must, in turn, be consistent with, and develop in detail, the intent of the approved 65% complete Construction Documents, (c) the 100% complete Construction Documents must, in turn, be consistent with, and develop in detail, the intent of the approved 90% complete Construction Documents and (d) the Construction Documents must provide a design for the Project that is reasonably practicable to deliver within the proposed FGMP (which shall be less than the IGMP as described in Subsections 4.1.1 (Contract Sum), 4.1.4 (Guaranteed Maximum Price), and 4.1.5 (Work Package Authorizations and GMP Development) and Contract Time. Without altering, modifying or otherwise revising the IGMP, FGMP, or any Work Package GMPs, as applicable, the DB Contractor shall also submit, for the Authority’s review and approval, a further refinement of the Schedule of Values that reflects each set of the preceding documents. Written approval of each stage of Construction Documents by the Authority must be obtained by the DB Contractor prior to the DB Contractor commencing any work on the next stage of Construction Documents. Further, the DB Contractor covenants and agrees that it shall not commence construction of any part or portion of the Project unless and until 100% complete Construction Documents relevant to such part or portion have been approved by the Authority in writing.

7.3.2.4 Complete Construction Documents. For purposes of the Contract Documents, Construction Documents shall be deemed 100% complete once they have been stamped “issued for permit” or “issued for construction” by the DB Contractor’s appropriately licensed and qualified Design Professional and have been approved by the Authority in writing. Once any of the 100% complete Construction Documents have been approved by the Authority, the Authority and the DB Contractor shall execute a complete set of the same. Upon such execution, such Construction Documents shall thereupon be deemed a part of the Contract Documents. Once approved, the DB Contractor may not modify, alter, or change any of the 100% complete Construction Documents without the Authority’s prior written approval.

7.3.2.5 Phased Completion of Design. To the extent not prohibited by the Contract Documents or applicable Law, the Construction Documents need not be submitted by the DB Contractor as a single complete set, but may be prepared and submitted in successive Design Packages, each of which addresses separate Work Packages or construction trades applicable to the Project, in order to allow for design and construction Work to proceed in phase in accordance with the Project Schedule and approved Work Package breakdown. Notwithstanding the foregoing, the DB Contractor shall be responsible to prepare 100% complete Construction Documents for the Work as a whole. DB Contractor shall prepare and submit to the Program Manager, ADOC, and Authority a complete reference set of the Construction Documents and shall keep such complete set accessible at all times until Final Completion.

7.3.3 Design Review

7.3.3.1 Regular Design Meetings. Throughout the preparation of the Design-Build Documents, the DB Contractor and the Design Professionals shall meet and confer on a regular basis with the Authority, the ADOC, and the Program Manager (and such other stakeholders in the Project that the Authority or the ADOC may reasonably identify) in order to review and discuss the documents then in the process of being prepared. The DB Contractor shall inform the Authority, the ADOC, and the Program Manager in writing as to any scheduled design meetings, all or any of which any of the State Parties, the Program Manager, or their representatives may attend.

7.3.3.2 Design Package Review Meetings. On or about the time of the scheduled submission of each Design Package, the DB Contractor, the Authority (and/or the ADOC) and the Program Manager shall meet and confer about the applicable Design Package, with the DB Contractor identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted Design Packages. Minutes of the meetings will be maintained by the DB Contractor and provided to all attendees for review. Following the design review meeting, the Authority, the ADOC, and the Program Manager, as applicable, shall review the Design Package in accordance with Subsection 7.3.3.3 (Authority Review of Design Packages) below, or, with respect to any Design Packages not specifically described in Subsection 7.3.2 (Development of Design Packages), in a time that is consistent with the turnaround times set forth in the Design Schedule or as otherwise provided in the Contract Documents.

7.3.3.3 Authority Review of Design Packages. Within 30 days after receipt from the DB Contractor of any of the Design Packages specifically described in Subsection 7.3.2 (Development of Design Packages), and the corresponding refinements to the Schedule of Values, the Authority shall either (a) provide written notification to the DB Contractor that the Authority approves such Design Package or (b) provide written notification to the DB Contractor that such Design Package is incomplete or does not comply with the requirements of this Section 7.3 (Design Development Services). In the event the Authority provides written notice of approval of the Design Package as set forth in clause (a) of this Subsection 7.3.3.3, the DB Contractor shall proceed with the next phase of the Project. In the event the Authority provides written notice as set forth in clause (b) of this Subsection 7.3.3.3, the DB Contractor shall immediately correct any incompleteness or noncompliance with respect to such Design Package. Upon completing the correction of the Design Package, the DB Contractor shall resubmit the applicable materials to the ADOC and the Program Manager, for review by them and review and approval by the Authority, and the foregoing procedures shall be repeated until the Authority provides written notice of approval by the Authority as to the Design Package in question.

7.3.4 Value Engineering Services

7.3.4.1 Throughout the design and engineering phase of the Work, the DB Contractor and the Design Professionals shall continually provide value engineering services, all of which services shall be performed so as to assist the State in achieving its objectives, including those related to schedule, cost, functional performance, and aesthetics. Factors to be considered by the DB Contractor and the Design Professionals in providing such services shall include: site use; selection of building materials, equipment and systems; availability of labor; methods and means of construction and installation; and any other similar items creating economies or cost savings for the Project. Particular attention shall be given to alternative design proposals, possible economies, and identification of options that would maximize the benefits the State would derive upon completion of the Work.

7.3.4.2 The DB Contractor shall compile value engineering analyses, advice, and recommendations in a written summary, and shall submit the same to the Program Manager for review and

consideration by the Program Manager, the ADOC, and the Authority. Each value engineering proposal submitted by the DB Contractor shall include the following:

- (a) A detailed description of the difference between the requirements of the Contract Documents, and the proposed changes and comparative advantages and disadvantages of each;
- (b) Itemization of aspects of the Contract Documents affected by enactment of the proposal;
- (c) Impact of the proposal upon both the Project cost and schedule;
- (d) A list of the projects, to the extent known, where the proposal or a similar proposal was used and the results experienced;
- (e) Lifecycle analyses that identify impacts to operations and maintenance costs;
- (f) Other information reasonably necessary to fully evaluate the proposal; and
- (g) The date by which the Authority must accept the proposal in order for the DB Contractor's cost and time estimates to remain valid.

7.3.4.3 The DB Contractor shall proceed with the performance of the Work as required by the Contract Documents and shall not implement any value engineering or other recommendations unless such recommendations are accepted by the Authority by written notice authorizing the DB Contractor to proceed with implementation, which acceptance and authorization will be documented in a subsequent Change Order.

7.4 PROSECUTION OF THE WORK

7.4.1 Administration

7.4.1.1 *Project Management Plan.* The DB Contractor shall develop and implement a comprehensive management and work plan for the Project that addresses (among other matters):

- (a) Project safety;
- (b) Quality assurance and quality control;
- (c) Management and control of the procurement and construction services; and
- (d) Management and control of Subcontractors and their respective Subcontracts.

Such plan shall be submitted within 10 Business Days after the Effective Date to the ADOC and Program Manager, for their review and comment and for review, comment, and acceptance by the Authority.

7.4.1.2 *Subcontracting.* Those portions of the Work that the DB Contractor does not perform with its own personnel shall be performed under contracts with the DB Contractor whereby appropriate Subcontractors provide all services, labor, materials, equipment, tools, transportation, and supplies for the construction of the Project. The DB Contractor shall manage the solicitation, assembly and buyout of all Subcontractor bid packages in accordance with Article 10 (Subcontracting). The DB Contractor shall maintain accounting records for all of the Work.

7.4.1.3 Meetings. In addition to attending those meetings otherwise specified in the Contract Documents, the DB Contractor shall schedule and attend regular meetings with the Authority, the other State Parties, and/or the Program Manager as directed by the Authority until Final Completion is achieved.

7.4.1.4 Worker Discipline. The DB Contractor shall enforce strict discipline and good order among the DB Contractor's employees and other persons carrying out the Work.

7.4.1.5 Notice of Claims. The DB Contractor shall promptly notify the Authority and ADOC of any claims, suits, or actions in relation to the Work, the Site, or the Contract Documents filed or asserted by or against the DB Contractor, any Subcontractor, the Facility, or the Site.

7.4.2 Construction Work

7.4.2.1 Tracking System. The DB Contractor shall maintain a tracking system or daily log containing a record of Subcontractors working on the Site, number of workers, Work accomplished, problems encountered, and other similar relevant data as the Authority may reasonably require. The system or log shall be readily available to the State Parties and the Program Manager.

7.4.2.2 Regular Inspections. The DB Contractor shall be responsible for inspection of portions of construction Work already performed to determine that such portions are in proper condition to receive subsequent Work. The DB Contractor shall make frequent inspections of the construction Work and shall promptly correct any deficient or defective Work as provided in Article 15 (Uncovering and Correction of Work).

7.5 LABOR

7.5.1 The DB Contractor covenants and agrees that it shall provide and pay for all items or services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Work, including all procurement, construction, and other services and items that are necessary or appropriate to execute and complete the Project in accordance with the Contract Documents, and shall include all such services and items that are specifically required by the Contract Documents.

7.5.2 All of the Work shall be performed by personnel possessing good labor relations, capable of performing quality workmanship and working in harmony with each other's personnel, contractors, and subcontractors, and with other personnel and Separate Contractors at the Site.

7.5.3 The DB Contractor shall be responsible for labor peace on the Site, shall at all times exert its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances, and shall at all times exert commercially reasonable efforts to maintain Project-wide labor harmony.

7.5.4 The DB Contractor shall enforce strict discipline and good order among the employees of the DB Contractor, its Subcontractors, and any other persons carrying out the Work. The DB Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The DB Contractor shall remove any employee or other individual that the Authority reasonably deems incompetent, careless, negligent, unreasonable, uncooperative, unfit, under the influence or in possession of drugs or alcohol, or otherwise reasonably objectionable. Any costs associated with any such removal of employees or other individuals shall be borne solely by the DB Contractor.

7.5.5 Additional requirements with respect to labor on the Project are set forth in Exhibit G (Labor and Contracting Requirements) hereto.

7.6 MATERIALS

7.6.1 If the Project Criteria or the Construction Documents approved in accordance with Section 7.3 (Design Development Services) require the DB Contractor to use a specific product, the DB Contractor shall use such product or request substitution of another product pursuant to Subsection 7.6.2 (Requests for Substitution). If the Project Criteria or the approved Construction Documents specify that the DB Contractor must use a specific product or an “equal,” “equivalent” or “similar” product, the DB Contractor shall use the specified product, or request substitution of a proposed equal, equivalent or similar product pursuant to Subsection 7.6.2 (Requests for Substitution). If the Project Criteria or the approved Construction Documents allow the DB Contractor a choice between two or more specified products, the DB Contractor may choose from among the specified products without seeking any additional approval.

7.6.2 Requests for Substitution

7.6.2.1 The Program Manager and the Authority will consider requests for substitution made by the DB Contractor for the DB Contractor’s convenience in accordance with this Subsection 7.6.2. Requests for substitutions shall be in writing and shall be accompanied by evidence that the proposed substitution (a) will not entail changes in details and construction of related Work, (b) will be acceptable in consideration of the required design effect and (c) shall not involve additional cost to the State or have an adverse impact on the Schedule.

7.6.2.2 The DB Contractor will furnish with its request for substitution such drawings, specifications, samples, performance data, and other information as may reasonably be required to assist the State in making a decision. The burden of proof shall be upon the DB Contractor to prove that the proposed product is equal or superior to the specified product. Regardless of the evidence submitted or any review or independent investigation by a State Party or the Program Manager, a request for a substitution shall constitute a representation, warranty, and covenant of the matters set forth in Subsection 7.6.2.1 above.

7.6.2.3 By making any request for a substitution, the DB Contractor also represents and warrants that: (a) the DB Contractor has personally and thoroughly investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; (b) the DB Contractor shall provide the same warranty for the substitution that the DB Contractor would for the product specified; (c) the DB Contractor waives all claims for additional costs or schedule adjustments relating to such substitution; and (d) the DB Contractor will coordinate the installation and integration of the accepted substitute, making such changes as may be required for the Work to be complete and proper in all respects.

7.6.2.4 The Authority shall have discretion to grant or deny a request for substitution, whether or not on the recommendation of the Program Manager. Approval of a substitution will not give any State Party any responsibility or liability therefor.

7.6.2.5 The DB Contractor shall bear all costs and schedule impacts associated with a substitution request.

7.6.3 Whenever a product is specified in accordance with a federal specification, ASTM standard, U.S. standard specification or other association standard, the DB Contractor shall, when requested by the Authority or the Program Manager, or as required in the Specifications, (a) present an affidavit from the manufacturer certifying that the product complies with the particular standard and (b) provide supporting data to substantiate compliance.

7.7 WARRANTY

7.7.1 The DB Contractor warrants to the Authority and ADOC that all work and services provided under this Contract will be performed in a good and workmanlike manner; that all materials, supplies, and equipment furnished under this Contract will be of good quality and new; that the Work (other than design work) will be free from defects and deficiencies; that all design work will comply with the Professional Standard; that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Authority; and that the Work will conform with the requirements of the Contract Documents and all applicable Laws and Permits. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. If required by the Authority, the DB Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

7.7.2 When deemed necessary by the Authority or the Program Manager, and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, the DB Contractor shall furnish proof of conformance to the Authority and the Program Manager. Proof of conformance shall be in the form of any of the following: (a) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standard, or (b) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standard, or (c) such further reasonable proof as is required by the Authority or the Program Manager.

7.7.3 The DB Contractor shall have primary liability with respect to the warranties set forth in this Agreement or otherwise required pursuant to the Contract Documents, whether or not any defect, deficiency, or other matter is also covered by a warranty of a Subcontractor or other third party, and the State Parties need only look to the DB Contractor for corrective action. In addition, the DB Contractor's warranties expressed herein shall not be restricted in any manner by any warranty of a Subcontractor or other third party, and the refusal of a Subcontractor or other third party to correct defective, deficient, or nonconforming Work shall not excuse the DB Contractor from its liability as to the warranties provided herein.

7.7.4 The DB Contractor hereby agrees to assign any and all Subcontractor's, manufacturer's, or other third-party warranties relating to materials, equipment, and labor used in or furnished as part of the Project, and shall ensure that such warranties may be freely assigned, to the Authority, for its benefit and the benefit of the ADOC, upon Final Completion without the consent or approval of such Subcontractor, manufacturer, or third party. The DB Contractor shall deliver to the Authority and Program Manager, prior to final payment but not later than 60 days following Preliminary Completion, such assignments along with or as part of a reference manual, in form and detail reasonably acceptable to the Authority and ADOC, showing all such warranties and guarantees shall commence no sooner than the date of acceptance by the Authority of the work product (the warranted or guaranteed materials, equipment, and/or labor). Subcontractors' warranties shall be automatically assigned to the Authority in the event of a termination of this Contract.

7.7.4.1 The DB Contractor shall take no action or fail to act in any way which results in the termination or expiration of such Subcontractor's, manufacturer's, or third-party warranties, or which otherwise results in prejudice to the rights of the Authority or the ADOC under such warranties. Until Final Completion, the DB Contractor shall perform all necessary maintenance activities to maintain warranties on materials and equipment.

7.7.4.2 The DB Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby the Authority and ADOC shall each have a direct right, but not a duty, of enforcement of such warranty obligations.

7.7.5 The warranties set forth in this Section 7.7 (Warranty) are not exclusive of any other warranties or guarantees set out elsewhere in the Contract Documents or implied under applicable Law. Nothing contained in this Section 7.7 (Warranty) shall be construed to establish a period of limitation with respect to other obligations of the DB Contractor under the Contract Documents.

7.8 TAXES

The DB Contractor shall pay all Taxes (whether direct or indirect) relating to, or incurred in connection with, the performance of the Work, including all duties, tariffs and taxes (whether foreign or otherwise) related to the import or export of machinery, equipment, materials and supplies utilized in the performance of the Work. Materials incorporated into the Work are exempt from sales and use tax pursuant to Section 40-9-14.1, Code of Alabama, 1975 as amended. The State Parties, DB Contractor, and Subcontractors shall be responsible for complying with rules and regulations of the Sales, Use, & Business Tax Division of the Alabama Department of Revenue regarding certificates and other qualifications necessary to claim such exemption when making qualifying purchases from vendors. For the avoidance of doubt, the DB Contractor shall pay all applicable Taxes that are not covered by the exemption in Section 40-9-14.1.

7.9 PERMITS

7.9.1 The DB Contractor shall secure and pay for all Permits necessary for the performance of the Work, except to the extent the Authority agrees in writing to secure and pay for a particular Permit.

7.9.2 The DB Contractor shall submit the Construction Documents and other documentation to applicable Governmental Authorities to obtain Permits and other required approvals of the Work, as the scope of such Work is finalized in the FGMP Amendment. Notwithstanding the foregoing, after issuance of an appropriate Work Package Authorization, the DB Contractor may, with the prior written approval of the Authority—and shall, upon the written direction of the Authority—submit Construction Documents to obtain Permits and related approvals of specified portions of the Work prior to execution of the FGMP Amendment.

7.9.3 To the extent that the DB Contractor requests the assistance or signature of the Authority or the ADOC in connection with any Permits or applications therefor, the DB Contractor shall indemnify and hold harmless such party for any cost, expense or liability associated therewith. Any such requests shall be made through the Program Manager or ADOC.

7.10 ALLOWANCES

Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Authority may direct, but the DB Contractor shall not be required to employ persons or entities against which the DB Contractor makes reasonable objection. Materials and equipment under an Allowance shall be selected promptly by the Authority to avoid delay in the Work.

7.11 KEY PERSONNEL

7.11.1 Attached to this Agreement as Exhibit E (Key Personnel) is a list of the DB Contractor's key personnel who will be responsible for supervising the performance of the DB Contractor's services hereunder.

7.11.1.1 Among such individuals, there shall be appointed a principal representative of the DB Contractor (the "**DB Contractor's Representative**"), who shall be the DB Contractor's authorized representative, and who shall receive and initiate all communications from and with the State Parties and be authorized to render binding decisions related to the Project.

7.11.1.2 Also among such individuals shall be a competent superintendent who, with such assistants as may be necessary, shall be in attendance at the Site during performance of the Work. Except as otherwise expressly agreed with the Authority in writing, the DB Contractor's superintendent shall (a) commit a sufficient portion of his working time to the prosecution and performance of the Work until Final Completion as necessary to ensure proper performance of the Work in accordance with the Contract Documents and (b) attend all meetings with the State Parties in connection with the Work and be present at the Site as may be required by the Authority.

7.11.2 The DB Contractor acknowledges and agrees that the award of this Contract by the Authority to the DB Contractor was based, in large part, on the qualifications and experience of the personnel identified in Exhibit E (Key Personnel) and the DB Contractor's commitment that such individuals would be available to undertake and perform the Work. The DB Contractor represents, warrants, and covenants that such individuals are available for and will fulfill the roles identified for them in Exhibit E (Key Personnel) in connection with the Work. Individuals filling these personnel roles shall be available for the Work and shall maintain full and active participation in the prosecution and performance of the Work.

7.11.3 If the individuals identified in Exhibit E (Key Personnel) are not available to serve their corresponding roles, or the roles identified in Exhibit E (Key Personnel) do not maintain active participation in the prosecution and performance of the Work as required by this Section 7.11 for reasons other than death, disability, change in position, or a termination of employment, the DB Contractor shall replace such individuals. Any replacement of any individual identified in Exhibit E (Key Personnel) for any reason (including due to death, change in position, or a termination of employment) shall be made with an individual approved by the Authority, such approval not to be unreasonably withheld.

7.11.4 The DB Contractor shall not remove any such key personnel from the Project without the prior written consent of the Authority, which consent shall not be unreasonably withheld. If, after the Effective Date, the Authority objects to any of the DB Contractor's key personnel (for any reason whatsoever), the DB Contractor shall promptly remove such disapproved personnel. If any of the DB Contractor's key personnel are removed as provided above, any replacement personnel shall be subject to the prior written approval of the Authority, which approval shall not be unreasonably withheld.

7.12 SUBMITTAL SCHEDULE

The DB Contractor shall prepare and keep current, for review by the Program Manager and approval by the Authority, a schedule of submittals that is coordinated with the Schedule and that allows the Program Manager and the State Parties, as applicable, reasonable time, but no fewer than 10 Business Days concurrently, to review and comment on submittals. The DB Contractor shall submit the schedule of submittals within 10 Business Days after the applicable GMP Effective Date, unless otherwise directed by the Authority.

7.13 DOCUMENTS AND SAMPLES AT THE SITE

7.13.1 The DB Contractor shall maintain at the Site one record copy of the Drawings, Specifications, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the State Parties and the Program Manager at all times during the performance of the Work.

7.13.2 Upon Final Completion, the documents listed in Subsection 7.13.1 shall be delivered by the DB Contractor to the Program Manager, who will in turn transmit to the same to Authority and the ADOC, in a format as requested and agreed by the Authority. In addition, the DB Contractor shall at the same time deliver to the Program Manager, for transmittal to the Authority and the ADOC, such documentation of the

Project as required pursuant to the requirements of the Facility Documents, and such documentation shall be in a format accepted by the Authority and, as applicable, any other State Party and may include record Drawings, final Specifications, and as-built plans.

7.13.3 Upon Final Completion, the DB Contractor shall provide to each of the Authority and the ADOC, by way of the Program Manager, one electronic copy, in a form reasonably acceptable to the Authority, of complete operating and maintenance manuals for the Project's mechanical, electrical and related systems.

7.14 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

7.14.1 Definitions

7.14.1.1 "Shop Drawings" are drawings, diagrams, schedules, and other data specially prepared for the Work by the DB Contractor or a Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

7.14.1.2 "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the DB Contractor to illustrate materials or equipment for some portion of the Work.

7.14.1.3 "Samples" are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

7.14.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the DB Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

7.14.3 The DB Contractor shall review for compliance with the Contract Documents, approve and submit to the ADOC and Program Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, and shall do so in accordance with the Schedule and the schedule for and sequence of submittals provided in accordance with Section 7.12 (Submittal Schedule) (or in any accelerated manner) so as to cause no delay in the Work or activities of the State Parties, the Program Manager, or the Separate Contractors. Submittals made by the DB Contractor that are not required by the Contract Documents may be returned without action.

7.14.4 The DB 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 and accepted by the Authority. The Work shall be in accordance with accepted submittals.

7.14.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the DB Contractor represents that the DB 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.

7.14.6 The DB Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by any review, acceptance, or approval of Shop Drawings, Product Data, Samples, or similar submittals made by a State Party or the Program Manager, unless the DB Contractor has specifically informed the ADOC and Program Manager in writing of such deviation at the time of submittal, and the Authority has accepted or approved the specific deviation in writing. The DB Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by review, acceptance, or approval thereof by a State Party or the Program Manager.

7.14.7 The DB 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 Authority on previous submittals. In the absence of such written notice, any review, acceptance, or approval by a State Party of a resubmission shall not apply to such revisions.

7.14.8 Informational submittals upon which no State Party is expected to take responsive action may be so identified in the Contract Documents.

7.14.9 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the State Parties and the Program Manager shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

7.15 USE OF SITE

7.15.1 The DB Contractor shall confine its operations at the Site to areas permitted by applicable Law, Permits and the Contract Documents, and shall not unreasonably encumber the Site with materials, equipment, or similar items. During the performance of the Work, the DB Contractor and all Subcontractors shall use such entrances to the Site and shall comply with all access restrictions set forth in the Facility Documents or that may be designated or otherwise approved by the Authority or ADOC. All access routes for delivery of materials and equipment shall be as indicated on Contract Documents and as approved by the Authority or ADOC.

7.15.2 The DB Contractor acknowledges and understands that areas adjacent to and around the Site may be occupied by and other parties performing activities in and for other portions of the Project while the DB Contractor performs the Work. The DB Contractor shall use its best efforts to ensure that the Work is performed so as to prevent interference with such parties, including the following types of interference: (a) fumes, odors, dust, debris, noise, and safety hazards, and (b) obstructions of access to or from any entryway in the vicinity of the Site.

7.15.3 The DB Contractor shall implement and strictly enforce a policy of noise and fugitive dust control to ensure that the Work is performed in compliance with any and all applicable Laws and Permits relating to sound, noise, and fugitive dust control and in a manner that will not disturb businesses, employees, members of the public and others in and around the vicinity of the Site.

7.15.4 The DB Contractor shall cooperate with the owners of any public or private utility service that may be authorized by the Authority to construct, reconstruct, or maintain utility services or facilities during the progress of the Work. The DB Contractor shall protect existing utilities from damage and unscheduled interruption of service, and shall provide appropriate advance notices to such utility owners of Work to be conducted in the general vicinity of such services and facilities.

7.15.5 Neither the DB Contractor nor any Subcontractor shall display, install, erect, or maintain any advertising or other signage at the Site or the Facility without the prior written consent of the Authority to the same. Any request for the approval of identification signs for the DB Contractor's or Subcontractor's operations shall be accompanied by illustrative drawings and design dimensions together with information about the type of identification signs proposed and the locations in which the signs are proposed to be installed.

7.15.6 The DB Contractor shall construct or otherwise provide a temporary field office or offices at the Site, with separate space for its on-site personnel and for the on-site personnel of the Program Manager and ADOC, and including a conference room for meetings with the State Parties.

7.16 CUTTING AND PATCHING

7.16.1 The DB Contractor shall be responsible for all cutting, fitting, or patching that is required to complete the Work or to make its parts fit together properly.

7.16.2 The DB Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Authority's or the ADOC's own forces or of Separate Contractors by cutting, patching or otherwise altering such construction. The DB Contractor shall not cut or otherwise alter such construction by Separate Contractors or by the Authority's or the ADOC's own forces except with written consent of such Separate Contractors and the Authority and the ADOC, as applicable; such consent shall not be unreasonably withheld. The DB Contractor shall not unreasonably withhold from the Separate Contractors, the ADOC, or the Authority the DB Contractor's consent to cutting or otherwise altering the Work.

7.17 TESTS AND INSPECTIONS

7.17.1 Except for those tests, inspections, and approvals that the Contract Documents expressly make the responsibility of the Authority (see particularly Exhibits A (*Project Criteria*) and J (*Special Conditions of the Program Manager*)), tests, inspections, and approvals of portions of the Work required by the Contract Documents, applicable Law, or the Permits shall be the DB Contractor's responsibility and shall be made at the appropriate times. Unless otherwise provided, the DB Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Authority or with the appropriate Governmental Authority, and shall bear all related costs of tests, inspections, and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

7.17.2 The DB Contractor shall coordinate all tests inspections with the Program Manager, the State Parties (and their respective designees), and any other applicable Governmental Authorities, whether performed by or behalf of the DB Contractor or the Authority. The DB Contractor shall give the Program Manager and the ADOC timely notice of when and where tests and inspections are to be made so that the Program Manager, the ADOC, the Authority, and any other appropriate State-Related Parties may observe such procedures. If the Authority or any other State Party is to observe tests, inspections, or approvals required by the Contract Documents, such State Party will do so promptly and, where practicable, at the normal place of testing.

7.17.3 If the procedures for testing, inspection or approval under Subsection 7.17.1 reveal any failure of the Work to comply with requirements established by the Contract Documents, the DB Contractor shall bear all costs made necessary by such failure, including those of repeated procedures, as well as the expenses of the State Parties (including any additional compensation due to the Program Manager or Separate Contractors).

7.17.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the DB Contractor and promptly delivered to the Authority and the ADOC.

7.18 CLEAN UP

7.18.1 Contractor shall, on a daily basis during construction, clean the Site (including the permanent toilets on each floor) so that it is free from the accumulation of waste materials, rubbish, and similar items. The DB Contractor shall be responsible for moving all rubbish and waste materials from the Site to the designated construction dumpsters.

7.18.2 Prior to each of Preliminary Completion and Final Completion, the DB Contractor shall thoroughly clean the Site and shall, without limitation:

- (a) Remove from and about the Site all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials;
- (b) Clean all interior glass and window blinds, as applicable;
- (c) Remove all paint spots and other smears, stains or scuff marks;
- (d) Clean all plumbing and lighting fixtures;
- (e) Wash all concrete, tile, and finished floors;
- (f) Clean and vacuum all carpeting;
- (g) Clean and wipe down all millwork and other surfaces;
- (h) Clean all bathrooms; and
- (i) Otherwise leave the Project in a neat and clean condition, suitable for the ADOC to occupy the Site for its intended purpose(s).

7.18.3 If the DB Contractor fails to clean up as provided in the Contract Documents, the Authority or the ADOC, or their designee, may do so and the cost thereof shall be charged to the DB Contractor.

7.19 CONFIDENTIALITY; PUBLICITY

7.19.1 Confidential Information. The DB Contractor agrees to keep confidential upon receipt from the Authority or any State-Related Party (a) all information relating to the design, development, construction, financing, or operation of the Project, including the terms of this Contract, (b) all information considered security-sensitive under the Alabama Open Records Act (Code of Alabama Section 36-12-40), or federal Homeland Security designations, and (c) all other documentation or information (i) that is marked as “proprietary” or “confidential,” (ii) that is supplied orally with a contemporaneous confidential designation or (iii) that is known by the receiving party to be confidential or proprietary information or documentation of the disclosing party (collectively, “**Confidential Information**”). Notwithstanding the foregoing, information shall be deemed Confidential Information if, given this Contract or the nature of the Facility, a reasonable person would consider such information confidential or proprietary. The DB Contractor shall have no obligation with respect to any such Confidential Information that (x) is or becomes publicly known through no act of the DB Contractor or a Contractor Agent, (y) is approved for release by written authorization of the Authority and the ADOC, or (z) is required to be disclosed by the DB Contractor pursuant to a legal process (as further described in Subsection 7.19.2 (Use of Confidential Information) below).

7.19.2 Use of Confidential Information. The DB Contractor shall not use or disclose Confidential Information for any purpose other than for the design, development, construction, financing, or operation of the Project. The DB Contractor will limit access to Confidential Information obtained by the DB Contractor to those of its Contractor Agents who need to know about or participate in the design, development, construction, financing, or operation of the Project, and disclosure shall be limited to only Confidential Information necessary for performance under this Contract. The DB Contractor agrees to inform each of its Contractor Agents who obtain Confidential Information of the proprietary and confidential nature thereof and of the obligations imposed by this Contract, and shall disclose to the Authority the identities of any Contractor Agents (other than direct employees of the DB Contractor) who

will have access to Confidential Information. Unless otherwise agreed by the Authority and the ADOC, no Confidential Information received from any State Party shall be disclosed by the DB Contractor or its Subcontractors at any tier to any other Contractor Agents (other than direct employees of the DB Contractor or such Subcontractors) until those individuals or entities have executed a mutually agreeable confidentiality agreement. The DB Contractor shall be liable for unauthorized use or disclosure of Confidential Information by its Contractor Agents. Confidential Information shall not be reproduced without written agreement of the Authority and the ADOC. Notwithstanding the foregoing, Confidential Information may be disclosed pursuant to a subpoena or other legal process or pursuant to the order of a Governmental Authority, *provided* that (a) the DB Contractor uses commercially reasonable efforts to avoid disclosure of the Confidential Information, and (b) prior to furnishing such information, the DB Contractor notifies the Authority and the ADOC and gives them each the opportunity to object to the disclosure or take the lead in seeking a protective order.

7.19.3 Publicity

7.19.3.1 Upon the reasonable request of the Authority, the DB Contractor shall cooperate and assist the Authority and the ADOC in connection with any public relations relating to the Project, including tours of the Project and Site arranged by the Authority or the ADOC.

7.19.3.2 Without the prior written consent of the Authority and ADOC, the DB Contractor shall not disclose details or information relating to the Work or the Project to the press, the public, any news-disseminating agency, or any other party, except to those parties performing portions of the Work, and then only to the extent required for the performance of the particular portion of the Work being performed. Without the prior written consent of the Authority and ADOC, the DB Contractor shall not reference the Authority, the ADOC, or the Project, or use any Authority or ADOC intellectual property (including any trademark and trade name, and any visual representations thereof, including logos, designs, symbols, word marks, images, and trade dress) or any other publicity rights or indicia of ownership owned or used by the Authority, the ADOC, or the State in the DB Contractor's marketing or promotional materials.

7.20 ACCESS TO WORK

The DB Contractor shall provide each of the State Parties and the Program Manager, and their respective employees, agents, representatives, and designees, access to the Work at all times.

7.21 ROYALTIES, PATENTS AND OTHER PROPRIETARY RIGHTS

The DB Contractor shall pay all royalties and other fees for any patents, trademarks, copyrights, or other proprietary rights necessary for the execution and completion of the Work. To the fullest extent permitted by Law, DB Contractor shall indemnify, defend, and hold harmless the State-Related Parties from and against any and all losses, damages, or expenses, including court costs and reasonable attorneys' fees, arising or resulting from any claim or legal action that any materials, supplies, equipment, processes, or other portions of the Work furnished by the DB Contractor under this Contract, or the use thereof, constitutes an infringement or violation of any Intellectual Property Right or other proprietary right. If any such item is held to constitute an infringement, and the use of such item is enjoined, the DB Contractor shall, at its own expense (in addition to the DB Contractor's indemnification obligation described in this Section 7.21 and any other remedies the State may have under this Contract), either procure the right to use the infringing item, or replace the same with a substantially equal but non-infringing item, or modify the same to be non-infringing, *provided* that any substitute or modified item shall meet all the requirements and be subject to all the provisions of this Contract. The terms and provisions of this Section 7.21 shall survive the termination or expiration of this Contract.

7.22 OTHER FEES, COSTS, EXPENSES

To the extent the DB Contractor, any Subcontractor or any other Contractor Agent causes or is responsible for, through any act or omission, any fees, costs, damages, or expenses payable by a State Party under the Facility Documents, the DB Contractor shall (a) be fully responsible to the State Party for all such fees, costs, damages, and expenses and (b) be fully responsible for any and all obligations of the State Party arising out of such acts or omissions pursuant to the terms of the Facility Documents. Any costs incurred by the DB Contractor pursuant to this Section 7.22 shall not be included in the GMP.

ARTICLE 8 SAFETY, SECURITY, AND ENVIRONMENTAL COMPLIANCE

8.1 COMPLIANCE WITH LAWS AND PERMITS

8.1.1 The DB Contractor and its Subcontractors (including all Design Professionals) shall be familiar and shall comply with all applicable Laws, including any Law of any Governmental Authority that in any manner affects the Work, those engaged or employed in the Work, or the material or equipment used in or upon the Work, or that in any way affects the conduct of the Work.

8.1.2 The listing of certain Laws in the Contract Documents is not to be construed as a listing of all applicable Law. The DB Contractor is responsible for familiarity and compliance with all applicable Law related to the Work, the Project, and this Contract. The DB Contractor's or any Contractor Agent's misunderstanding or ignorance of such applicable Law shall not modify the provisions of this Contract or limit the DB Contractor's responsibility to comply with the Contract Documents.

8.1.3 The Work shall be performed in compliance with all Permits, authorizations, and registrations required under applicable Laws. The DB Contractor shall ensure that its employees and the employees of its Subcontractors are trained in the procedures required to meet all Permit requirements and other requirements of applicable Laws.

8.2 SAFETY AND SECURITY PROGRAM

8.2.1 Compliance with Safety Requirements

8.2.1.1 The DB Contractor shall, and shall cause all Subcontractors to, comply with and give notices in accordance with applicable Law (including the Occupational Safety and Health Act of 1970), construction safety program(s), insurance manuals, and any other construction safety requirements provided by the Authority or the ADOC, or otherwise required by applicable Law or the Contract Documents as it concerns public or worker health and safety, safety programs, the safety of persons or property or their protection from damage, injury, or loss, the exposure or threat of exposure of the public or workers to Hazardous Materials, and the prevention of accidents.

8.2.1.2 In addition to the requirements set forth herein, the DB Contractor shall specifically comply with all applicable Laws concerning safety and security of the Facility and all persons accessing said facilities, including those Laws promulgated by applicable Governmental Authorities. The DB Contractor shall specifically cooperate with applicable Governmental Authorities in arranging for security and a safe and hazard-free work environment within areas under construction, and comply with the security rules of such entities.

8.2.1.3 The DB Contractor shall track, respond to and resolve (with the concurrence of the Authority and/or the ADOC, if required under this Article 8 (Safety, Security, and Environmental Compliance)) notices to the satisfaction of the Authority and any applicable Governmental Authorities.

8.2.2 Contractor Safety Program

8.2.2.1 The DB Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work, the Project, and this Contract in accordance with the Contract Documents (including the requirements of this Article 8 (Safety, Security, and Environmental Compliance)) and applicable Law. The DB Contractor's safety program shall be acceptable to the Authority and shall ensure compliance with any Site or Facility safety requirements and all applicable Law.

8.2.2.2 If the DB Contractor identifies any safety concern in conducting the Work or otherwise under the Contract Documents, the DB Contractor shall immediately notify the Authority, the ADOC, and the Program Manager.

8.2.3 Safety Personnel

8.2.3.1 The DB Contractor shall appoint a full-time, dedicated, on-site safety officer (the "Safety Officer") and shall provide the name, title, and phone numbers of the Safety Officer not later than seven days from the date of the commencement of the Work. The Safety Officer shall have health and safety at the Site as his or her sole, dedicated responsibility and may not serve in a dual role on the Project. The DB Contractor shall immediately notify the Authority, the ADOC, and the Program Manager of any change in the status of the Safety Officer and update the name, title, and phone number of any new Safety Officer not later than seven days from the date of any change in status. The Safety Officer shall conduct all safety meetings required by the Authority or the ADOC.

8.2.3.2 In addition, the DB Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be the DB Contractor's superintendent unless otherwise designated in writing by the DB Contractor to the Authority, the ADOC, and the Program Manager.

8.2.3.3 The DB Contractor shall furnish the Authority, the ADOC, and the Program Manager with 24-hour emergency contact information prior to mobilization.

8.2.4 Safety Meetings and Training

8.2.4.1 The DB Contractor shall designate responsible representatives of the DB Contractor's and Subcontractors' staffs at the Site who shall be responsible for the promotion of safety and prevention of accidents, and shall enforce all applicable Law pertaining to safety and prevention of accidents. The safety representatives shall hold meetings at least every week with representatives of the various trades employed at the Site in order to ensure that all workers understand and comply with the applicable Law and the Contract Documents related to safety.

8.2.4.2 The DB Contractor shall implement and lead a training program with all employees and Subcontractor employees that provides training on the proper conduct and safety at a site such as the Site.

8.3 ENVIRONMENTAL COMPLIANCE AND HAZARDOUS MATERIALS

8.3.1 Environmental Compliance

8.3.1.1 Throughout the performance of the Work, the DB Contractor and its Subcontractors shall implement effective standards and procedures to maintain compliance with all Environmental Laws and respond to incidents involving Hazardous Materials or threats to human health and the Environment.

8.3.1.2 Throughout the performance of the Work, the DB Contractor shall, and shall cause all Subcontractors to, comply with all Environmental Laws and Permits. The DB Contractor shall give all notices required by applicable Environmental Laws and Permits, including any required notices related to Hazardous Materials, except that the DB Contractor shall consult with the Authority prior to giving any notices to any Governmental Authority related to Hazardous Materials in connection with the Work. The DB Contractor shall cooperate with the Authority in providing any and all required submissions and information for reporting Hazardous Materials issues to any applicable Governmental Authority.

8.3.1.3 The DB Contractor shall promptly provide the Authority, ADOC, and Program Manager with copies of any notices of violation of Environmental Laws or other Environmental Claims made by any Governmental Authority or third party related to or associated with the Facility, Project, Site, Work or other DB Contractor's activities conducted under this Contract. The DB Contractor shall promptly undertake all Remedial Actions necessary to fully and completely resolve such matters, including the payment of fines and penalties and promptly addressing any noncompliance or liabilities identified to the satisfaction of the Authority. All Remedial Actions shall be performed by one or more contractors, selected by the DB Contractor and approved by the Authority, and under the supervision of a consulting engineer, selected by DB Contractor and approved in advance in writing by the Authority (which approval shall not be unreasonably withheld, conditioned, or delayed). All costs and expenses of such Remedial Actions shall be paid by the DB Contractor, including, without limitation, the charges of such contractor(s), the consulting engineer, and the Authority's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Actions.

8.3.1.4 In the event that the DB Contractor fails to fulfill its obligations under this Section 8.3 (Environmental Compliance and Hazardous Materials), the Authority may undertake (or the ADOC may undertake, on the Authority's behalf) such Remedial Actions at the sole cost and expense of the DB Contractor. All such costs and expenses (including reasonable attorney's fees) incurred by the Authority or the ADOC shall be reimbursed by DB Contractor. The DB Contractor shall pay undisputed amounts due to the Authority or the ADOC pursuant to this Subsection 8.3.1.4 within 30 days after DB Contractor's receipt of an invoice from the Authority.

8.3.1.5 The DB Contractor shall maintain records related to its compliance with Environmental Laws under this Contract for at least five years or such longer period of time as required by applicable Environmental Laws. The DB Contractor shall, at the request of the Authority or the ADOC, provide the Authority, the ADOC, and the Program Manager with reasonable access to the DB Contractor's operations, documents, and employees for purposes of allowing the Authority to assess the DB Contractor's compliance with its obligations under this Section 8.3 (Environmental Compliance and Hazardous Materials), including responding to reasonable information requests.

8.3.1.6 The DB Contractor agrees that, if the Authority provides any information, instruction, or materials to the DB Contractor relating to the DB Contractor's obligations under any Environmental Laws, the provision of such information, instruction, or materials shall not in any way relieve Contractor of its obligation to comply with all applicable Environmental Laws.

8.3.2 Hazardous Materials

8.3.2.1 The DB Contractor shall ensure that its services, including the design, construction, and operation of any pollution control equipment, shall not result in or contribute to any Release of Hazardous Materials or any unacceptable impacts to the Environment or public and worker health and safety (including the exacerbation of Pre-Existing Hazardous Materials present at the Site).

8.3.2.2 The DB Contractor shall promptly notify the Authority, ADOC, Program Manager, and any Governmental Authority required to be notified under Applicable Law of any Hazardous Materials discovered at the Site or any other project related to the Project or in the performance of the Work.

8.3.2.3 The DB Contractor agrees that it shall not transport to or from, or use, manage, handle, treat, install, generate, store, remove, or dispose of any Hazardous Materials at, on, or under the Facility or Site except in accordance with Environmental Laws. The DB Contractor shall be responsible for the proper handling, removal, cleanup, remediation, transportation, disposal, or other Remedial Action related to Hazardous Materials brought to, stored, used, or Released at the Site by the DB Contractor or any Contractor Agent.

8.3.2.4 If after the commencement of the Work, Pre-Existing Hazardous Materials are discovered at the Site, the DB Contractor shall immediately stop Work in the affected area and report the condition to the Authority, ADOC and Program Manager. The DB Contractor shall coordinate with the ADOC and Program Manager regarding any required Remedial Action and shall mitigate the impact of such Remedial Action on the progress of the Work.

8.3.2.5 None of the DB Contractor, its Subcontractors, their employees or agents, or any other person for whom they may be responsible, shall knowingly or negligently exacerbate any Pre-Existing Hazardous Materials encountered at the Site. The DB Contractor shall be responsible for the handling, removal, and disposal of Pre-Existing Hazardous Materials if the DB Contractor or any Contractor Agent knowingly or negligently exacerbates such Pre-Existing Hazardous Materials.

8.3.2.6 The DB Contractor shall be considered the sole generator and arranger for any Hazardous Materials or Pre-Existing Hazardous Materials for which the DB Contractor is responsible pursuant to this Subsection 8.3.2. The DB Contractor shall sign all manifests using its generator identification number. The DB Contractor shall indemnify, save, protect, and defend the Authority and ADOC from Environmental Claims or any other liabilities arising out of or related to any Hazardous Materials or Pre-Existing Hazardous Materials for which the DB Contractor is responsible pursuant to this Subsection 8.3.2.

8.3.3 Respirable Crystalline Silica. The DB Contractor shall ensure that the Work is performed in compliance with the Occupational Safety and Health Administration respirable crystalline silica standard at 29 CFR 1910.1053 (the “**OSHA CS Standard**”) or any equivalent or more stringent state standard applicable to the Work. In performing the Work, the DB Contractor shall use all appropriate engineering and work practice controls to reduce and maintain employee exposure to respirable crystalline silica to at or below any applicable permissible exposure limit set forth under the OSHA CS Standard or any applicable equivalent or more stringent state standard. The DB Contractor shall establish and implement a written exposure control plan in accordance with the OSHA CS Standard or any applicable equivalent or more stringent state standard and shall provide the Authority, ADOC and Program Manager a copy of such written exposure control plan. The DB Contractor shall make any reasonable changes to such written exposure control plan as requested by the Authority. If requested by the Authority, the DB Contractor shall conduct air monitoring, at the DB Contractor’s expense, to determine the exposure level of any employee who is or may reasonably be expected to be exposed to respirable crystalline silica as a result of the Work, and shall immediately provide to the Authority, ADOC and Program Manager all air monitoring results upon receipt of such results.

8.4 SAFE AND SECURE USE OF SITE

8.4.1 The DB Contractor shall be responsible for the safety and security of the Site, including equipment, facilities, and, as applicable, Authority or ADOC property. The DB Contractor shall be

responsible for monitoring use of premises by its Subcontractors, employees, and agents of the DB Contractor or its Subcontractors, and any other person for whom they may be responsible.

8.4.2 The DB Contractor shall be responsible for protection and safekeeping of materials and products as stored on the Site and shall store materials and products (including Hazardous Materials) only in those areas indicated for staging. The DB Contractor and any Subcontractor will be assigned a space where they can, at their own expense, provide proper protection for their materials and the tools of their employees. The State shall not be responsible for loss of tools, materials, or property of the DB Contractor, Subcontractors, their employees, or other persons. The DB Contractor shall indemnify and hold harmless the State-Related Parties from any and all claims relating to and any and all loss, damage, deterioration, or destruction of such tools, materials, or property.

8.4.3 The DB Contractor shall obtain from manufacturers and maintain at the Site Safety Data Sheets that comply with 29 CFR 1910.1200 for all materials incorporated into the Work to the extent required under applicable Law.

8.4.4 Subject to the terms and conditions of this Article 8, the DB Contractor shall be responsible for the disposition of excavated and demolished materials.

8.4.5 The DB Contractor shall take adequate precautions against fire throughout all of the DB Contractor's and Subcontractors' operations. Flammable material shall be kept to an absolute minimum, and, if any, shall be properly handled and stored. Except as otherwise provided herein, the DB Contractor shall not permit fires to be built at any location on or adjacent to the Site.

8.5 SAFETY AND SECURITY OF PERSONS AND PROPERTY

8.5.1 The DB Contractor shall take proper precautions and institute appropriate programs for the safety of, and shall provide reasonable protection to safeguard and prevent accidents or damage, injury or loss to:

- (a) Employees on the Project, employees of the Facility, inmates, visitors, and other persons on, about, or adjacent to the Site, or who otherwise may be affected by the Work;
- (b) The Work and the materials and equipment to be incorporated therein, whether in storage on- or off-Site, or under the care, custody, or control of the DB Contractor or its Subcontractors; and
- (c) Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of the Work.

8.5.2 The DB Contractor shall develop, erect, and properly maintain at all times, as required by applicable Law (including the Occupational Safety and Health Act of 1970) and by the conditions and progress of the Work, proper safeguards for the protection of workers and the public, including barricades, markings, danger signs, and other warnings against hazards, applicable safety regulations, and appropriate notices to owners and users of adjacent sites and utilities. The DB Contractor shall post signs warning against the dangers created by openings, stairways, falling materials, open excavations, and all other hazardous conditions. When used during periods of darkness, such barricades, markings, and signs shall be suitably illuminated.

8.5.3 Equipment and materials installed by the DB Contractor pursuant to the Contract Documents shall be labeled with all safety signs, safety symbols, or accident prevention tags required to warn employees and other persons about electrical hazards that may endanger them, as required by applicable Law

(including the Occupational Safety and Health Act of 1970). Such labels shall include all required arc flash panel labeling.

8.5.4 When use or storage of Hazardous Materials or dangerous equipment is necessary for execution of the Work, the DB Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel in accordance with applicable Law.

8.5.5 The DB Contractor shall comply with applicable Laws in moving material or equipment to the Project. The DB Contractor shall endeavor not to load or permit any part of the Work, the Site or public roads to be loaded so as to endanger safety. A special permit will not relieve the DB Contractor of any liability for damage to the Project that may result from the moving of material or equipment. None of the DB Contractor, its Subcontractors, their employees or agents, or any other person for whom they may be responsible, shall operate equipment of such weight or loading so as to cause damage to the Work. Hauling of materials over the base course or surface course under construction shall be performed as directed by the Contract Documents. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period as set forth in the Contract Documents. The DB Contractor shall be responsible for all damage done by its or its Subcontractors' hauling equipment and shall correct any such damage to the Work or the Project at its sole expense.

8.5.6 The DB Contractor shall provide at the Site, and make available to all workers, medical supplies and equipment necessary to supply first aid service to all persons injured in connection with the Work being performed at the Site, whether by the DB Contractor, a Subcontractor, a Separate Contractor, their employees or agents, or any other person at the Site. The DB Contractor shall, within 24 hours after the occurrence, report in writing to the Authority, the ADOC and the Program Manager all accidents whatsoever arising out of or in connection with the performance of the Work, whether on- or off-site, that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death or serious injuries or serious property damages occur, the accident shall be reported immediately by telephone or messenger to the Authority, the ADOC, and the Program Manager. If any claim is made by anyone against the DB Contractor, any Subcontractor, any of their employees or agents, or any other person for whom they are responsible, on account of any accident on the Site or otherwise related to the Work or the Project, the DB Contractor shall promptly report the facts in writing to the Authority and Program Manager, giving full details of the claim.

8.5.7 In the event a Force Majeure event occurs at the Site (or impacts the Project from another location) and creates an environmental, health, or safety concern, as determined by the Authority, any other State Party, the Program Manager, or the Safety Officer, the Authority and the ADOC shall each have the right to immediately suspend all or a portion of the Work, and such suspension shall be considered an Excusable Event pursuant to Subsection 12.2.3 (Excusable Events). At such time as the Force Majeure event is resolved, as determined by the Authority, the DB Contractor may resume Work.

8.5.8 The DB Contractor shall promptly remedy all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) referred to above in this Section 8.5 (Safety and Security of Persons and Property) to all public and private property caused in whole or in part by the DB Contractor or any Contractor Agent, except damage or loss attributable to acts or omissions of a State-Related Party and not attributable to the fault or negligence of the DB Contractor. The DB Contractor shall restore such property to a condition at least equal to that existing before such damage or injury was done, to the reasonable satisfaction of the Authority. The foregoing obligations of the DB Contractor are in addition to the DB Contractor's other obligations under this Contract.

8.5.9 PREA. Pursuant to Alabama Code Section 14-11-31, as well as 28 C.F.R. Part 115, the Prison Rape Elimination Act ("PREA"), any type of sexual contact with or sexual harassment of an inmate in the custody of the ADOC by one who is responsible for the care, control, or supervision of inmates—with or

without the consent of the inmate—is illegal. Under Alabama Law, it constitutes a felony: custodial sexual misconduct. (*See also* ADOC Administrative Regulation 454, Inmate Sexual Assault and Harassment Awareness (Prison Rape Elimination Act (PREA).) The ADOC has a Zero Tolerance Policy toward all forms of custodial sexual misconduct, sexual abuse, and sexual harassment. Any type of conduct—including suspected conduct—that falls within the context of custodial sexual misconduct/sexual abuse, as defined by either the State or Federal laws referenced above, shall be reported immediately to the Warden of the facility to which he or she is assigned, the ADOC’s PREA Director, or such person’s designee.

8.6 EMERGENCIES

8.6.1 In an emergency affecting the safety of persons or property, the DB Contractor shall act, at the DB Contractor’s discretion, to prevent threatened damage, injury, or loss. Claims by the DB Contractor for additional compensation or an extension of time on account of an emergency shall be determined by Change Order in accordance with Articles 12 (Claims; Excusable Events; Site Conditions) and 13 (Changes in the Work).

8.6.2 If the Authority is forced to make (or cause to be made) necessary emergency repairs to the Facility or any work due to damage resulting from the fault, negligence, or intentional acts of the DB Contractor, a Subcontractor or any other Contractor Agent, or any other party for whose acts any of them may be liable, the DB Contractor shall reimburse the Authority for such actual costs of repairs.

ARTICLE 9 **ADMINISTRATION OF THE CONTRACT**

9.1 ADMINISTRATION OF THE CONTRACT

9.1.1 The Authority, assisted by the Program Manager and ADOC, shall determine if the Work is being performed in accordance with the requirements of the Contract Documents.

9.1.2 The Authority will provide for coordination of the activities of Separate Contractors and the Authority’s and the ADOC’s own forces with the Work of the DB Contractor, who shall cooperate with them. The DB Contractor shall participate with Separate Contractors, the ADOC, and the Authority in reviewing their schedules when directed to do so. Consistent with Section 3.4 (Schedule), the DB Contractor shall prepare any revisions to the Schedule deemed necessary after a joint review and mutual agreement. Notwithstanding anything to the contrary contained in this Subsection 9.1.2, unless otherwise agreed by the Authority in writing, the Contract Time shall not be altered, revised, or otherwise changed as the result of revisions to the Schedule as provided herein.

9.1.3 Throughout the duration of this Contract, the DB Contractor shall schedule and conduct weekly meetings between the DB Contractor, the ADOC, the Program Manager, and any other parties designated by the Authority or the ADOC for the purpose of discussing the status of the Project. The DB Contractor shall prepare an agenda for each such meeting and shall, immediately after any such meeting, compile and distribute minutes to all participants.

9.1.4 The Authority shall provide for regular on-site observation visits, whether by the Program Manager, the ADOC or otherwise, to review the progress of the Work to evaluate whether the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents.

9.1.5 None of the Authority or the other State-Related Parties will have control over or charge of, and none of them will be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, which are and shall remain the sole responsibility of the DB Contractor (as between it and the State-Related Parties).

9.1.6 Communications by and with Subcontractors shall be through the DB Contractor. Communications by and with Separate Contractors shall be through the Authority, ADOC or Program Manager, as directed by the Authority.

9.1.7 The Authority, assisted by the ADOC and Program Manager, will review and approve all Applications for Payment by the DB Contractor, including final payment, based upon their observations of the Work and their evaluations of the DB Contractor's Application for Payment.

9.1.8 The Authority will have authority to reject Work that does not conform to the Contract Documents and to require additional inspection or testing in accordance with Section 7.17 (Tests and Inspections), whether or not such Work is fabricated, installed, or completed. However, neither the authority of the Authority to act under this Subsection 9.1.8, nor a decision made by the Authority in good faith either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of any State-Related Party to the DB Contractor, the Subcontractors, their agents or employees or other persons performing any of the Work, except as otherwise specifically provided in the Contract Documents.

9.1.9 The Program Manager will receive from the DB Contractor and log and review all Shop Drawings, Product Data, and Samples requested by the Authority for review and comment or acceptance.

9.1.10 The Authority will review and comment, accept or take other appropriate action with reasonable promptness upon the DB Contractor's submittals such as Shop Drawings, Product Data, and Samples. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the DB Contractor as required by the Contract Documents. Review, comment, acceptance or approval, as applicable, of the DB Contractor's submittals by a State-Related Party shall not relieve the DB Contractor of the obligations under this Contract (including Articles 7 (DB Contractor) and 8 (Safety, Security and Environmental Compliance) hereof). Review, acceptance or approval by the ADOC or Authority, as applicable, shall not constitute approval by any State-Related Party of safety precautions or, unless otherwise specifically stated by the Authority, of any construction means, methods, techniques, sequences, or procedures. Review, comment, acceptance, or approval of a specific item by a State-Related Party shall not indicate approval of an assembly of which the item is a component.

ARTICLE 10 **SUBCONTRACTING**

10.1 GENERAL PROVISIONS

10.1.1 Work, equipment, and materials procured by the DB Contractor under this Contract will be procured in accordance with the process, terms and conditions set forth in this Article 10.

10.1.2 In undertaking any contracting in relation to the Work, the DB Contractor and its Subcontractors shall comply with the requirements with respect to labor and contracting as set forth in Exhibit G (Labor and Contracting Requirements) hereto and the requirements with respect to the participation of diverse businesses set forth in Exhibit H (Subcontractor Diversity Policy) hereto.

10.2 AWARD OF SUBCONTRACTS

10.2.1 Pre-Approved Subcontractors. The Subcontractors identified on Exhibit F (Approved Subcontractors) have been approved by the Authority to perform the portions of the Work specified on Exhibit F (Approved Subcontractors). The DB Contractor may retain additional Subcontractors in accordance with the terms and conditions set forth in this Section 10.2.

10.2.2 Subcontractor Selection Process. During the Design Phase, the DB Contractor shall seek to further develop potential Subcontractor interest in the Project. Selection of Subcontractors shall be coordinated with the ADOC and Program Manager and approved by the Authority. Prior to the award of any Subcontracts (other than those identified in Exhibit F (Approved Subcontractors)), the DB Contractor shall meet with the ADOC (as the Authority's Representative) and Program Manager to review the Subcontractor selection process. The DB Contractor shall also provide the ADOC and Program Manager with a list of potential Subcontractors ("bidders") proposed to conduct Work or provide materials or equipment for each Work Package. The ADOC (as the Authority's Representative) shall review such list with the DB Contractor and Program Manager prior to solicitation by the DB Contractor. Either the Authority or the ADOC may remove or exclude any bidder from consideration.

10.2.3 Subcontract Bidding and Award. Prior to issuance of each Work Package Authorization (or as otherwise agreed by the Authority), the DB Contractor shall be required to solicit a minimum of three competitive bids for all Construction Phase Work in the applicable Work Package, including for any materials or equipment supplied in connection with the Work, from bidders on the approved list. After analyzing bids, the DB Contractor shall deliver the bids, together with bid tabulations, to the Program Manager. The Authority will then review with the DB Contractor, ADOC, and Program Manager all bids and bid tabulations, and the Authority will, with the advice of the ADOC, Program Manager, and DB Contractor, determine which bidder(s) will provide the best value for the particular portion of the Work. The subcontracted Work shall be awarded to the bidder providing the best value who is approved by the Authority. If the selection process does not meet the requirements of the Contract Documents or is otherwise unsatisfactory to the Authority, acting reasonably, the Authority may direct that no award be made and that a new selection process be undertaken. Subject to the Authority's approval and compliance with the requirements of Section 10.4 (Subcontract Terms), the DB Contractor may negotiate the most favorable price and terms of each Subcontract.

10.2.4 Subcontracting After FGMP is Established. If the FGMP has been established, and if a particular bidder among those whose bids are delivered by the DB Contractor pursuant to Subsection 10.2.3 (Subcontract Bidding and Award) (a) is recommended by the DB Contractor, (b) is qualified to perform that portion of the Work, and (c) has submitted a bid that reasonably conforms to the requirements of the Contract Documents (including the best value requirements set forth in Subsection 10.2.3 (Subcontract Bidding and Award)), but the Authority requires that another bid be accepted, the DB Contractor may request that a Change Order be issued to adjust the FGMP (and/or the applicable Work Package GMP incorporated within the FGMP) by the difference between the bid of the recommended bidder and the amount of the Subcontract with the bidder designated by the Authority.

10.2.5 Subcontract Sums. Subcontracts shall conform to the payment provisions of Articles 4 (DB Contractor's Compensation) and 5 (Payments) and shall not be awarded on the basis of cost of the work plus a fee without prior approval by the Authority.

10.3 SUBSTITUTION OF SUBCONTRACTORS

10.3.1 Criteria for Substitution. The DB Contractor shall not, without the written consent of the Authority, (a) substitute any party as Subcontractor in place of a Subcontractor approved by the Authority or (b) allow the subcontracted Work to be performed by anyone other than the original Subcontractor. Consent for substitution shall only be given if:

10.3.1.1 The approved Subcontractor, after having reasonable opportunity to do so, fails or refuses to execute a written Subcontract that is based upon the requirements of the Contract Documents and upon the terms of such Subcontractor's written bid or proposal, if applicable;

10.3.1.2 The Subcontractor fails or refuses to perform the Subcontract;

10.3.1.3 The Subcontractor is substantially delaying or disrupting the progress of the Work;

10.3.1.4 The Subcontractor fails or refuses to meet the insurance or bonding requirements as set forth in this Contract;

10.3.1.5 Work performed by the Subcontractor is unsatisfactory and not in substantial accordance with the Contract Documents;

10.3.1.6 The Subcontractor is not a responsible contractor/consultant;

10.3.1.7 The Subcontractor is not licensed pursuant to applicable Law; or

10.3.1.8 The Subcontractor becomes bankrupt or insolvent.

10.3.2 Requests for Substitution. In the event the DB Contractor requests a substitution, the DB Contractor will notify the Authority and Program Manager of its desire and reasoning to substitute a Subcontractor and will provide at least 10 days for the Authority to respond.

10.4 SUBCONTRACT TERMS

10.4.1 General Subcontract Terms. By appropriate written agreement, the DB Contractor shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor (including any equipment or materials to be furnished by such Subcontractor), to be bound to the DB Contractor by the terms of the Contract Documents and to assume toward the DB Contractor all the obligations and responsibilities with respect to such Work that the DB Contractor assumes toward the Authority and the other State Parties under this Contract (each such agreement, a “**Subcontract**”). The DB Contractor shall contract in its own name and behalf, and not in the name or behalf of the Authority or the ADOC, with the specified Subcontractor. The DB Contractor shall require each Subcontractor to enter into similar agreements with Subcontractors of every tier.

10.4.2 Specific Required Subcontract Terms. In addition to those provisions which are expressly required to be included in Subcontracts under other provisions of the Contract Documents, all Subcontracts related to any part of the Work performed by a Subcontractor shall, except with the prior written approval of the Authority, contain provisions that, in language reasonably acceptable to the Authority:

10.4.2.1 Require that such Work be performed in accordance with the requirements of the Contract Documents and applicable Law;

10.4.2.2 Make a contingent assignment of the DB Contractor’s interest in the Subcontract to the Authority, which assignment shall become effective upon termination for cause of this Contract and the Subcontractor’s receipt of written notification from the Authority that the assignment is effective;

10.4.2.3 Require the Subcontractor to carry and maintain insurance in accordance with the requirements of the Contract Documents;

10.4.2.4 Require the Subcontractor to indemnify and hold harmless the State-Related Parties with indemnity provisions consistent with industry standards;

10.4.2.5 Require the Subcontractor to maintain records and comply with all audit and confidentiality requirements in accordance with the requirements of the Contract Documents;

10.4.2.6 Contain any and all provisions specifically required by the Authority in order to comply with applicable Law, including standard State contract terms identified by the Authority (substantially as worded in this Contract except as necessary to properly identify the contracting parties);

10.4.2.7 Contain any and all provisions required by the Authority to enable full compliance with the Applicable Facility Lease Provisions (Exhibit Q) and with financing documents (as outlined in Exhibit P (Financing-Related Conditions)), as applicable; and

10.4.2.8 Such other clause as may be reasonably, timely, and specifically required by the Authority.

10.4.3 The DB Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound

10.4.4 The DB Contractor shall keep a copy of all executed Subcontracts (including all purchase orders) entered in connection with this Contract at the Site and available for inspection by the Authority, the ADOC or the Program Manager upon request by the same.

10.5 ASSIGNMENT OF SUBCONTRACTS

The DB Contractor shall not assign any Subcontracts to any third party without advance written approval of the Authority.

10.6 SELF-PERFORMED WORK

10.6.1 The DB Contractor must obtain prior written approval from the Authority to perform any portion of the Construction Phase Work (including any portion of a Work Package), other than supervision of the Work and agreed General Conditions Items, by the DB Contractor's own forces or the forces of any affiliate of the DB Contractor ("**Self-Performed Work**").

10.6.2 Self-Performed Work shall be limited only to those services or work where it is in the best interest of and value to the Project for the DB Contractor to self-perform, for instance in such cases as: (a) where no bid is received for a Work Package; (b) the lowest responsible bid would exceed the line-item amount for such Work set forth in the Schedule of Values for the FGMP, the Contractor's Contingency is exhausted, and any redesign permitted in accordance with Article 7 (DB Contractor) would not remedy the cost overrun; (c) upon the termination of a Subcontract for default by the Subcontractor, where performance of the applicable scope of Work cannot be secured in the Contract Time within the FGMP (including by recourse to bonds or insurance); or (d) in other compelling circumstances, upon the request of the DB Contractor, but only with the prior written approval of the Authority, in its discretion. In such cases, the Authority may require that the DB Contractor be compensated for the Self-Performed Work on the basis of *the lesser of* (x) the line-item amount in the Schedule of Values for the FGMP or the Subcontract for such Work, as applicable, *and* (y) the Cost of the Work actually and reasonably incurred by the DB Contractor in performing the Self-Performed Work, plus the DB Contractor's Fee on such Work; *provided, however*, that in no event shall the Authority's authorization of Self-Performed Work entitle the DB Contractor to compensation in excess of the FGMP.

ARTICLE 11

CONSTRUCTION BY THE AUTHORITY OR ADOC OR BY SEPARATE CONTRACTORS

11.1 THE RIGHTS OF THE AUTHORITY AND ADOC

11.1.1 The Authority reserves the right to perform, or to cause the ADOC to perform, construction or operations related to the Project with the Authority's or the ADOC's own forces or to award contracts to Separate Contractors in connection with other portions of the Project or other construction or operations on the Site.

11.1.1.1 As of the Effective Date, the Authority has retained the following Separate Contractors:

- (a) Goodwyn Mills Cawood, LLC, as Enabling Works Designer; and
- (b) W.S. Newell & Sons, Inc., as Enabling Works Contractor.

11.1.1.2 As of the Effective Date, the Authority intends to retain the following Separate Contractors:

- (a) Construction materials testing consultant; and
- (b) Commissioning Agent.

11.1.2 The DB Contractor shall cooperate with the Authority, the ADOC, and such Separate Contractors, as applicable, to coordinate the performance of its Work to minimize any interference with the work of the Separate Contractors and to ensure the achievement of the Work in accordance with the Schedule. The Authority shall use reasonable efforts to cause the Separate Contractors to coordinate the performance of their work with the DB Contractor to minimize any interference with the DB Contractor's performance of its Work.

11.2 MUTUAL RESPONSIBILITY

11.2.1 The DB Contractor shall afford the Authority's and the ADOC's own forces and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the DB Contractor's construction and operations with theirs as required by the Contract Documents.

11.2.2 If part of the DB Contractor's Work depends for proper execution or results upon construction or operations by the Authority's and the ADOC's own forces or Separate Contractors, the DB Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Authority apparent discrepancies or defects in such other construction that renders it unsuitable for the proper execution of the Work. Failure of the DB Contractor so to report shall constitute an acknowledgment by the DB Contractor to the Authority that the completed or partially completed construction or operations of the Separate Contractors or of the Authority's or ADOC's own forces are fit and proper to receive the DB Contractor's Work.

11.2.3 The DB Contractor shall promptly remedy damage or loss caused by the DB Contractor or its Subcontractors to completed or partially completed construction or to property of the State or of a Separate Contractor.

11.2.4 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the DB Contractor when caused by the DB Contractor and by the Authority when caused by the Authority, the ADOC, or Separate Contractors.

11.2.4.1 In the event that the DB Contractor or its Subcontractors delay the work of the Authority's or the ADOC's forces or of the Separate Contractors performing work at the Site by negligently or willfully not cooperating with them, or by not affording them reasonable opportunity to perform their work as specified, then the Authority shall provide written notice of the potential impact and anticipated associated costs, in which instance the DB Contractor shall pay all reasonable costs and expenses reasonably incurred by the Separate Contractors due to any such delays or damages.

11.2.4.2 Any Claims made by the DB Contractor that work by the Authority or the ADOC or Separate Contractors has delayed or increased the cost of the DB Contractor's Work shall be made as provided in Section 12.2 (Excusable Events) and shall be subject to the DB Contractor's obligations to

cooperate set forth in Subsection 11.1.2 (The Rights of the Authority and ADOC) and this Section 11.2 (Mutual Responsibility).

11.3 RESPONSIBILITY FOR CLEAN-UP

If a dispute arises among the DB Contractor, Separate Contractors, the ADOC, and/or the Authority as to the responsibility under their respective contracts for maintaining the Site and surrounding area free from waste materials and rubbish as described in Section 7.18 (Clean Up), the Authority may clean up and allocate the cost among those responsible as the Authority determines to be just.

ARTICLE 12 **CLAIMS; EXCUSABLE EVENTS; SITE CONDITIONS**

12.1 GENERAL PROVISIONS

12.1.1 General. A “Claim” is a demand or assertion by one of the parties seeking, as a matter of right, adjustment in any GMP or the Contract Time. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim. Any Claim must specify the Work Package(s) to which it relates.

12.1.2 Time for Submission of Claims. Notice of a Claim by or on behalf of the DB Contractor must be submitted, in writing, to the Program Manager and the ADOC (as Authority Representative) within 14 days after the DB Contractor becomes aware (or should have been aware) of the event giving rise to such Claim. In the event the DB Contractor fails to submit written notice of a Claim within such time period, the DB Contractor shall not be entitled to an adjustment in any GMP or the Contract Time in relation to such Claim and shall be deemed to have waived the right to such Claim.

12.1.3 Performance Pending Resolution of Claims. Pending final resolution of a Claim or any other claim, dispute or controversy between the Authority and DB Contractor, the DB Contractor shall proceed diligently with performance of this Contract, and the Authority shall continue to make payments as to undisputed amounts in accordance with the Contract Documents.

12.2 EXCUSABLE EVENTS

12.2.1 Adjustments in Contract Time

12.2.1.1 Except as a result of Changes in the Work as permitted in accordance with Article 13 (Changes in the Work), an extension in the Contract Time shall only be granted if a delay occurs in the progress of the Work as a result of an Excusable Event and the DB Contractor has complied with the terms and conditions of the following subparagraphs:

- (a) The DB Contractor submits a written Claim to the Program Manager and Authority within the time period specified in Subsection 12.1.2 (Time for Submission of Claims) identifying the Excusable Event, which Claim must state the cause of the event and the number of days the DB Contractor believes that its activities will in fact be delayed as a result of the event.
- (b) The DB Contractor can demonstrate, with supporting documentation, that the activity claimed to have been delayed was in fact delayed by the Excusable Event, that the Excusable Event materially affected the critical path of the Work and that the delay in such activity will result in a delay in achieving Final Completion within the Contract Time.
- (c) The Claim provided by the DB Contractor under subparagraph (a) above shall describe the efforts of the DB Contractor that have been (or are going to be) undertaken by the DB

Contractor to overcome or remove the Excusable Event and to minimize the potential adverse effect on the time for performance of the Work resulting from such Excusable Event. The DB Contractor shall be entitled to an adjustment in the applicable GMP for its commercially reasonable mitigation efforts, subject to the Authority's prior written approval except in cases of emergency affecting the safety of persons or property.

12.2.1.2 Compliance with this Subsection 12.2.1 (Adjustments in Contract Time) is a condition precedent to receipt of an extension in the Contract Time. In the event of a failure to comply with this Subsection 12.2.1 (Adjustments in Contract Time), the DB Contractor shall not be entitled to an extension in the Contract Time and shall be deemed to have waived any future claim relating to such Excusable Event. Upon satisfaction by the DB Contractor of the terms and conditions of this Subsection 12.2.1 (Adjustments in Contract Time), the parties shall attempt to resolve any such Claim pursuant to the terms and provisions of Section 12.3. If the Claim is resolved, the Authority and the DB Contractor shall enter into a Change Order reflecting the resulting adjustments in the Contract Time.

12.2.1.3 Notwithstanding the foregoing, if the DB Contractor is entitled to an adjustment in the Contract Time pursuant to this Subsection 12.2.1 (Adjustments in Contract Time), the Authority shall have the right to request that the DB Contractor perform the Work in accordance with the Contract Time without adjustment to the Contract Time, subject to an increase in the applicable GMP(s) in an amount equal to the DB Contractor's cost of furnishing additional manpower (including overtime labor), materials, facilities and equipment as may be necessary to ensure the progress and completion of the Work in accordance with the Contract Time without adjustment. In such case, the Authority and the DB Contractor shall enter into a Change Order reflecting the resulting adjustment(s) in the GMP(s).

12.2.2 Adjustments in Guaranteed Maximum Price

12.2.2.1 Except as a result of Changes in the Work as permitted in accordance with Article 13 (Changes in the Work), any increase in any GMP (including any increase in the FGMP and any increase in any Work Package GMP) shall only be granted if a demonstrable increase in the DB Contractor's cost of performing the Work results from the occurrence of an Excusable Event other than Force Majeure, and the DB Contractor has complied with the terms and conditions of the following subparagraphs:

- (a) The DB Contractor submits a written Claim to the Authority within the time period specified in Subsection 12.1.2 (Time for Submission of Claims) identifying the Excusable Event, which Claim must state the cause of the event and the additional cost the DB Contractor believes it will in fact incur as a result of the event.
- (b) The DB Contractor can demonstrate with supporting documentation that the Excusable Event will in fact cause an increase in the DB Contractor's cost of performing the Work.
- (c) The Claim provided by the DB Contractor under subparagraph (a) above shall describe the efforts of the DB Contractor that have been (or are going to be) undertaken by the DB Contractor to overcome or remove the Excusable Event and to minimize the potential adverse effect on the cost of the performance of the Work resulting from such Excusable Event. The cost to the DB Contractor for its commercially reasonable mitigation efforts may be included in the Claim for GMP adjustment, subject to the Authority's prior written approval except in cases of emergency affecting the safety of persons or property.
- (d) If adverse weather conditions are the basis for the Claim, the Claim must be accompanied by data substantiating that the weather conditions were unusually severe given the location and time of year. The DB Contractor shall document all days within the relevant calendar month(s) that Work activities on the critical path could not be performed due to adverse

weather conditions, including the total number of days in such month(s) that actually had 0.10 inches or more of rainfall as provided in documentation reported by the National Oceanic and Atmospheric Administration (NOAA) for the weather station nearest the Site, and the average weather conditions for the month in question during the previous five years as recorded by NOAA at the weather station nearest the Site.

12.2.2.2 Compliance with this Subsection 12.2.2 is a condition precedent to receipt of an increase in any GMP. In the event of a failure to comply with this Subsection 12.2.2, the DB Contractor shall not be entitled to an increase in any GMP and shall be deemed to have waived any future claim relating to such Excusable Event. Upon satisfaction by the DB Contractor of the terms and conditions of this Subsection 12.2.2 (Adjustments in Guaranteed Maximum Price), the parties shall attempt to resolve any such Claim pursuant to the terms and provisions of Section 12.3 (Resolution of Claims and Disputes). If the Claim is resolved, the Authority and the DB Contractor shall enter into a Change Order reflecting the resulting adjustment(s) in the GMP(s).

12.2.3 Excusable Events

The occurrence of any of the following events shall constitute an “**Excusable Event**”:

- (a) Delays resulting from the acts or omissions of the Authority, any other State Party, or any of their respective consultants or agents in relation to the performance of their duties as described in the Contract Documents, or of the Program Manager, or of the Separate Contractors performing work at or adjacent to the Site, to the extent such delays arise from circumstances beyond the reasonable control and without the fault or negligence of the DB Contractor, its Subcontractors or any other Contractor Agent;
- (b) Any of the following acts, events, conditions or occurrences, or similar acts, events, conditions or occurrences, to the extent that the same are beyond the DB Contractor’s reasonable control, could not have been avoided by the exercise of due diligence, and have an adverse effect on the DB Contractor’s ability to perform its obligations hereunder, and are not otherwise specifically addressed under any of subparagraphs (a) or (c)-(g) of this Subsection 12.2.3 (such acts, events, conditions or occurrences being referred to hereunder as “**Force Majeure**”): fires, explosions, floods, earthquakes, tornadoes, hurricanes, or other cataclysmic events of nature, pandemics (including COVID-19, but excluding those impacts of COVID-19 that are reasonably knowable as of the applicable GMP Effective Date), civil disturbances, war, riots, terrorism, sabotage, restraints or injunctions issued by a court or other Governmental Authority, or nationwide strikes or labor disputes;
- (c) The occurrence of a Change in Law;
- (d) The suspension of the Work in whole or in part by the Authority as described in Section 16.2 (Suspension by the Authority for Convenience);
- (e) The discovery of any Pre-Existing Hazardous Materials at the Site, except to the extent that the DB Contractor, its Subcontractor or any other Contractor Agent knowingly or negligently materially exacerbates such Pre-Existing Hazardous Materials;
- (f) The discovery of any Unforeseeable Conditions at the Site; and
- (g) Delays due to weather conditions that are unusually severe given the location and time of year; *provided, however*, that the DB Contractor shall incorporate an average number of rain delay days for each calendar month into its Schedule to anticipate such weather conditions. Such average number of rain delay days shall be determined based on the

average number of days in a month with 0.10 inches or more of rainfall as provided in documentation reported by NOAA for the weather station nearest the Site. Any days of delay caused by unusually severe weather conditions occurring on a day on which the DB Contractor or any Subcontractor is scheduled to perform Work that are in excess of the average number of rain delay days for the relevant calendar month will be considered an Excusable Event. A day on which a Subcontractor or the DB Contractor's own forces worked (or could reasonably have worked, in accordance with the Professional Standard, including safety standards) six hours or more will not be considered a "day of delay" for purposes of this subparagraph (g).

12.2.4 Concurrent Delays. If a delay due to an Excusable Event occurs concurrently with a delay due to an event or occurrence not covered by Subsection 12.2.3, then the DB Contractor shall be entitled to an equitable adjustment of the Contract Time, but not an adjustment to any GMP, to the extent that the critical path of the Work has been impacted by the Excusable Event (subject to the provisions of Subsection 12.2.1).

12.2.5 Rights Limited. The rights and remedies set forth in this Section 12.2 (Excusable Events) shall be the DB Contractor's sole and exclusive rights and remedies in the event of an occurrence of an Excusable Event, and the DB Contractor hereby waives all other rights and remedies at law or in equity that it might otherwise have against the Authority on account of an Excusable Event. In confirmation and furtherance of the terms and provisions of this Subsection 12.2.5, the DB Contractor acknowledges and agrees that each GMP (including the FGMP and each Work Package GMP) and the Contract Time may only be adjusted in accordance with, and to the extent permitted by, the terms and provisions of this Section 12.2 (Excusable Events).

12.3 RESOLUTION OF CLAIMS AND DISPUTES

12.3.1 Informal Dispute Resolution by Representatives. Upon initiation of a Claim by either the Authority or the DB Contractor, the Authority Representative and the DB Contractor's Representative shall meet and attempt to resolve the Claim. Any mutual determination by the Authority Representative and the DB Contractor's Representative shall be final and binding upon the parties. However, should the Authority Representative and the DB Contractor's Representative fail to arrive at a mutual decision as to the Claim within 10 days after notice to both individuals of the Claim, such Claim shall be submitted to the Senior Officers as hereinafter provided.

12.3.2 Informal Dispute Resolution by Senior Officers. In the event that a Claim is not resolved in accordance with Subsection 12.3.1 (Informal Dispute Resolution by Representatives), Senior Officers from each party shall meet and engage in a good faith attempt to resolve the Claim. Any mutual determination by the Senior Officers shall be final and binding upon the parties.

12.3.3 Formal Dispute Resolution. Should such Senior Officers fail to arrive at a mutual decision as to the Claim within 20 days after notice to such Senior Officers of the Claim, and if the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment for the State of Alabama. For any and all other disputes arising under the terms of this Contract that are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including mediation, subject, however, at all times to the sovereign immunity of the State. Such dispute resolution shall occur in Montgomery, Alabama, utilizing, where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar.

12.3.4 Continuation of Obligations Pending Dispute Resolution. Pending final resolution of a Claim, the DB Contractor shall proceed diligently with performance of the Contract, and the Authority shall continue to make payments as to undisputed amounts in accordance with the Contract Documents.

12.4 SITE CONDITIONS

12.4.1 Local Conditions. In connection with the representations made by the DB Contractor in Section 7.1 (Review of Project Criteria and Site Conditions) hereof, and in acknowledgement of the terms and conditions associated with the provision of information in accordance with Section 6.4 (Information and Services Required of the State Parties) hereof, the DB Contractor covenants and agrees that it shall bear all risks associated with any such general and local conditions (other than Unforeseeable Conditions at the Site) that can affect the Project, the Facility, the Site, or the performance of the Work, and the DB Contractor shall not be relieved of its responsibility to perform the Work without adjustment in any GMP or the Contract Time, once established, as a result of any such conditions. In confirmation and furtherance of the foregoing, the DB Contractor acknowledges and agrees that it shall not be entitled to an adjustment in any GMP or the Contract Time based on general and local conditions (other than Unforeseeable Conditions at the Site) affecting the Project, the Site, or the performance of the Work, and the DB Contractor hereby waives any and all claims associated therewith.

12.4.2 Unforeseeable Conditions. If the DB Contractor encounters conditions at the Site that are concealed physical conditions and that the DB Contractor reasonably believes are Unforeseeable Conditions, then notice by the DB Contractor as to the same shall be given to the Authority pursuant to the terms of Section 12.1 (Claims: General Provisions). If the Authority and the DB Contractor thereafter mutually determine that such concealed physical conditions are in fact Unforeseeable Conditions, then the DB Contractor will be entitled to seek an equitable adjustment in the applicable GMP(s) or the Contract Time as provided in Section 12.2 (Excusable Events).

ARTICLE 13 **CHANGES IN THE WORK**

13.1 GENERAL PROVISIONS

13.1.1 Changes in the scope of Work shall only be deemed to have occurred if, during the progression of the Work, the Authority directs or approves a change that requires work of a materially different nature, character, scope, and quality than the general scope of the Work reasonably inferable by the DB Contractor as an experienced and prudent design-build contractor (a “**Change in the Work**”). The DB Contractor shall not initiate changes in the scope of the Work.

13.1.2 Changes in the Work may be accomplished after the Effective Date, and without invalidating this Contract, only by the Authority’s issuance of a Change Order or Construction Change Directive (each as defined below) or other Modification, subject to the limitations stated in this Article 13 (Changes in the Work) and elsewhere in the Contract Documents.

13.1.3 Changes in the Work that result in a change in a GMP or the Contract Time, if any, will be reflected in the Change Order or Construction Change Directive ordering the DB Contractor to perform such Changes in the Work. For the avoidance of doubt, each established GMP (*i.e.*, each GMP established pursuant to Work Package Authorization and the FGMP) and the Contract Time may *only* be adjusted by amendment, Change Order, or Construction Change Directive.

13.1.4 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the DB Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

13.2 CHANGE ORDERS

13.2.1 A “Change Order” is a written instrument in the form attached hereto as Exhibit O (Form of Change Order), prepared by the Authority or the DB Contractor and signed by both the Authority and the DB Contractor, stating their agreement upon all of the following:

- (a) A Change in the Work or the applicable Excusable Event(s);
- (b) The amount or method of the adjustment in the applicable GMP(s), if any; and
- (c) The extent of the adjustment in the Contract Time, if any; and
- (d) Changes to the applicable Work Package Authorization(s), if any.

Any Change Order must specify the Work Package(s), if any, to which it relates.

13.2.2 A Change Order signed by the DB Contractor documents the mutual agreement of the Authority and the DB Contractor with respect to the subject matter thereof. By executing a Change Order, except to the extent expressly reserved by the DB Contractor in such Change Order, the DB Contractor thereafter waives the right to assert any further claim for an increase in any GMP or an extension of the Contract Time based on the subject matter of, or the Claim addressed by, such Change Order; it being acknowledged and agreed by the DB Contractor that such Change Order shall completely address any cost or schedule impact associated with the subject matter of, or the Claim addressed by, such Change Order, except as expressly set forth in such Change Order.

13.2.3 When the Authority and the DB Contractor reach agreement upon any adjustment in the applicable GMP(s) and/or the Contract Time, such agreement shall be recorded by preparation and execution of an appropriate Change Order.

13.3 IMPACT ASSESSMENT FOR PROPOSED CHANGES IN THE WORK

13.3.1 At any time, the Authority may propose a change in the scope of the Work and request from the DB Contractor a good faith assessment of the impact, if any, of the proposed change on the GMP(s) and Contract Time.

13.3.1.1 In making such a request, the Authority shall describe to the DB Contractor the nature, extent and other details of the proposed change in the scope of the Work, and the State Parties and the Program Manager shall consult concerning the scope of the proposed change in the Work and the estimated cost and schedule impacts.

13.3.1.2 Within the timeframe set forth in the Authority’s request, the DB Contractor shall provide the Program Manager and the Authority with the DB Contractor’s evaluation as to whether the proposed change constitutes a Change in the Work and a detailed estimate of the impact on the GMP(s) and Contract Time, if any. The DB Contractor’s assessment shall not be binding on the Authority.

13.3.2 If the Authority, with the assistance of the ADOC and Program Manager, determines that the proposed change constitutes a Change in the Work, then, within a reasonable time after receipt of the DB Contractor’s assessment, the Authority shall issue a Change Order (or, if the DB Contractor is not in agreement, a Construction Change Directive) effectuating the Change in the Work and establishing any change in the applicable GMP(s) or the Contract Time. The Authority’s issuance of a request for the DB Contractor’s assessment of the impact of a proposed change in the Work shall not, by itself, authorize an adjustment in any GMP or the Contract Time.

13.4 GMP ADJUSTMENTS

13.4.1 Adjustments Generally. Methods used in determining any adjustments to any GMP attributable a Change in the Work shall be limited to those methods listed in Subsection 13.4.2 (Available Methods for Adjustment) and shall comply with Subsection 13.4.4 (Additional Conditions of Payment for Changed Work) and Sections 13.5 (Markups for Additional Work) and 13.6 (Limitations on Payments for Additional Work), as applicable.

13.4.2 Available Methods for Adjustment. If a Change Order provides for an adjustment to the GMP, the adjustment shall be based on one of the following methods, as agreed by the parties:

13.4.2.1 Mutual acceptance of a set lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation;

13.4.2.2 Unit Prices stated in the Contract Documents or subsequently agreed upon;

13.4.2.3 Hourly rates as set forth in Exhibit B (IGMP Schedule of Values), for additional Work actually performed by the DB Contractor or Design Professionals and supported by such documentation as reasonably required by the Authority or Program Manager, including timesheets;

13.4.2.4 Costs directly attributable to the Change in the Work or Excusable Event, as applicable, to be determined in a manner agreed upon by the parties, and a mutually acceptable fixed or percentage markup, not to exceed a sum certain; or

13.4.2.5 As provided in Subsection 13.4.3 (Increased Cost-Plus Fee Method).

13.4.3 Increased Cost-Plus Fee Method. If so agreed by the parties, or if the DB Contractor does not respond promptly or disagrees with the method for adjustment in the GMP (as in the case of disputed payment under a Construction Change Directive as described in Subsection 13.7.6 (Disputed Directives)), the method and the adjustment shall be determined as follows:

13.4.3.1 If the Cost of the Work is increased by a Change in the Work or an Excusable Event, the applicable GMP(s) shall be increased (without duplication) by an amount equal to the sum of the following:

- (a) The actual, documented, and reasonable Cost of the Work incurred by the DB Contractor in performing the additional Work, excluding any DB Contractor or Subcontractor markups for overhead and profit (the “**Increased Cost**”); *plus*
- (b) The percentage markup for overhead and profit in accordance with Section 13.5 (Markups for Additional Work).

13.4.3.2 If the Cost of the Work is decreased by any such change, the applicable GMP(s) shall be decreased (without duplication) so as to reflect the Cost of the Work that would have been incurred by the DB Contractor (or by any Subcontractor) in the absence of such change, including percentage markups calculated as described in Section 13.5 (Markups for Additional Work).

13.4.4 Additional Conditions of Payment for Changed Work. The following additional terms and conditions shall apply in the event that an adjustment to a GMP is determined pursuant to either of the methods provided under Subsections 13.4.2.3 (Available Methods for Adjustment) or 13.4.3 (Increased Cost-Plus Fee Method):

13.4.4.1 In such cases, the DB Contractor shall keep and present, in such form as the Authority may prescribe, an itemized accounting of all costs of the Change in the Work or Excusable Event, as

applicable, including labor, materials, rental equipment taxes, and markup (overhead and fee) paid or due by the DB Contractor or its Subcontractors attributable to such change or event, together with appropriate supporting information requested by the Authority, which may include timesheets, field orders, and daily field reports. The Authority may require such documentation to accompany all relevant Applications for Payment.

13.4.4.2 In the event that changed Work takes longer than one Application for Payment period to complete, a Change Order will be issued for an adjustment in the applicable GMP(s) subject to a not-to-exceed amount determined by the Authority. The Schedule of Values shall be revised to reflect such adjustment. The DB Contractor shall then be compensated for the actual, reasonable, and documented cost of such changed Work performed during each Application for Payment period, as supported by the documentation required pursuant to Subsection 13.4.4.1 above, and subject to the not-to-exceed amount for such Work established pursuant to the applicable Change Order. If the not-to-exceed amount for the changed Work is exhausted prior to completion of such Work, an additional Change Order may be issued to increase the not-to-exceed amount for such Work to reflect an updated reasonable and good faith estimate of the cost of such Work, as reasonably determined by the Authority. Such estimate shall be supported by all documentation reasonably required by the Authority or Program Manager from the DB Contractor and its applicable Subcontractors. Upon completion of performance of the changed Work, an additional “true-up” Change Order, either additive or deductive, will be executed, adjusting the applicable GMP(s) to reconcile the total amounts due and payable on account of such Change in the Work, as compared to the Change Order(s) originally issued with respect to such changed Work.

13.5 MARKUPS FOR ADDITIONAL WORK

13.5.1 Except as provided in Section 13.4 (GMP Adjustments) and this Section 13.5 (Markups for Additional Work), only the direct Costs of the Work attributable to the performance of additional Work required by a Change in the Work or an Excusable Event shall be allowed in any Change Order. All other costs (including profit and home office overhead) shall be included in the markups allowed pursuant to this Section 13.5 and shall constitute full compensation for all costs not included as actual labor, materials, equipment, or Subcontractor costs. The DB Contractor’s costs for General Conditions Items as described in Subsection 4.2.9 (General Conditions Costs) shall be paid as a Cost of the Work.

13.5.2 Notwithstanding the foregoing subsection, to the extent that Exhibit B (IGMP Schedule of Values) hereto sets forth agreed hourly rates for any additional design services performed by the DB Contractor or a Design Professional, such hourly rates shall apply with respect to any such additional design services required by a Change in the Work or an Excusable Event. All costs (including profit and home office overhead) with respect to such additional design services are included in the agreed hourly rates set forth in Exhibit B (IGMP Schedule of Values), and such hourly rates shall constitute the DB Contractor’s full compensation for any additional design services performed. Accordingly, no percentage markup for overhead and profit (including the markups allowed pursuant to Subsections 13.5.3 and 13.5.4 (Markups for Additional Work)) shall be applied with respect to any additional design services to be compensated on the basis of hourly rates as set forth in Exhibit B (IGMP Schedule of Values).

13.5.3 Markups owed to the DB Contractor for additional Work shall not exceed the following schedule:

13.5.3.1 In the event the DB Contractor self-performs the Work in accordance with Section 10.6 (Self-Performed Work) hereof, it shall be entitled to charge the DB Contractor’s Fee attributable to Self-Performed Work set forth in Section 1.1 (Key Terms) hereof on the Costs of the Work associated with the additional Work, but no additional markup or compensation for General Conditions Items will be allowed.

13.5.3.2 To the extent that a Subcontractor performs the Work, Subcontract costs shall be the actual cost to the DB Contractor for Work performed by a Subcontractor. On such additional Work, the DB

Contractor shall be entitled to charge the DB Contractor's Fee attributable to Work performed by Subcontractors set forth in Section 1.1 (Key Terms) hereof, but shall not be entitled to any compensation for additional General Conditions Items except as otherwise expressly agreed by the Authority.

13.5.4 Where additional work is performed by Subcontractors, a Subcontractor's markup for overhead and profit shall not exceed 15% of the Increased Cost of such Work, and the maximum markup for overhead and profit for all tiers of Subcontractors combined shall not exceed 20% of the Increased Cost of the Work.

13.5.5 If Work is deleted by Change Order or Construction Change Directive, the Authority shall be provided a deduction for the deleted overhead and profit of the DB Contractor and the Subcontractors equal to the markups as provided in this Section 13.5 (Markups for Additional Work), as applicable; *provided* that in no case shall such deduction be less than 5%.

13.5.6 When both additions and credits covering related Work or substitutions are involved in a change, the markup or deletion for overhead and profit shall be figured on the basis of net decrease or increase, if any, with respect to that change.

13.6 LIMITATIONS ON PAYMENTS FOR ADDITIONAL WORK

13.6.1 The Authority will not pay the DB Contractor for costs in excess of prevailing market values unless the DB Contractor can reasonably establish that the DB Contractor has investigated all practicable means of providing the work and that the excess costs could not be avoided. The Authority will, in the exercise of reasonable discretion, and in consultation with the Program Manager, determine the necessity of incurring costs in excess of market value and whether the excess costs are required for performance of additional Work required by a Change in the Work or an Excusable Event.

13.6.2 Except to the extent expressly reserved by the DB Contractor in the applicable Change Order, no claims for further compensation or extensions of time, whether for delay, extended general conditions, markup, overhead (including any home office overhead), profit, fees, acceleration, disruption, impact, or any other reason whatsoever, shall be made by the DB Contractor as a result of the Change(s) in the Work or Excusable Event(s) addressed in a Change Order, as payments and extensions of time specified thereunder shall constitute payment in full for the Work as altered therein.

13.6.3 To the extent a dispute exists with respect to the amount or entitlement to compensation for changed Work, the Authority may require the DB Contractor to perform the changed Work pursuant to a Construction Change Directive in accordance with Section 13.7 (Construction Change Directives), and the Authority shall pay the DB Contractor all amounts associated with such performance that are not in dispute as recorded by Change Order in accordance with Subsection 13.7.4 (DB Contractor Assent to Directive).

13.7 CONSTRUCTION CHANGE DIRECTIVES

13.7.1 Directed Changes in the Work. A "Construction Change Directive" is a written order prepared by either the DB Contractor or the Authority and executed by the Authority, directing a Change in the Work prior to, or in the absence of, agreement on the terms of a Change Order. For the avoidance of doubt, a Construction Change Directive may be issued by the Authority alone. The Authority may by Construction Change Directive, without invalidating this Contract, order Changes in the Work within the general scope of this Contract consisting of additions, deletions, or other modifications of the Work or Work Package Authorization(s), the applicable GMP(s) and the Contract Time being adjusted accordingly.

13.7.2 Proposed Basis for Adjustment. A Construction Change Directive shall state a proposed basis for adjustment(s), if any, in the GMP(s) or the Contract Time. Methods used in determining adjustments to any GMP shall be limited to those listed in Subsection 13.4.2 (Available Methods for Adjustment) and shall

comply with Subsection 13.4.4 (Additional Conditions of Payment for Changed Work) and Sections 13.5 (Markups for Additional Work) and 13.6 (Limitations on Payment for Additional Work), as applicable.

13.7.2.1 The Authority may (among other options) issue a Construction Change Directive on a “price-only” basis, directing the DB Contractor to prepare an assessment of the impact of the ordered Change in the Work on the GMP(s) and/or Contract Time in accordance with Section 13.3 (Impact Assessment for Proposed Changes in the Work), but not authorizing the DB Contractor to proceed with such Change.

13.7.2.2 The Authority may (among other options) issue a Construction Change Directive on a “price-and-proceed” basis, directing the DB Contractor to proceed promptly with the Change in the Work, notwithstanding that a Change Order documenting the agreement of the Authority and the DB Contractor as to any change in the applicable GMP(s) or the Contract Time remains pending. In the case of a “price-and-proceed” Construction Change Directive, the DB Contractor shall prepare an assessment of the impact, if any, of the Change in the Work on the applicable GMP(s) and the Contract Time as directed by the Authority in the Construction Change Directive. Once any adjustment of the GMP(s) and/or the Contract Time has been agreed by the parties, a series of Change Orders and/or a “true-up” Change Order may be issued in accordance with Subsection 13.4.4.2 (Additional Conditions of Payment for Changed Work) in order to effectuate such adjustment.

13.7.3 DB Contractor Obligation to Proceed with Directed Changes. Upon receipt of a Construction Change Directive, unless such Construction Change Directive is issued on a “price-only” basis, the DB Contractor shall promptly proceed with the Change in the Work involved and advise the Authority of the DB Contractor’s agreement or disagreement with the method provided in the Construction Change Directive for determining the proposed adjustment(s), if any, in the applicable GMP(s) or the Contract Time.

13.7.4 DB Contractor Assent to Directive. A Construction Change Directive signed by the DB Contractor indicates the agreement of the DB Contractor therewith, including with respect to any adjustment in any GMP and Contract Time and the method for determining such adjustment(s). Such agreement shall be effective immediately and shall be recorded as a Change Order.

13.7.5 Payment for Undisputed Directives. Upon the completion of any changed Work pursuant to a Construction Change Directive, the DB Contractor may submit Applications for Payment in accordance with any undisputed portions of such Construction Change Directive that have been recorded as a Change Order.

13.7.6 Disputed Directives. Pending a Change Order, or absent a Change Order and pending final determination of the total cost of the Construction Change Directive, the DB Contractor may submit Applications for Payment in respect of changed Work ordered and completed pursuant to a Construction Change Directive in order to be compensated for the Increased Cost of such Work, plus a percentage markup for overhead and profit, determined in accordance with Subsection 13.4.3 (Increased Cost-Plus Fee Method) and subject to the limitations set forth in Subsection 13.4.4 (Additional Conditions of Payment for Changed Work) and Sections 13.5 (Markups for Additional Work) and 13.6 (Limitations on Payments for Additional Work). The Authority, in consultation with the ADOC and Program Manager, will make an interim determination, for purposes of approval and payment of monthly progress payments, as to the amount that the Authority, in consultation with the ADOC and Program Manager, deems to be reasonably justified for payment. The Authority’s interim determination of such amount shall adjust the GMP accordingly on the same basis as a Change Order and shall entitle the DB Contractor to payment of such amount. As to any amounts that remain in dispute, both parties reserve their rights as to the matter in dispute under Article 12 (Claims; Excusable Events; Site Conditions), and the DB Contractor’s receipt of payment for such Work under this Subsection 13.7.6 will not prejudice its right to receive full payment upon a final determination of the disputed cost.

ARTICLE 14 COMPLETION

14.1 PRELIMINARY COMPLETION

14.1.1 Conditions for Preliminary Completion. “Preliminary Completion” is the stage in the progress of the Work when:

- (a) The Authority has determined, in consultation with the ADOC and Program Manager and with the DB Contractor’s written assurance, that Punch List work can be completed within 30 days; and
- (b) All required governmental inspections applicable to the Work have been conducted and all approvals and certifications for the Project have been issued by the appropriate Governmental Authorities having jurisdiction over the Project, other than the security sweep required pursuant to Section 14.3 (Final Completion) or as otherwise required specifically for Final Completion.

14.1.2 Preliminary Completion Inspection. When the DB Contractor considers the Work as a whole, or a portion thereof that the Authority agrees to separately review for Preliminary Completion, is substantially complete, the DB Contractor shall submit a request to the Authority, ADOC and Program Manager for an inspection to determine Preliminary Completion. The Authority, in conjunction with the DB Contractor, and assisted by the ADOC and Program Manager, shall inspect the Work or a portion thereof. If such inspection discloses any item that is not sufficiently complete for Preliminary Completion, the DB Contractor shall complete or correct such item upon notification by the Authority. The DB Contractor shall then submit to the Authority, ADOC, and Program Manager a request for another inspection.

14.1.3 Preliminary Completion Documentation. When the Work or portion thereof is substantially complete, and in connection with the determination as to Preliminary Completion, the Authority, in conjunction with the DB Contractor, and assisted by the ADOC and Program Manager, shall prepare a list of incomplete or unsatisfactory items and a schedule for their completion (the “**Punch List**”), and the Authority will prepare a Preliminary Completion document that shall establish responsibilities of the Authority, the ADOC (as applicable), and DB Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the DB Contractor shall finish all items on the Punch List. The Preliminary Completion document shall be submitted to the DB Contractor for its written acceptance of responsibilities assigned to it in such document.

14.2 PARTIAL OCCUPANCY OR USE

14.2.1 Optional Partial Occupancy or Use. The Authority may, at its sole election, occupy or use, or permit the ADOC to occupy or use, any completed or partially completed portion of the Work at any stage when such portion is designated by the Authority (in consultation with the Program Manager and ADOC) as being sufficiently complete for such occupancy or use, *provided* that such occupancy or use is consented to by the insurer, if so required, and authorized by Governmental Authorities having jurisdiction over the Project, if so required. Such partial occupancy or use may commence whether or not the portion is substantially complete or Preliminarily Complete, *provided* that the Authority, the ADOC (as applicable), and the DB Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.

14.2.2 Inspection Prior to Partial Occupancy. Immediately prior to such partial occupancy or use, the Authority, the ADOC (as applicable), the Program Manager, and the DB Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

14.2.3 Partial Occupancy or Use is Not Final Completion. Partial occupancy or use of a portion or portions of the Work shall not constitute achievement of Final Completion or acceptance of Work not complying with the requirements of the Contract Documents. Nothing in this Contract shall require full or partial occupancy of the Facility by the Authority or ADOC prior to Final Completion.

14.3 FINAL COMPLETION

14.3.1 Conditions Precedent to Final Completion. “Final Completion” of the Work shall occur when:

- (a) The Work of the Project is sufficiently complete in accordance with the Contract Documents so the Authority can occupy or utilize the Work for its intended use and purpose, including completion of all Punch List items;
- (b) A security sweep has been performed in accordance with Subsection 14.3.3 (Security Sweep); and
- (c) All the duties, obligations, and responsibilities of the DB Contractor under this Contract have been completely fulfilled.

14.3.2 Notice of Final Completion. Once the DB Contractor believes it has achieved Final Completion, including completion of all Punch List items, but with the sole exceptions of completion of the final inspection and security sweep, the DB Contractor shall forward to the Authority, ADOC, and Program Manager a written notice and certification that the Work is ready for final inspection, a security sweep, and final acceptance. The Authority and the ADOC, in conjunction with the DB Contractor, and assisted by the ADOC and Program Manager, shall promptly make such inspection.

14.3.3 Security Sweep. The DB Contractor acknowledges that Final Completion and final payment will require the ADOC’s completion of a security sweep of the entirety of the Facility, for which the DB Contractor shall reserve a period of 30 days immediately prior to the Final Completion date. The purpose of such security sweep is for each applicable building or area comprising the Facility to be designated as “secure and restricted from any traffic” until full occupancy by the ADOC. Reasonably in advance of the 30-day period for the security sweep prior to the scheduled Final Completion date, the DB Contractor shall develop a plan for the sweep, including a schedule, description of activities, and plan for coordination with the ADOC, for reasonable acceptance by the ADOC and the Authority. After completion of a security sweep of a building comprising part of the Premises, any building that is designated by the ADOC as “secure and restricted from any traffic” will only be accessed by agreement of the ADOC, with representatives of both the ADOC and the DB Contractor present during entrance and closing of the building. The ADOC shall have no obligation to perform any security sweep, whether requested prior to or as part of a Preliminary Completion determination or otherwise, at any time prior to the date that is 30 days prior to the scheduled Final Completion date for the entire Work.

14.3.4 Certificate of Final Completion. When the Program Manager, based on its evaluation and inspections of the Work, finds the Work acceptable under the Contract Documents and the Contract fully performed, and after the security sweep is completed, the Program Manager will promptly recommend to the Authority and ADOC that, to best of the Program Manager’s knowledge, information, and belief, that the Work has been completed in accordance with the terms and conditions of the Contract Documents. Upon completion of the security sweep and receipt of the Program Manager’s recommendation, when the Authority and the ADOC, based on their respective evaluation and inspection, find the Work acceptable

under the Contract Documents and the Contract fully performed, the Authority will issue a certificate establishing the date of Final Completion. Final payment will be made in accordance with Section 5.8 (Final Payment).

14.3.5 Commencement of Warranties. Warranties required by the Contract Documents shall commence on the date of Final Completion of the Work specified in the certificate of Final Completion.

ARTICLE 15

UNCOVERING AND CORRECTION OF WORK

15.1 COVERING AND UNCOVERING OF WORK

15.1.1 If any State-Related Party is required, or has requested, to review any particular portion of the Work, the DB Contractor shall provide reasonable notice of not less than four Business Days prior to covering such portion of the Work.

15.1.2 If a portion of the Work is covered contrary to a State-Related Party's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either, be uncovered for their observation and be replaced at the DB Contractor's expense without change in the applicable GMP(s) or the Contract Time.

15.1.3 If a portion of the Work has been covered that a State-Related Party has not specifically requested to observe prior to its being covered (and was covered pursuant to the terms of the Contract Documents), a State-Related Party may request to see such Work, and it shall be uncovered by the DB Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Authority, and the Contract Time shall be adjusted as appropriate. If such Work is not in accordance with the Contract Documents, the DB Contractor shall pay such costs.

15.2 CORRECTION OF WORK

15.2.1 The DB Contractor shall promptly correct Work (including any items of construction or fabrication, or any other product constituting a part, system, or component of the Work), whether discovered before or after Final Completion, and whether or not fabricated, installed, or completed, (a) that the Authority rejects as defective, deficient, or failing to conform to the Contract Documents (including the warranties set forth in Section 7.7 (Warranty)), or (b) that is otherwise known by the DB Contractor or any Subcontractor to be defective or failing to conform to the Contract Documents. If other portions of the Work are adversely affected by or are damaged by such defective Work, the DB Contractor shall, at its sole cost and expense and at the earliest practical opportunity, correct, repair, or replace such affected or damaged Work, as well as any other property damaged by such defective or nonconforming Work. All corrections to the Work shall be performed in accordance with the Contract Documents and applicable Laws. Costs of correcting defective Work, including additional testing and inspections and reasonable compensation for the Authority's or ADOC's consultants, contractors, or agents, and other expenses of the State or its agents made necessary thereby, shall be at the DB Contractor's expense.

15.2.2 If the DB Contractor fails to correct defective or nonconforming Work, or any damaged Work or other property specified in Subsection 15.2.1 (Correction of Work), the Authority or ADOC may correct it (or cause it to be corrected) in accordance with Section 6.6 (The Authority's Right to Carry Out the Work). The DB Contractor shall remove from the Site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the DB Contractor nor accepted by the Authority. If the DB Contractor does not proceed with correction of such nonconforming Work within the time period provided in Section 6.6 (The Authority's Right to Carry Out the Work), the Authority, or the ADOC, as applicable, may remove it and store the salvable materials or equipment at the DB Contractor's

expense. If the DB Contractor does not pay costs of such removal and storage within 10 days after receipt of written notice, the Authority, or the ADOC, as applicable, may, upon 10 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 DB Contractor, including expenses made necessary thereby. If such proceeds of sale do not cover costs that the DB Contractor should have borne, the FGMP shall be reduced by the deficiency. If payments then or thereafter due the DB Contractor are not sufficient to cover such amount, the DB Contractor shall pay the difference to the Authority.

15.2.3 The DB Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Authority or Separate Contractors caused by the DB Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

15.2.4 In addition to the DB Contractor's obligations under Section 7.7 (Warranty) above, the DB Contractor's obligation to correct defective or nonconforming Work as described in this Section 15.2 shall survive the termination or expiration of this Contract and shall remain in full force and effect for a period of one year after the date of Final Completion of all of the Work. If, within such one-year period, any of the Work is found by the Authority to be defective or nonconforming, the Authority shall provide prompt written notice to the DB Contractor, unless the Authority has previously given the DB Contractor a written acceptance of such condition. Within two Business Days after a party's receipt of notice of defective or nonconforming Work following Final Completion, or in such other timeframe as parties agree or that the ADOC reasonably determines is appropriate given its custodial obligations and the nature of the condition, the ADOC and the DB Contractor shall confer and agree in good faith as to when and how the DB Contractor shall correct the Work and/or otherwise remedy the defect in such manner and at such times so as to minimize disruption (to the extent possible) the operation of the Facility, it being understood that from and after Final Completion, the ADOC shall be solely and exclusively responsible for the safety and security of the Facility. The DB Contractor shall be responsible to perform corrective Work in a safe manner in accordance with the requirements of the Facility Documents and shall comply at all times with the ADOC's safety and security policies, procedures, orders, and directives. Any portion of the Work that has been repaired, replaced or otherwise corrected pursuant to this Section 15.2 (Correction of Work) (whether by the DB Contractor or, pursuant to the State's self-help remedies hereunder, by the Authority or the ADOC) shall automatically be warranted by the DB Contractor in conformity with all warranty requirements set forth in the Contract Documents (including those set forth in Section 7.7 (Warranty)), and the DB Contractor will have the same corrective Work obligations in relation thereto as set forth in this Subsection 15.2.4 (Correction of Work); *provided, however*, that in no event shall the DB Contractor's corrective Work obligations under this Subsection 15.2.4 (Correction of Work) extend beyond the date that is one year after the date of Final Completion of all of the Work.

15.2.5 Nothing contained in this Section 15.2 (Correction of Work) shall be construed to establish a period of limitation with respect to other obligations that the DB Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work following Final Completion as described in Subsection 15.2.4 (Correction of Work) relates only to the specific obligation of the DB 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 DB Contractor's liability with respect to its obligations other than specifically to correct the Work, regardless of whether the Authority or the ADOC has requested that the DB Contractor correct defective Work itself.

15.3 ACCEPTANCE OF NONCONFORMING WORK

If the Authority prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Authority may do so instead of requiring its removal and correction, in which case the

FGMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 16

TERMINATION OR SUSPENSION OF THE CONTRACT

16.1 TERMINATION BY THE DB CONTRACTOR

16.1.1 After commencement of the Construction Phase, the DB Contractor may terminate this Contract if the Work is stopped, through no act or fault of the DB Contractor, any Contractor Agent, or any other persons performing portions of the Work under contract with the DB Contractor, for:

- (a) A period of 90 days, because the DB Contractor has suspended performance of the Work in accordance with Section 5.10 (Failure of Payment), and
- (b) A period of 180 days, for any of the following reasons:
 - (i) Issuance of an order of a court or other public authority having jurisdiction;
 - (ii) An act of a Governmental Authority, such as a declaration of national emergency, making material unavailable; or
 - (iii) The Authority has suspended the Work for its convenience as provided in Section 16.2 (Suspension by the Authority for Convenience), except in those instances in which the DB Contractor is not entitled to an equitable adjustment in a GMP or Contract Time as described in Section 16.2.

16.1.2 If one of the above reasons exists, the DB Contractor may, upon 30 additional days' written notice to the Authority, if such condition is not cured within such 30-day period, and as the DB Contractor's sole and exclusive remedy hereunder, terminate this Contract and recover from the Authority as provided in Section 16.4 (Termination Compensation), provided, however, that the amount to be paid to the DB Contractor shall not cause the GMP(s) for the then-authorized Work to be exceeded. The DB Contractor may only terminate this Contract as a whole, unless the Authority expressly agrees to permit the DB Contractor to terminate a particular Work Package Authorization hereunder.

16.2 SUSPENSION BY THE AUTHORITY FOR CONVENIENCE

The Authority may, without cause, order the DB Contractor in writing to suspend, delay, or interrupt the Work in whole or in part (such as a particular Work Package) for such period of time as the Authority may determine. In such event, the DB Contractor will be entitled to an equitable adjustment in the applicable GMP(s) and/or Contract Time as provided in Section 12.2 (Excusable Events), except to the extent that:

- (a) Performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the DB Contractor is responsible; or
- (b) An equitable adjustment is made or denied under another provision of this Contract.

16.3 TERMINATION BY THE AUTHORITY FOR CONVENIENCE

16.3.1 Prior to the commencement of the Construction Phase Work, the Authority may terminate this Contract as a whole or with respect to one or more components of the Project without cause, including, without limitation, in the event the Authority, in its sole discretion, determines that it has not secured sufficient financing for the Project, upon not less than seven days' prior written notice to the DB Contractor. If this Contract is so terminated, the DB Contractor, as its sole and exclusive remedy hereunder, shall be

entitled to receive from the Authority that portion of the Design Phase Sum payable for the Design Phase Work properly and fully performed prior to the date of such termination notice, together with compensation for any Costs of the Work payable during the Design Phase pursuant to Subsections 4.1.2.2 (Design Phase Costs of the Work) and 4.1.2.3 (Design Phase Payments) and actually incurred by the DB Contractor prior to the date of such termination notice.

16.3.2 On or after the commencement of the Construction Phase Work, the Authority may terminate this Contract without cause upon not less than 30 days' prior written notice to the DB Contractor. If this Contract is so terminated, the DB Contractor, as its sole and exclusive remedy hereunder, shall be entitled to receive payment from the Authority as provided in Section 16.4 (Termination Compensation), *provided, however*, that the amount to be paid to the DB Contractor shall not cause the GMP(s) for the then-authorized Work to be exceeded.

16.4 TERMINATION COMPENSATION

In the event of any termination of this Contract (x) by the DB Contractor pursuant to Section 16.1 (Termination by the DB Contractor) or (y) by the Authority for convenience as provided in Section 16.3 (Termination by the Authority for Convenience), the Authority shall then pay the DB Contractor, as the DB Contractor's sole and exclusive remedy hereunder, an amount calculated as follows:

- (a) *Take* the Cost of the Work actually incurred by the DB Contractor to the date of termination;
- (b) *Add* the DB Contractor's Fee based on the Cost of the Work for Work completed up to the time of termination;
- (c) *Add* all or a portion of the Design Phase Sum based on the Design Phase Work completed up to the time of termination;
- (d) *Add* any actual, documented and reasonable cancellation charges due to Subcontractors pursuant to the terms of their Subcontracts by reason of the termination of this Contract;
- (e) *Add*, only in the case of a termination pursuant to subparagraph (b) of Subsection 16.1.1 (Termination by the DB Contractor), any actual, documented and reasonable costs of the DB Contractor for demobilization of the Site (and, if directed by the Authority, remobilization at the Site) incurred by the DB Contractor in the period commencing on the 90th day following the suspension event described in subparagraph (b) and ending on the 180th day following such event; and
- (f) *Subtract* the aggregate of previous payments made by the Authority to the DB Contractor.

Reimbursement for demobilization of the Site (other than as required pursuant to paragraph (e) of this Section 16.4 above) will be considered, the intent being that an equitable settlement will be made with the DB Contractor. In no event shall the DB Contractor receive payment, including any portion of the DB Contractor's Fee, with respect to Work or other services not performed as of the time of termination.

16.5 TERMINATION BY THE AUTHORITY FOR CAUSE

16.5.1 The Authority may terminate this Contract if the DB Contractor, after having received 10 days' notice specifying any default listed below, fails to cure, or commence and diligently proceed with the cure of, such default:

- (a) Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

- (b) Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the DB Contractor and the Subcontractors, except to the extent arising from the Authority's failure to make payments to the DB Contractor when properly due;
- (c) Disregards or fails to comply with applicable Laws, repeatedly or with a material impact on the Project or the State Parties;
- (d) Becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due;
- (e) Makes a general assignment for the benefit of its creditors;
- (f) Commences or consents to any case, proceeding or other action (i) seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of the DB Contractor or of the DB Contractor's debts under any Law relating to bankruptcy, insolvency, reorganization, or relief of debts or (ii) seeking appointment of a receiver, trustee, or similar official for the DB Contractor or for all or any part of the DB Contractor's property;
- (g) Has any case, proceeding or other action commenced against the DB Contractor (i) seeking to have an order for relief entered against the DB Contractor as debtor, (ii) seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of the DB Contractor or the DB Contractor's debts under any Law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or (iii) seeking appointment of a receiver, trustee, or similar official for the DB Contractor or for all or any part of the DB Contractor's property;
- (h) Attempts to assign, convey, or transfer this Contract, or any interest herein, without the Authority's prior written consent; or
- (i) Has otherwise breached any material provision of the Contract Documents.

16.5.2 When any of the above reasons exist, the Authority may, without prejudice to any other rights or remedies the Authority may have under this Contract or at law or in equity, and after giving the DB Contractor and the DB Contractor's surety, if any, 10 days' written notice in accordance with Subsection 16.5.1 (Termination by the Authority for Cause), terminate employment of the DB Contractor and this Contract as a whole or with respect to one or more Work Packages.

16.5.3 If the Authority terminates this Contract in accordance with this Section 16.5 (Termination by the Authority for Cause), the Authority may, subject to any prior rights of the surety:

- (a) Take possession of the Site and all materials and equipment on the Site intended to be incorporated into the Work;
- (b) Accept assignment of Subcontracts in accordance with Section 10.4 (Subcontract Terms); and
- (c) Finish the Work by whatever reasonable method the Authority deems expedient.

16.5.4 When the Authority terminates this Contract or the DB Contractor's employment for one of the reasons stated in Subsection 16.5.1 (Termination by the Authority for Cause), the DB Contractor shall not be entitled to receive further payment, if at all, until the Work of the Project is finished.

16.5.5 If the Authority terminates this Contract in accordance with this Section 16.5 (Termination by the Authority for Cause) prior to the commencement of the Construction Phase Work, the DB Contractor shall receive no further payment or compensation hereunder, *provided* that the DB Contractor shall be paid on account of the Design Phase Sum for all Design Phase Work properly performed prior to the date of termination and shall be compensated for any Costs of the Work payable during the Design Phase pursuant to Subsections 4.1.2.2 (Design Phase Costs of the Work) and 4.1.2.3 (Design Phase Payments) and actually incurred by the DB Contractor prior to the date of such termination notice.

16.5.6 If the Authority terminates this Contract in accordance with this Section 16.5 (Termination by the Authority for Cause) following commencement of Construction Phase Work, and if the unpaid balance of the GMP(s) for the then-authorized Work exceeds costs of finishing such Work, then the DB Contractor shall be paid for all Work properly performed by the DB Contractor to the date of termination, which amount shall in no event exceed the difference between the unpaid portion of the applicable GMP(s) and the Authority's costs in completing such Work. If such costs exceed the unpaid balance, the DB Contractor shall pay the difference to the Authority. The costs to the Authority of completing the Work shall include the cost of any additional design, managerial and administrative services required thereby, court costs and reasonable attorneys' fees and expenses, and any other costs, expenses, or damages the Authority may incur in order to complete the Work.

16.5.7 For the avoidance of doubt, in the event of any termination by the Authority pursuant to this Section 16.5 (Termination by the Authority for Cause), the amount, if any, to be paid to the DB Contractor upon termination shall not cause any applicable GMP to be exceeded, nor shall it exceed the amount the DB Contractor would have been entitled to receive under Section 16.4 (Termination Compensation) had the Authority terminated for convenience.

16.5.8 Upon termination of this Contract pursuant to this Section 16.5 (Termination by the Authority for Cause), the DB Contractor shall promptly transfer and deliver to the Authority all completed and in-process Design Materials and associated Intellectual Property Rights in accordance with Article 20 (Miscellaneous Provisions).

ARTICLE 17 **INSURANCE**

17.1 CONTRACTOR'S INSURANCE

The DB Contractor shall procure, as a Cost of the Work, the insurance coverages set forth in Exhibit I (Insurance and Bonding Requirements) hereto and shall maintain such coverages in full force and effect in accordance with Exhibit I (Insurance and Bonding Requirements).

17.2 SUBCONTRACTOR INSURANCE

Unless the Authority agrees in writing to the contrary for individual Subcontractors, the DB Contractor must require, in writing, each Subcontractor to procure and maintain, at the Subcontractor's sole cost and expense, insurance coverages in accordance with Exhibit I (Insurance and Bonding Requirements) hereto.

17.3 PROPERTY INSURANCE

Terms and conditions with respect to property insurance in relation the Project are set forth in Exhibit I (Insurance and Bonding Requirements) hereto.

17.4 WAIVER OF SUBROGATION

Unless specifically precluded by a property insurance policy held by the Authority or another State Party, the Authority and DB Contractor waive all rights against each other and any of their consultants, subcontractors, suppliers, agents, and employees, each of the other, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance. This waiver of subrogation shall be effective as to a person or entity (a) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (b) even though that person or entity did not pay the insurance premium directly or indirectly, and (c) whether or not the person or entity had an insurable interest in the damaged property.

17.5 BONDS

Terms and conditions with respect to payment and performance bonds required in connection with the Work are set forth in Exhibit I (Insurance and Bonding Requirements) hereto.

ARTICLE 18 INDEMNIFICATION; RIGHTS AND REMEDIES

18.1 INDEMNIFICATION

18.1.1 To the fullest extent permitted by Law, the DB Contractor shall indemnify, defend, and hold harmless State-Related Parties from and against any and all third-party (*i.e.*, not State-Related Parties) claims, demands, suits, liabilities, injuries (personal or bodily), judgments, orders, decrees, proceedings, fines, property damage, causes of action, losses, costs, expenses, damages, or penalties, including court costs and reasonable attorneys' fees, arising out of or resulting from:

18.1.1.1 Any failure by the DB Contractor, a Subcontractor, or any other Contractor Agent to comply with the DB Contractor's obligations under this Agreement;

18.1.1.2 The performance of the Work, *provided* that, under this Subsection 18.1.1.2, such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property; and

18.1.1.3 The negligence or willful misconduct of the DB Contractor, a Subcontractor, or any other person for whom they may be liable at the Site or Facility or otherwise in the performance of the Work.

18.1.2 The DB Contractor's indemnification, defense, and hold harmless obligation under this Section 18.1 shall survive the expiration or termination of this Contract and shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 18.1.

18.1.3 The DB Contractor's indemnification, defense, and hold harmless obligation under the Contract Documents shall not be limited to the extent that such claim, damage, loss, or expense is covered by the proceeds of insurance required to be maintained pursuant to the Contract Documents or any approved self-insurance retention.

18.1.4 In claims against any person or entity indemnified under this Section 18.1 by an employee of the DB Contractor, a Subcontractor, or any other Contractor Agent, the DB Contractor's indemnification, defense, and hold harmless obligation under this Section 18.1 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the DB Contractor, a Subcontractor,

or any other Contractor Agent under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

18.1.5 The DB Contractor shall ensure that the defense of any claim subject to the DB Contractor's defense obligations under this Section 18.1 is coordinated with the Authority and the Alabama Office of the Attorney General. If the Authority or another State Party receives notice or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under this Section 18.1, then the State, upon notice to the DB Contractor, shall have the right to conduct its own defense (including defense of the Authority or any other State Party) upon notice to the DB Contractor, except to the extent that either an insurer accepts tender of defense of the claim within the time required by Law, or the DB Contractor accepts the tender of the claim within 10 Business Days after receipt of the tender, and subject in all cases to the terms of this Subsection 18.1.5. If the DB Contractor or its insurer accepts tender of defense, the party accepting tender shall have the right to select legal counsel subject to the approval of such counsel by the Authority and the Attorney General of the State of Alabama. The DB Contractor shall not agree, and further shall ensure that any insurer or other party in charge of the defense does not agree, to any settlement of any such claim without first obtaining the concurrence of the Authority and the Alabama Office of the Attorney General.

18.2 CUMULATIVE NATURE OF RIGHTS AND REMEDIES

Except as otherwise provided in this Agreement, (a) rights and remedies available to the State or the DB Contractor as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such parties at law or in equity, and (b) any specific right or remedy conferred upon or reserved to the Authority or the DB Contractor in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

18.3 OPERATION OF WAIVER GENERALLY

No course of dealing or failure of the Authority or the DB Contractor to enforce strictly any term, right, or condition of this Contract shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Contract shall operate as a waiver of any other term, right, or condition.

18.4 WAIVER OF LOST PROFIT AND CONSEQUENTIAL DAMAGES

18.4.1 Notwithstanding any other provision of this Contract to the contrary, neither the Authority nor the DB Contractor (nor, for the avoidance of doubt, any State-Related Party or Contractor Agent) shall be liable under this Contract or under any cause of action related to the subject matter of this Contract, whether in contract, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action or legal theory, for lost profit, special, indirect, punitive, incidental, or consequential losses or damages, including loss of use, opportunity, reputation, revenues, financing, bonding capacity, or business interruption, or damages or losses for principal office expenses, including compensation of personnel stationed there; *provided, however*, that the limitation of liability set forth in this Subsection 18.4.1 shall not apply to:

- (a) Any stipulated or Liquidated Damages payable by the DB Contractor under this Contract;
- (b) Damages paid by any State-Related Party to a third party (or that a State-Related Party has been finally determined to be liable to pay to a third party), to the extent that the DB Contractor is obligated under this Agreement to indemnify the State-Related Party against such damages;

- (c) Damages incurred by any State-Related Parties that are finally determined by a court or equivalent authority of competent jurisdiction to be the result of any fraud, gross negligence, or willful misconduct by the DB Contractor or any Contractor Agent; or
- (d) Damages that are covered by proceeds of insurance policies required to be maintained pursuant to the Contract Documents.

18.4.2 The DB Contractor covenants and agrees that it will obtain a written waiver of consequential damages from each Subcontractor performing any portion of the Work.

ARTICLE 19

REPRESENTATIONS AND WARRANTIES

19.1 CONTRACTOR REPRESENTATIONS AND WARRANTIES

The DB Contractor hereby represents and warrants the following to the Authority and the ADOC, which representations and warranties shall survive the execution and delivery of this Contract, any termination of this Contract and Final Completion:

19.1.1 That the DB Contractor is able to furnish the personnel, tools, materials, supplies, equipment, labor, and design, engineering and construction services required to complete the Work, that it has the requisite technical, financial, and legal ability to perform the Work, that it is familiar with and knowledgeable of all applicable Laws, and that it has and shall maintain the capability, expertise, competence, and experience to perform the Work;

19.1.2 That the DB Contractor has investigated and familiarized itself with the general and local conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents in accordance with Section 7.1 (Review of Project Criteria and Site Conditions);

19.1.3 That the DB Contractor is capable of properly completing the Project within the established GMP(s) and the Contract Time, all in accordance with the terms and provisions of the Contract Documents;

19.1.4 That the DB Contractor is authorized to do business in the state in which the Site is located and properly licensed and approved by all Governmental Authorities having jurisdiction over the DB Contractor, the Work or the Project;

19.1.5 That the DB Contractor's execution, delivery, and performance of this Contract have been duly authorized by all necessary proceedings on its part and will not conflict with its governing documents, or any covenant, agreement, understanding, decree, or order to which it is a party or by which it is bound or affected;

19.1.6 That no authorization, approval, exemption, or consent by any Governmental Authority is required in connection with the DB Contractor's authorization, execution, delivery, and performance of the terms of this Contract;

19.1.7 That there are no actions, suits, proceedings, or investigations pending or, to the DB Contractor's knowledge, threatened against it at law or in equity, before any court or before any Governmental Authority, that, individually or in the aggregate, could reasonably be expected to have a materially adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the DB Contractor, or could reasonably be expected to result in any impairment of its ability to perform its obligations under this Contract, and that the DB Contractor has no knowledge of any violation or default with respect to any order,

writ, injunction, or decree of any court or any Governmental Authority that could reasonably be expected to have such a materially adverse effect or result in such impairment; and

19.1.8 That no surety of the DB Contractor has been called upon to perform any work required to be performed by the DB Contractor (or any entity affiliated with the DB Contractor) in the preceding five years.

19.2 MUTUAL REPRESENTATIONS AND WARRANTIES

Each party hereby represents and warrants to the other:

19.2.1 That it is duly organized, validly existing, and in good standing under the laws of the state of its organization, has the requisite power to carry on its activities under this Contract, and has the full power, right, and authority to execute and deliver this Contract and to perform its obligations hereunder; and

19.2.2 That this Contract has been duly authorized, executed, and delivered by and on behalf of each such party and constitutes the legal, valid, and binding obligation of the parties, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting the rights of creditors generally or by general principles of equity.

19.3 COMPLIANCE WITH ANTI-BRIBERY AND ANTI-CORRUPTION LAWS

19.3.1 In carrying out the responsibilities described in this Contract, the DB Contractor warrants and agrees to comply fully with, and to cause its Subcontractors, employees, directors, officers, agents, and any person acting on its behalf, to comply fully with all Laws, including the anti-bribery Laws and anti-corruption Laws in all relevant jurisdictions.

19.3.2 Neither the DB Contractor, nor any of its owners, directors, or officers, nor any Subcontractors, employees, or agents who are performing work or services under this Contract, has been subject to an investigation or been convicted of or pleaded guilty, no contest or *nolo contendere* to an offense involving fraud, corruption, or moral turpitude, nor has the DB Contractor or any such person been listed by any Governmental Authority as debarred, suspended, proposed for suspension or debarment, or otherwise declared ineligible for government procurement programs. Neither the DB Contractor, nor its owners, controlling shareholders, related companies, or any current or former employee is on any government restricted parties list.

19.3.3 It is understood and agreed by the parties hereto, and the DB Contractor hereby represents and warrants to the State, that in performing work or services under this Contract, or in connection therewith, neither the DB Contractor, nor any person acting on the DB Contractor's behalf: (a) has given, promised to give, offered to give, or will give, promise to give, or offer to give, any loan, gift, donation, payment, or other items of value directly or indirectly, whether in cash or in kind, to or for the benefit of any government official and/or political party, to obtain or retain business, or to secure any improper advantage; (b) will violate any applicable Law, including the anti-bribery and anti-corruption Laws in all relevant jurisdictions; or (c) will cause the Authority or the ADOC to be in violation of any applicable Law, including the anti-bribery and anti-corruption Laws in all relevant jurisdictions.

19.3.4 The DB Contractor agrees that all Applications for Payment, invoices, reports, statements, Claims, requests for Modifications, and books and records that it submits will be true and accurate in all respects to the best of the DB Contractor's knowledge, and will fully and accurately describe services rendered and the nature and recipient of expenditures and/or payments made or to be made. The DB Contractor agrees that it will not fail to reveal any material information that the State Parties may require to accurately prepare their respective books and records.

19.3.5 The DB Contractor will not pay or tender, directly or indirectly, any commission or finders or referral fees to any person or firm in connection with carrying out the responsibilities described in this Contract.

19.3.6 The DB Contractor will not subcontract, delegate, or assign any of its duties, obligations, or rights under this Contract without the prior written consent of the Authority.

19.3.7 The DB Contractor warrants and agrees that the information it provided in any third party due diligence questionnaire, or other similar questionnaire or report required by the Authority, is true, accurate, and complete in all material respects. The DB Contractor further warrants and agrees to provide notice to the Authority if it learns of facts that make the information the DB Contractor previously provided no longer accurate.

19.3.8 The DB Contractor represents, warrants, and agrees that during the term of this Contract, none of its shareholders, directors, supervisors, and officers, and none of its employees who are performing work or services under this Contractor, is an official, employee, or an agency or arm of, or entity owned or controlled by, any Governmental Authority.

19.3.9 If there are any material changes in the ownership or control of the DB Contractor, it will immediately advise the Authority in writing.

19.3.10 The DB Contractor agrees to provide the State Parties with (a) prompt access to its books and records as necessary in the Authority's judgment to confirm the DB Contractor's compliance with its obligations hereunder, during business hours and with reasonable advance notice, and (b) such additional certifications of its compliance with Laws as the Authority or any other State Party may from time to time reasonably request.

19.3.11 The Authority shall have the right to terminate this Contract for cause upon any material DB Contractor violation of the above provisions. The DB Contractor shall indemnify and hold harmless State-Related Parties from any claim, liability, fine, penalty, loss, or damage that arises as a result of the DB Contractor's failure to comply with the obligations set forth in this Section 19.3 (Compliance with Anti-Bribery and Anti-Corruption Laws).

19.3.12 The DB Contractor understands and agrees that, should the Authority at any time reasonably determine that the DB Contractor has materially failed to comply with the material legal and regulatory obligations set forth herein, or with material obligations of applicable Laws, the Authority may terminate any relationship with the DB Contractor without prior notice.

ARTICLE 20

MISCELLANEOUS PROVISIONS

20.1 OWNERSHIP AND USE OF DOCUMENTS

20.1.1 The copies and other tangible embodiments of all design, architectural, and engineering materials created for the Project or the Work by the DB Contractor, the Design Professionals, or their respective employees, consultants, subcontractors, and agents, including the Design Development Documents, Construction Documents, and any other drawings, specifications, designs, plans, drafts, sketches, specifications, data files, data sets, or similar materials and documents (collectively, the "**Design Materials**") are and shall remain the exclusive property of the Authority, subject only to the Authority's satisfaction of its payment obligations under this Agreement. The Design Professionals shall have the unrestricted right to the future use, and shall retain their rights in, any standard drawing details not specific to this Project, and such documents are not Design Materials. The DB Contractor and its Subcontractors may retain electronic files and a reproducible copy of the Design Materials for their records.

20.1.2 The DB Contractor, the Design Professionals, and their respective employees, consultants, subcontractors, and agents performing Work relating to the Design Materials are each doing so as an “employee for hire” or “consultant for hire” as those terms are understood under the State’s intellectual property law. The DB Contractor shall obtain written confirmation from the Design Professionals and their respective employees, consultants, subcontractors, and agents performing Work relating to the Design Materials to the effect that such services are performed as an employee or consultant for hire. Accordingly, subject to the Authority’s satisfaction of its payment obligations under this Agreement, any Intellectual Property Right that is created in connection with the Design Materials shall be and remain the exclusive property of the Authority upon payment therefor. Submittal or distribution by the DB Contractor or the Design Professionals to meet official regulatory requirements in connection with the Project is not to be construed as publication in derogation of any such Intellectual Property Right.

20.1.3 In confirmation and furtherance of the foregoing, the DB Contractor hereby assigns, transfers, releases and conveys to the Authority all of the DB Contractor’s worldwide right, title, and interest in and to all Design Materials and Intellectual Property Rights associated with the Design Materials. The DB Contractor shall also cause the Design Professionals to assign, transfer, release, and convey to the Authority (or to DB Contractor for assignment, transfer, release and conveyance to the Authority pursuant to this Section 20.1 (Ownership and Use of Documents)) all of their respective worldwide rights, titles, and interests in and to all Design Materials and Intellectual Property Rights associated with the Design Materials.

20.1.4 The DB Contractor shall never assert and hereby waives any and all claims in, interests in, and rights associated with the Design Materials and the Intellectual Property Rights associated with the Design Materials. The DB Contractor shall also cause the Design Professionals to waive any and all claims in, interests in, and rights associated with the Design Materials and the Intellectual Property Rights associated with the Design Materials.

20.1.5 The Design Materials and the Intellectual Property Rights associated with the Design Materials (and copies of physical embodiments thereof) are for use solely with respect to this Project and shall not be used by the DB Contractor, the Design Professionals, or their respective employees, consultants, subcontractors, agents, or any other party, for any other projects or for any other purpose, anywhere in the world, without the prior written consent of the Authority.

20.1.6 If the Authority terminates this Agreement before completion of the Project, and any State Party uses the Design Materials to complete the Project, or if any State Party alters the Design Materials or uses them for a purpose other than the Project or the ordinary maintenance of the Facility, in each case without the author’s written authorization, then neither the DB Contractor nor the Design Professionals shall be liable to any State Party for, and the Authority releases the DB Contractor, Design Professionals, other Subcontractors, and any other person or entity providing services or work for any of them, from, all claims and causes of action arising by reason of such use or alteration. The terms of this Section 20.1.6 (Ownership and Use of Documents) shall not apply if the Authority rightfully terminates this Agreement for cause under Section 16.5 (Termination by the Authority for Cause).

20.1.7 The terms and provisions of this Section 20.1 (Ownership and Use of Documents) shall survive the termination or expiration of this Contract.

20.2 ASSIGNMENT

20.2.1 The DB Contractor is prohibited from making any assignment (including assignments by operation of Law), conveyance, or transfer, or otherwise substituting its interest in this Contract, or any part thereof, or delegating any of its duties hereunder, without the Authority’s prior written consent. If the DB

Contractor attempts to make such an assignment without the Authority's consent, the DB Contractor shall nevertheless remain legally responsible for all obligations under this Contract.

20.2.2 This Contract shall be assignable by the Authority without the written consent of the DB Contractor to any other State Party or any other State agency or instrumentality or other Governmental Authority succeeding to the interest or responsibilities of the Authority. Further, the DB Contractor acknowledges that the Authority is financing a portion of the Project through the issuance of bonds, and the DB Contractor hereby agrees to comply with any requirements of the bond financing documents as described in Exhibit J hereto, including with respect to any consent to assignment required thereunder. In all other cases, the Authority's assignment of this Contract is subject to the prior approval of the DB Contractor, which approval shall not be unreasonably withheld.

20.2.3 Upon the Authority's assignment of this Contract in accordance with Subsection 20.2.2 (Assignment), the DB Contractor agrees that it shall deal with any such assignee, or their respective designee, in the place of the Authority, and that the DB Contractor shall perform all of its obligations under this Contract in accordance with the Contract Documents. In such event, such assignee may enforce the obligations of the DB Contractor hereunder with the same force and effect as if enforced by the Authority. The DB Contractor shall execute any consents to collateral assignment, certificates, lien waivers, escrow agreements or instructions, releases, receipts, or other documents as may be reasonably requested by any such assignee or as reasonably required in connection with the bond financing.

20.3 ADOC AS THIRD-PARTY BENEFICIARY

The ADOC shall be a third-party beneficiary of this Contract and the warranties provided hereunder.

20.4 SEVERABILITY

Should any provision of this Contract be held by final decision of a court or tribunal of competent jurisdiction to be invalid, illegal or unenforceable, (a) such decision shall not affect the validity, legality, and enforceability of the remaining provisions of this Contract, which shall continue in full force and effect, and (b) the parties shall immediately and in good faith negotiate an amendment to this Contract to incorporate revisions or new provisions to give force to the original intent of the parties, to the extent such intent has not been held illegal or unenforceable.

20.5 NOTICE

All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person, or if sent by registered or certified mail, with postage prepaid and return receipt requested, or by a national recognized overnight courier to the addresses provided for each party in Section 1.1 (Key Terms) (or to such other addresses as either party may subsequently designate). All notices required hereunder shall be deemed received on the date of delivery, or attempted delivery, if delivered in person, or, if mailed or sent by nationally recognized overnight courier, on the date that is two days after the date such notice is deposited in the mail.

20.6 EXECUTION BY COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which when executed by a party and delivered to the counterparty (including by email of an executed PDF counterpart) is an original, but all of which together shall constitute one instrument. The parties agree that this Agreement may be electronically signed and that a secure electronic signature appearing on this Agreement is the same as a handwritten signature for the purposes of validity, enforceability, and admissibility. For the avoidance of doubt, this Contract shall not be effective unless duly executed by each of the parties hereto.

This Agreement is entered into by the Authority and the DB Contractor by their respective duly authorized representatives as of the Effective Date set forth above.

THE AUTHORITY:

By: Kay Ivey

Name: Kay Ivey

Its: President

DB CONTRACTOR:
CADDELL CONSTRUCTION CO. (DE), LLC

By: [Signature]

Name: Stephen Strickland

Its: Senior Vice President

EXHIBIT A
PROJECT CRITERIA²

Attachment 1	Design Criteria Documents
Attachment 2	Specifications
Attachment 3	Drawings
Attachment 4	State-Provided FF&E

² **Note:** Exhibit A, Attachments 1, 2, and 3 are confidential and exempt from disclosure under the Open Records Act as security sensitive information.

Attachment 1 to Exhibit A
Design Criteria Documents

[See attached]

Attachment 2 to Exhibit A
Specifications

[See attached]

Attachment 3 to Exhibit A
Drawings

[See attached]

Attachment 4 to Exhibit A
State-Provided FF&E

1. Mattresses
2. Office chairs

EXHIBIT B
IGMP SCHEDULE OF VALUES

[See attached]

Attachment 1	Hourly Rates
Attachment 2	General Conditions Schedule
Attachment 3	Design Phase Maximum Payment Schedule

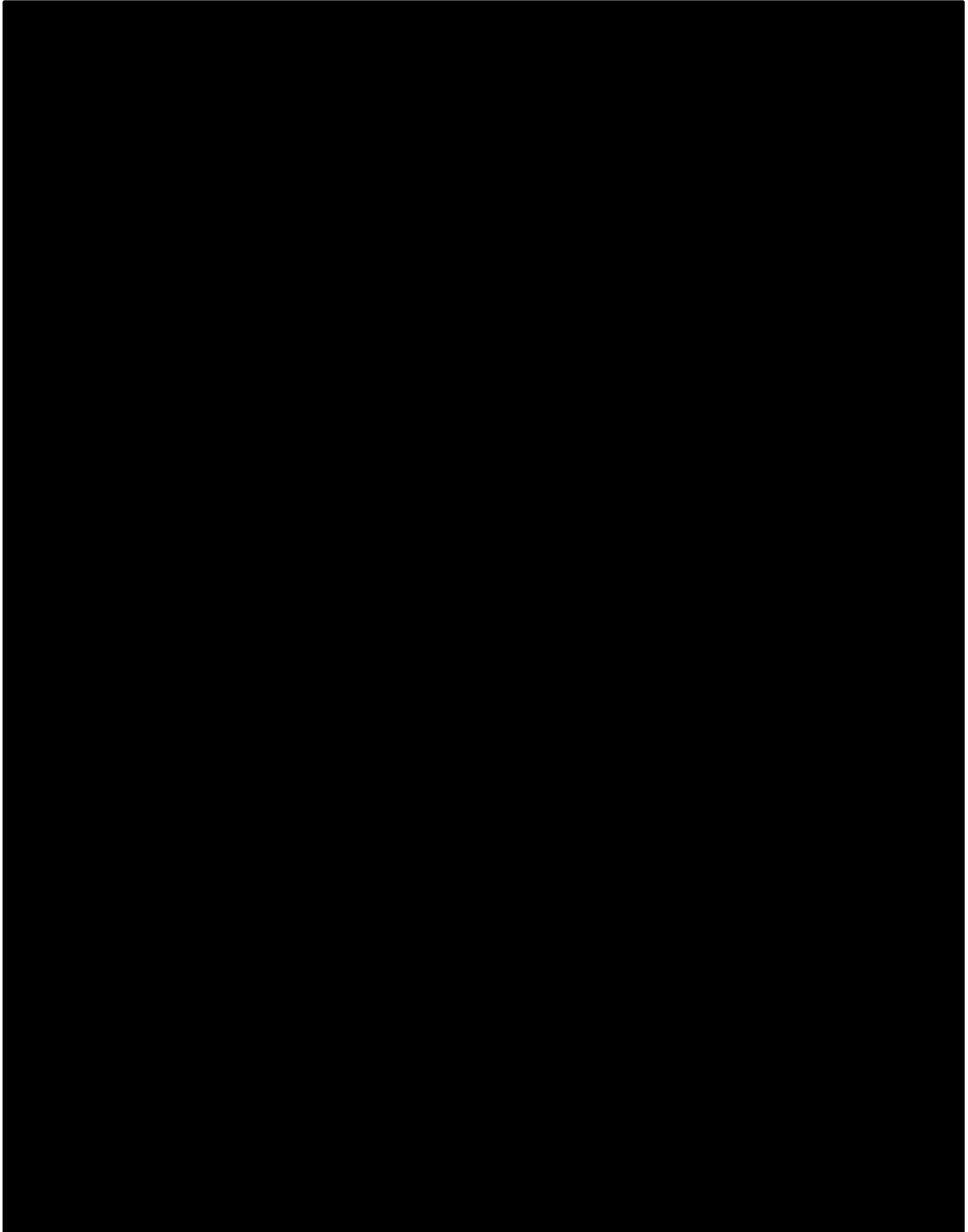
EXHIBIT B
IGMP SCHEDULE OF VALUES

COST OF THE WORK	Quantity	Units	TOTAL
Buildings, Site & Infrastructure (Including General Conditions)			\$ 523,948,713
Owner / Program Manager Temporary Office Facilities (included in line above)			\$ -
Insurances (GL, Auto, Excess & Pollution Liability. Ref. 4.2.8.1 of the Agreement)	1.25	%	\$ 6,551,859
General Information Technology Support (Ref. 4.2.8.7 of the Agreement)	0.1	%	\$ 524,149
BIM & VDC Technologies (Ref. 4.2.8.8 of the Agreement)	0.1	%	\$ 524,149
General Health & Safety Support (Ref. 4.2.8.9 of the Agreement)	0.1	%	\$ 524,149
Site Security & Management Program Allowance (Ref. 4.2.8.10 of the Agreement)			\$ 200,000
SUBTOTAL COST OF THE WORK			\$ 532,273,018

COMPENSATION FOR THE WORK	Quantity	Units	TOTAL
DB Contractor's Fee (Ref. 4.1.3 of the Agreement)	4	%	\$ 20,965,949
Design Fee (Ref. 4.1.2 of the Agreement)	1	LS	\$ 38,874,067
Preconstruction Services Fee (Ref. 4.1.2 of the Agreement)	1	LS	\$ 3,029,238
Contractor Contingency (Ref. 4.1.6 of the Agreement)			\$ 26,613,651
State Contingency (Ref. 4.1.5.1 of the Agreement)			\$ 1,890,078
SUBTOTAL COMPENSATION FOR THE WORK			\$ 91,372,982

INITIAL GUARANTEED MAXIMUM PRICE (IGMP)			\$ 623,646,000
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Attachment 1 to Exhibit B
Hourly Rates



Attachment 2 to Exhibit B
General Conditions Schedule

[See attached]

SPECIALIZED MEN'S PRISON FACILITY - ELMORE COUNTY**Cost of Work GC's & GR's****DB Contractor: CADDELL CONSTRUCTION CO. (DE), LLC**

General Conditions & General Requirements	
JOBSITE MANAGEMENT	
Management (Include all necessary Jobsite management)	
Senior Project Manager	
Project Manager	
Assistant Project Manager	
Project Engineer	
Assistant Project Engineer	
Senior Project Superintendent	
Superintendent	
Area Superintendent	
Assistant Superintendent	
Disciplined Superintendent	
Quality Control Manager	
Senior Safety Manager	
Safety Manager	
Submittal Clerk	
Project Controls Engineer (Scheduling)	
Office Manager (Admin Assistant)	
SUBTOTAL MANAGEMENT	
TEMP OFFICE FACILITIES	
JOB OFFICE TRAILERS	
DELIVERY & SETUP / DEMOBILIZE	
TEMP PARKING AREA	
PORCHES, STEPS, CANOPIES	
SUPERINTENDENT'S TRAILER	
DELIVERY & SETUP / DEMOBILIZE	
PORCHES, STEPS, CANOPIES	
OFFICE FURNISHINGS	
OFFICE MACHINES, PHONES, ETC.	
COPY MACHINES	
COMPUTER HRDWR / SFTWR	
GEN OFFICE SUPPLIES	
POSTAGE & EXPRESS MAIL	
TEMP OWNER'S OFFICE FACILITIES	
OWNER / ARCH OFFICE TRAILERS	
DELIVERY & SETUP / DEMOBILIZE	
OWNERS' OFFICE FURNISHINGS/EQUIPMENT	
PORCHES, STEPS, CANOPIES	

General Conditions & General Requirements	
External Restroom Trailer	
BIM Equipment	
Computer / Cellphones	
Telephone/Internet Usage / Install and Setup	
Network/monthly	
Network/Server Set-up (New Service)	
Cellular Monthly Cost	
Temporary Office Toilet Tank	
<i>SUBTOTAL Jobsite Office</i>	
Vehicles and Travel	
Rental - Trucks and Cars	
Offsite Parking	
Hotel / Subsistence	
Fuel - Trucks and Cars	
<i>SUBTOTAL Vehicles and Travel</i>	
Jobsite Office Equipment & Other Services	
Postage/Federal Express	
Petty Cash / Office Snacks	
Office Supplies	
Copier Paper	
Drinking Water	
Team Collab Meals / Team Building	
Working Lunches	
Janitorial	
Plan Reproduction	
Submittal Reproduction	
O and M Manuals	
VDC Services	
<i>SUBTOTAL Jobsite Office Equipment & Other Services</i>	
<i>SUBTOTAL JOBSITE MANAGEMENT</i>	
SITE REQUIREMENTS	
Permits & Fees	
Building Permit	
Stormwater Permit	
Misc Project Fees	
Development Impact Fees	
Water/Service & Utility Access Fee	
Waterproofing Consultant	
Sales Tax	
<i>SUBTOTAL Permits & Fees</i>	
Insurance & Bonds	
Contractor's Insurance	

General Conditions & General Requirements
Builder's Risk Insurance
Payment & Performance Bonds
Subcontractor Bonds/Subguard
Auditor Costs
<i>SUBTOTAL Insurance & Bonds</i>
Equipment & Tools
Fire Protection/Extinguishers
Small Tools and Consumables
Jobsite Wifi
Other Cranes (incl. operator)
Material/Man Hoist (IVMC)
Hoist Operator (IVMC)
Material/Man Hoist Foundation (IVMC)
Equipment Rental
Graders and Backhoes (incl. operator)
Lulls / Forklift (incl.operator)
On-Site Transportation (UTVs)
Personnel Trucks
Job Truck Flatbed
Water Truck
Equipment Operating Expense (F/ O/ M)
<i>SUBTOTAL Equipment & Tools</i>
Safety & Cleanup
Daily Cleanup - Laborer
Dumpsters Rent / Haul
Trash Chutes
Debris Boxes
Debris Carts
Sidewalk Protection
Safety Construction
Safety Rails & Opening Protection
Site Fencing
K-rail / Barricades
Safety Equipment / Gear
First Aid Supplies
Drug Screening
Safety Signage
COVID-19 Conditions
COVID-19 Labor
Safety Awards/Milestone Celebrations
<i>SUBTOTAL Safety & Cleanup</i>
Temporary Services
Temporary Electrical - Setup
Temporary Electrical - Lght/Pwr
Construction Power Costs
Temporary Water - Setup
Temporary Water - Piping
Construction Water Costs
Construction Water Meters

General Conditions & General Requirements
Jobsite Cameras / Timelapse
Progress Photos
Project Dashboard
Guard Service (Site/Trailer Security)
Security Agency/Service
Badges / Background Checks
Temporary Fencing
Misc Temp Fence
Craft Lunch Area
Security Shed and Supplies
Temporary Gravel for Roads/Lots
Temporary Parking
Temporary Entrances
Temporary Jersey Barrier
Temporary Stair Towers
Temporary Stair Towers Erect and Dismantle
Temporary Covered Walkways
Temporary Hoist Platform
Temporary Wall Shoring
Temporary Interior Partitions/Doors
Temporary Exterior Partitions/Doors
Temporary Safety Rail/Toe-Boards
Perimeter Cable Removal
Temporary Elevator Protection
Temporary Elevator Operators
Temporary Elevator Maintenance
Temporary Elevator Fees
Temporary Stair Railings/Protection
Davit Arms for Construction
ICRA Negative Air
ICRA Temporary Partitions
ICRA Tacky Mats/Supplies
Winterization/Weather Protection
Existing Building Protection
Existing Site Utility Protection
Temporary Roof & Openings Protection
Temporary Weather Protection
Temporary Building Conditioning
Temporary Cooling / Vent Fans
Floor Protection
Temporary Protection - Glass
Temporary Field Ice Box & Ice
Potable Water, Ice, Cups - For Craft
Bottled Water
Temporary Toilets
Temporary Holding Tanks and Installation/Removal
Temporary Hand Washing Stations
Temporary Site Signage
SUBTOTAL Temporary Services
Site Conditions

General Conditions & General Requirements
Temporary Roads/Drainage
Conex Box
Material Testing
Site Survey
Site/Building Layout
Utility Locates
Potholing
Dewatering
Dust Control
SWPPP Maintenance
QSP Testing
Street Cleaning
Traffic Signage / Barricades
Flagman/Traffic Control
<i>SUBTOTAL Site Conditions</i>
<i>SUBTOTAL SITE REQUIREMENTS</i>
<i>TOTAL GC / GR COST</i>

Attachment 3 to Exhibit B
Design Phase Maximum Payment Schedule

	<u>Total</u>	<u>Design Fee</u>	<u>Preconstruction Services Fee</u>
Month 1	\$2,460,198	\$2,278,444	\$181,754
Month 2	\$4,920,396	\$4,556,888	\$363,508
Month 3	\$1,640,132	\$1,518,963	\$121,169
Month 4	\$4,100,331	\$3,797,407	\$302,924
Month 5	\$4,920,396	\$4,556,888	\$363,508
Month 6	\$1,640,132	\$1,518,963	\$121,169
Month 7	\$4,510,364	\$4,177,147	\$333,217
Month 8	\$4,112,831	\$3,809,907	\$302,924
Month 9	\$4,112,831	\$3,809,907	\$302,924
Month 10	\$832,566	\$771,981	\$60,585
Month 11	\$1,242,599	\$1,151,722	\$90,877
Month 12	\$1,255,099	\$1,164,222	\$90,877
Month 13	\$1,665,132	\$1,543,962	\$121,170
Month 14	\$845,066	\$784,481	\$60,585
Month 15	\$1,050,083	\$974,352	\$75,731
Month 16	\$1,050,083	\$974,352	\$75,731
Month 17	<u>\$845,066</u>	<u>\$784,481</u>	<u>\$60,585</u>
Total	\$41,203,305	\$38,174,067	\$3,029,238

Breakdown of Design Fee Maximum Payment Schedule by Design Milestones

Schematic Design Documents	\$8,354,295
Design Development Documents	\$9,873,257
65% Construction Documents	\$12,568,942
90% Construction Documents	\$4,644,388
<u>100% Construction Documents</u>	<u>\$2,733,185</u>
Total through 100% Design	\$38,174,067

The total Design Fee is \$38,874,067, which includes, in addition to the sums above, \$700,000 for construction administration services to be provided by Design Professionals following completion of design over the remaining months of the Project Schedule (anticipated to be months 18-45). Payments for such services will be distributed throughout those months and accounted for in Applications for Payment for the respective months.

EXHIBIT C
FORM OF FGMP AMENDMENT

[See attached]

**FGMP AMENDMENT
TO DESIGN-BUILD CONTRACT
Specialized Men's Prison Facility**

This FGMP Amendment to Design-Build Contract (this "**Amendment**") is entered into by and between the Alabama Corrections Institution Finance Authority (the "**Authority**") and Caddell Construction Co. (DE), LLC (the "**DB Contractor**"), effective as of [●] (the "**FGMP Effective Date**").

RECITALS

A. The Authority and DB Contractor entered into that certain Design-Build Contract, dated as of _____, 2022, (as it may be amended from time to time, the "**Agreement**") for the design and construction of a new Specialized Men's Prison Facility. All capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Agreement.

B. The Authority and DB Contractor have agreed on an FGMP and its basis pursuant to Subsection 4.1.5.8 (FGMP Amendment) of the Agreement.

C. The Authority and DB Contractor therefore desire to execute this Amendment as contemplated by the Agreement, as further described herein.

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE AUTHORITY AND DB CONTRACTOR AGREE AS FOLLOWS:

TABLE OF ARTICLES

- A.1 CONTRACT SUM AND FGMP**
- A.2 CONTRACT TIME**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 APPROVED SUBCONTRACTORS**
- A.5 MISCELLANEOUS PROVISIONS**

**ARTICLE A.1
CONTRACT SUM AND FGMP**

§ A.1.1 CONTRACT SUM

In consideration of the timely and complete performance of the Work, the Authority has agreed to pay the DB Contractor, in current funds, the Contract Sum. The Contract Sum shall be the Design Phase Sum, *plus* the Cost of the Work, *plus* the DB Contractor's Fee, not to exceed the FGMP.

§ A.1.1.1 The Design Phase Sum has the meaning set forth in Subsection 4.1.2.1 (Design Phase Sum) of the Agreement and is equal to \$[41,903,305.00], of which \$[●] has been paid to the DB Contractor on account of the Design Fee and \$[●] has been paid to the DB Contractor on account of the Preconstruction Services Fee prior to the FGMP Effective Date.

§ A.1.1.2 The Cost of the Work has the meaning set forth in Section 4.2 (Cost of the Work) of the Agreement.

§ A.1.1.3 The DB Contractor's Fee has the meaning set forth in Subsection 4.1.3 (The DB Contractor's Fee) of the Agreement and, except as limited by the FGMP, shall be in an amount equal to 4% of the Cost of the Work.

§ A.1.2 FINAL GUARANTEED MAXIMUM PRICE (FGMP)

Pursuant to Subsection 4.1.5.8 (FGMP Amendment) of the Agreement, the Authority and the DB Contractor hereby amend the Agreement to establish the FGMP. The FGMP is hereby established as, and the Contract Sum is guaranteed by the DB Contractor not to exceed, \$[●], subject to additions and deductions in the Contract Sum and FGMP by subsequent Modification as provided in the Contract Documents. Costs and expenses incurred in performing and completing the Work that would cause the FGMP to be exceeded shall be borne by the DB Contractor alone, without reimbursement by the Authority or any other State Party.

§ A.1.2.1 Schedule of Values

Attached hereto as Attachment 1 is a line-item Schedule of Values allocating the FGMP among the various portions of the Work.

§ A.1.3 BASIS FOR CONTRACT SUM AND FGMP

The Contract Sum and FGMP are based upon the General Conditions Schedule, hourly rates, Unit Prices, Contractor Contingency, Allowances, Alternates, and assumptions described in this § A.1.3.¹

§ A.1.3.1 General Conditions Schedule

The Contract Sum and FGMP are based upon the General Conditions Schedule. Attached hereto as Attachment 2 is a final General Conditions Schedule for all General Conditions Items remaining on the Project. [This Attachment 2 shall supersede and replace Exhibit B (IGMP Schedule of Values), Attachment 2 to the Agreement.]

§ A.1.3.2 Hourly Rates

[Attached hereto as Attachment 3 is a schedule of agreed hourly rates for any Costs of the Work to be payable on an hourly basis (including any Changes in the Work payable on a time-and-materials basis), excluding those rates which were previously agreed in Attachment 1 (Hourly Rates) to Exhibit B (IGMP Schedule of Values) to the Agreement, which remain unchanged by this Amendment.]²

§ A.1.3.3 Unit Prices

Unit prices, if any, upon which the Contract Sum is based are as follows: [*Identify any unit price(s) or reference Schedule of Values or other attachment. Include any quantity limitations to which the unit price will be applicable.*]

§ A.1.3.4 Contractor Contingency

The Contractor Contingency is hereby established as \$[●].³

¹ **Note:** Attachment references to be adjusted if items are inapplicable, combined in an attachment with other items, or addressed in the main body of this FGMP Amendment.

² **Note:** Hourly Rates Attachment, if any, to include only newly agreed rates (*e.g.*, rates for Construction Phase services payable on an hourly basis that were not previously included in the Agreement, except as agreed by the Authority).

³ **Note:** The Contractor Contingency shall be an agreed amount based on an evaluation of the remaining risk of the Work as of the FGMP Effective Date, which amount shall not be less than 3% of the estimated Cost of the Work.

§ A.1.3.5 Allowances

Allowances, if any, included in the FGMP, are as follows: *[Insert list or description of any agreed Allowances, accompanied by a statement of their basis (e.g., quantities, Unit Prices) and exclusions, if any, or reference Schedule of Values or other Attachment.]*

§ A.1.3.6 Alternates

Alternates approved by the Authority, if any, are as follows: *[Insert list or description of any agreed Alternates (including whether they are authorized as of the FGMP Effective Date or subject to the Authority's subsequent written approval), or reference Schedule of Values or other Attachment.]*

§ A.1.3.7 Assumptions and Qualifications

Assumptions and qualifications, if any, on which the FGMP is based are as follows: *[Identify any agreed assumptions on which the FGMP is based, or reference Attachment as needed].*

**ARTICLE A.2
CONTRACT TIME**

§ A.2.1 FINAL COMPLETION DEADLINE

The DB Contractor shall achieve Final Completion of the Work (subject to adjustments in the Contract Time in accordance with the Agreement) not later than the Final Completion Deadline, which is hereby established as: *[insert date or number of days from FGMP Effective Date]*.

§ A.2.2 SCHEDULE

Attached hereto as *[Attachment 4]* is the Schedule upon which the Contract Time is based. The Schedule reflects an anticipated Preliminary Completion Date of *[insert date or number of days from FGMP Effective Date]*.

[The Schedule also includes the following milestones for completion of the Work, which are hereby established as Interim Project Milestones:]

Work Package/Portion of Work

Interim Project Milestone Date

**ARTICLE A.3
INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Contract Sum, FGMP, and Contract Time established in this Amendment are based on the information described in this § A.3.1.

§ A.3.1.1 The Drawings:

(Either list the drawings here or refer to an Attachment to this Amendment.)

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

§ A.3.1.3 RFIs and other clarifications or assumptions regarding the scope of the Work:

(List RFIs and/or insert description of clarifications or refer to an Attachment to this Amendment.)

§ A.3.1.4 Deviations from the Project Criteria as adjusted by a Modification:

(List by Modification or refer to an Attachment to this Amendment.)

§ A.3.1.5 Following the FGMP Effective Date, the DB Contractor shall be required to submit the following additional Design Packages and other submittals to the ADOC and Program Manager, for review by them and by the Authority:

<u>Submittal</u>	<u>Anticipated Date</u>	<u>Required Review</u>
[90% Construction Documents] ⁴		[Subject to review of ADOC and Program Manager, and review and approval by the Authority]
[100% Construction Documents]		[Subject to review of ADOC and Program Manager, and review and approval by the Authority]
<i>[Identify any other required submittals]</i>		<i>[Indicate whether Authority approval required, or submission is for review and comment or information]</i>

§ A.3.1.6 Execution of this Amendment by the DB Contractor is a representation that it (a) has either prepared or carefully and thoroughly reviewed, analyzed, compared and familiarized itself with the above-described information, (b) has visited the Site and the area surrounding it, has conducted such other investigations as it deems appropriate in connection with the FGMP Proposal regarding existing conditions at the Site, and has become familiar with local conditions under which the Work is to be performed, (c) has correlated its observations with the above-described information, and (d) has, in accordance with the Professional Standard, taken into account all such information and conditions in preparing the FGMP Proposal upon which this Amendment is based, including the FGMP and Final Completion Deadline hereby established.

§ A.3.1.7 By execution of this Amendment, the DB Contractor also represents that any changes to the Project design that are implemented by this Amendment have been reviewed and approved in writing by the Design Professional or other licensed design professional(s) of record for the Project.

⁴ **Note:** Design Packages to be omitted in this list if completed and approved as of the FGMP Effective Date (the latest approved Design-Build Documents being identified in § A3.1.1 and A3.1.2).

ARTICLE A.4
APPROVED SUBCONTRACTORS AND SUPPLIERS⁵

§ A.4.1 APPROVED SUBCONTRACTORS AND SUPPLIERS

The Design Professionals, consultants, subcontractors, and suppliers identified on [Attachment 5] shall be considered “**Subcontractors**” approved by the Authority to perform the Work specified in [Attachment 5] as subcontractors to the DB Contractor, subject to the terms and conditions of the Contract Documents. *(Attachment to list name, address, discipline / scope of Work, and any other reasonably required information.)*

§ A.4.2 DBEs

The DB Contractor shall retain the DBEs or other minority businesses identified on [Attachment 5-A] to participate in the Work of the Contract as set forth in such Attachment. *(Attachment to list name, address, description of work, and dollar amount of participation, or refer to an Attachment with such information. See Exhibit H (Subcontractor Diversity Policy) of the Agreement for requirements.)*

ARTICLE A.5
MISCELLANEOUS PROVISIONS

§ A.5.1 Prior GMPs and Work Packages Superseded. Upon the FGMP Effective Date, this Amendment shall supersede any prior GMP Amendments or Work Package Authorizations previously issued pursuant to the Agreement (including the GMPs, Schedules of Values, and Schedules set forth therein)[, except as follows: *[insert description of exceptions, if any]*].

§ A.5.2 Incorporation of Recitals. The recitals set forth above are hereby incorporated by reference into this FGMP Amendment as though fully set forth herein.

§ A.5.3 Agreement Remains in Effect. All terms and conditions of the Contract not expressly modified herein shall remain in full force and effect as presently written and shall apply to this Amendment. The rights, duties, liabilities, and obligations of the parties shall continue in full force and effect as set forth in the Contract, except as expressly modified by this Amendment.

§ A.5.4 Counterparts. This Amendment may be executed in one or more counterparts, each of which when executed by a party and delivered to the counterparty (including by email of an executed PDF counterpart) is an original, but all of which together shall constitute one instrument. For the avoidance of doubt, this Amendment shall not be effective unless duly executed by each of the parties hereto.

⁵ **Note:** If applicable, the Amendment may also establish approved changes in Key Personnel and/or Authorized Representatives.

This Amendment is entered into by the Authority and the DB Contractor by their respective duly authorized representatives as of the FGMP Effective Date set forth above.

THE AUTHORITY:

DB CONTRACTOR:

CADDELL CONSTRUCTION CO. (DE), LLC

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

EXHIBIT D
PROJECT SCHEDULE

Final Completion Deadline

Final Completion Deadline:	<i>Will be set forth in the FGMP Amendment, but is expected to be no later than 1,382 days following the Notice to Proceed issued by the Authority.</i>
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Interim Project Milestones

Commencement of Design Phase Work:	Pursuant to Notice to Proceed to be issued by the Authority
Date for FGMP Proposal:	The date that is 330 days following the date of the Notice to Proceed with Design Phase Work issued by the Authority.
Date for Preliminary Completion of Warehouse Work Package:	<i>Will be set forth in the Work Package Authorization, but the goal is for Preliminary Completion to be achieved on or before December 31, 2023.</i>
Preliminary Completion Date (all Work):	<i>Is expected to be identified in the Schedule accompanying the FGMP Amendment.</i>
Other Interim Project Milestones, if any:	<i>May be set forth in a Work Package Authorization or a GMP Amendment (including the FGMP Amendment).</i>

Attachment 1 to Exhibit D
Design Schedule

[See attached]

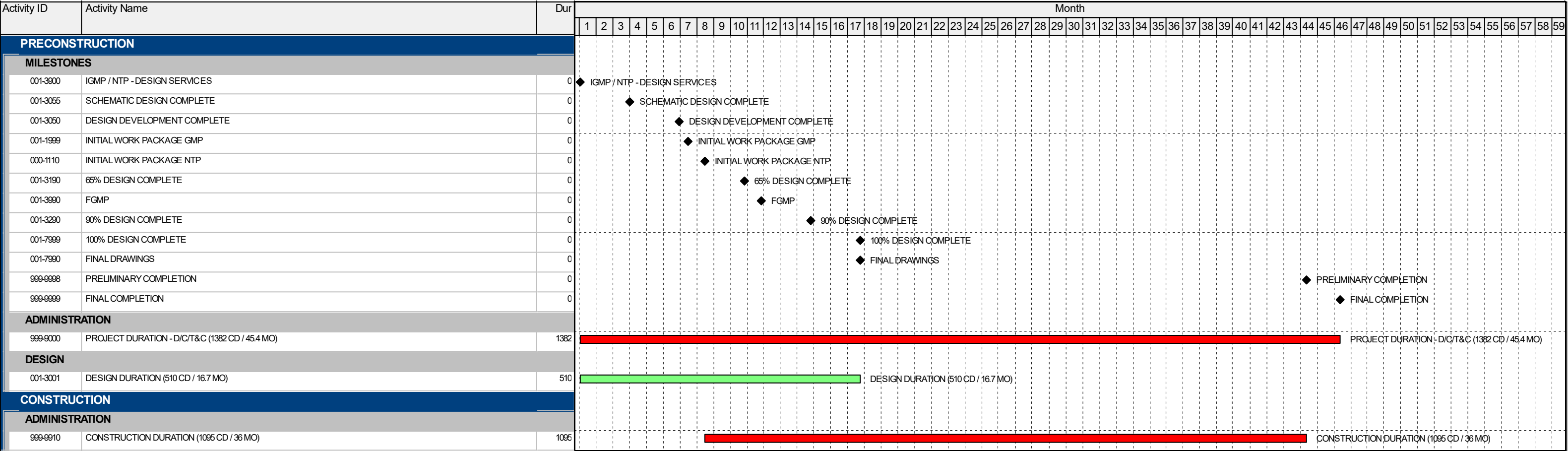


EXHIBIT E
KEY PERSONNEL

Caddell Construction
445 Dexter Avenue, Suite 11000
Montgomery, AL 36104
334-272-7723

Randy Denham – Senior Project Manager – **DB Contractor's Representative**



Dennis Shepard – VP Estimating and Purchasing



Tim Buck – Senior Estimator



Andrew Thomason – Senior Project Superintendent



EXHIBIT F
APPROVED SUBCONTRACTORS

Design Professionals:

Goodwyn, Mills, & Cawood (GMC)
2660 EastChase Lane, Suite 200
Montgomery, AL 36117
334-271-3200

DLR Group (DLR)
6457 Frances Street, Suite 200
Omaha, NE 68106
402-393-4100

Newcomb & Boyd
303 Peachtree Center Avenue, NE, Suite 525
Atlanta, GA 30303
404-730-8400

LBYD
880 Montclair Road, Suite 600
Birmingham, AL 35213
205-251-4500

R & N Systems
615 Oakleaf Office Lane
Memphis, TN 38117
901-309-0115

Camacho
3103 Medlock Bridge Road
Atlanta, GA 30071
800-849-0520

EXHIBIT G
LABOR AND CONTRACTING REQUIREMENTS

1. LABOR STANDARDS

1.1 In the performance of its obligations under the Contract Documents, the DB Contractor at all times shall comply, and require by contract that all Subcontractors and vendors comply, with all applicable federal and State labor, occupational safety, and health Laws and federal and State orders.

1.2 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the services or work assigned to them.

1.3 If any individual employed by the DB Contractor or any Subcontractor is not performing the Work in conformance with the Contract Documents, then the DB Contractor shall, or shall cause such Subcontractor to, remove such individual and such individual shall not be re-employed in connection with the Work. If, after notice and reasonable opportunity to cure, such individual is not removed, or if the DB Contractor fails to ensure that skilled, experienced, licensed, and certified personnel are furnished for the proper performance of the Work, then the Authority may suspend the affected portion of the Work by delivering to the DB Contractor notice of such suspension. Such suspension shall in no way relieve the DB Contractor of any obligation contained in the Contract Documents or entitle Contractor to any additional payment or time extension hereunder.

2. NONDISCRIMINATION; EQUAL EMPLOYMENT POLICY

The DB Contractor shall not, and shall require its Subcontractors to not, discriminate on the basis of race, color, national origin, ancestry, sex, age, marital status, religion, creed, or disability, or any other classification or characteristic protected by federal or State constitutional or statutory Law, in the performance of the Work under the Contract Documents. The DB Contractor shall carry out, and shall require its Subcontractors to carry out, applicable requirements of 49 CFR Part 26. The DB Contractor confirms that it has an equal employment opportunity policy ensuring equal employment opportunity without regard to any such classification or characteristic and maintains no employee facilities segregated on the basis of any such classification or characteristic, and has required, or with respect to Subcontracts not yet in effect as of the Effective Date, shall require prior to subcontracting, that each of its Subcontractors also complies with the foregoing. The DB Contractor shall comply with all applicable equal employment opportunity and nondiscrimination Laws, and shall require its Subcontractors to comply with such Laws. The DB Contractor shall include the provisions of this Section in every Subcontract to which the DB Contractor is a party, and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

3. PREA

The DB Contractor shall include the provisions of Subsection 8.5.9 (PREA) of the Agreement in every Subcontract to which the DB Contractor is a party, and shall require that such provisions be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

4. LOCAL HIRING

Where applicable and commercially practicable, the DB Contractor, in hiring persons to perform the Work hereunder, shall use commercially reasonable efforts to demonstrate a hiring preference for those persons that reside in the local geographic area in which the Site is located and for a labor force that reflects the demographic diversity (including the racial and ethnic diversity) of the State and the local area in which the Site is located.

5. STATE MERIT SYSTEM

For the avoidance of doubt, no work by any person employed by or contracted with the DB Contractor in connection with this Contract or the Work hereunder shall entitle any such person to the benefits under the State Merit System.

6. IMMIGRATION LAWS

6.1 The parties agree, and hereby acknowledge, that all terms, covenants, and conditions, or actions taken under this Agreement shall comply with all applicable state, federal, or local laws, including the Alabama Beason-Hammon Alabama Taxpayer and Citizen Protection Act as amended. Pursuant to Section 31-13-9(k) of the Code of Alabama (1975), by execution of this Agreement, the parties affirm, for the duration of this Agreement, that the parties will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State. Furthermore, a party found to be in violation of this provision shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.

6.2 The DB Contractor shall enroll in the E-Verify Program, and filed the proper documentation with respect to such enrollment with the Authority, and shall at all times during the Work and for the duration of the Contract remain enrolled in the E-Verify Program. The DB Contractor is not required to participate should the E-Verify Program cease to exist.

6.3 The DB Contractor shall verify through the E-Verify Program the work eligibility status of every newly hired employee required to be verified according to applicable Laws. The DB Contractor shall not knowingly employ or contract with an unauthorized alien. The DB Contractor shall not retain an employee or contract with a person that the DB Contractor subsequently learns is an unauthorized alien.

6.4 The DB Contractor shall comply with Section 31-13-9 of the Code of Alabama (1975), including requiring all Subcontractors, and their respective subcontractors, who perform Work under this Contract, to certify to the DB Contractor that they do not knowingly employ or contract with an unauthorized alien and that each Subcontractor and subcontractor has enrolled in and is participating in the E-Verify program. The DB Contractor agrees to maintain and make available to the Authority this documentation from and after the Effective Date and continuing for the term of this Contract and shall include this requirement in its Subcontracts.

6.5 Upon receipt of notice from the Authority that the DB Contractor or one of its Subcontractors is in violation of this Section 6, the DB Contractor shall remedy the violation within 30 days, which may include the DB Contractor terminating, or causing the termination of, the affected employee or Subcontractor. If the DB Contractor does not remedy the violation within 30 days after receipt of notice from the Authority, it shall be considered a DB Contractor default for which the Authority may terminate this Contract for cause.

7. COMPLIANCE WITH ACT 2016-312

In compliance with Act 2016-312 as codified by Code of Alabama Section 41-16-5, the DB Contractor, by execution of this Agreement, certifies that it is not currently engaged in, and will not engage in, the boycott of a person based in or doing business with a jurisdiction with which the State can enjoy open trade. The DB Contractor shall include the provisions of this Section in every Subcontract to which the DB Contractor is a party, and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

8. SECURITY

8.1 The DB Contractor acknowledges and understands that, from and after the Effective Date, the DB Contractor and all Contractor Agents will be subject to, and will be required to comply with, all security regulations and procedures of the ADOC with respect to the use and operation of the Facility as a correctional facility.

8.2 All Contractor Agents who may enter the Site and any facility owned by or for operation by the ADOC, including the Facility, are subject to a background check and security check of his/her person and personal property (including his/her vehicle), and may be prohibited from entering any ADOC facility in accordance with such ADOC security regulations. Additionally, any Contractor Agent found to have violated any ADOC security regulation then in effect may be barred from entering the Site or any ADOC facility, including the Facility, notwithstanding any other provision of this Contract to the contrary.

8.3 The DB Contractor shall be responsible to perform background checks on all personnel performing Work on behalf of the DB Contractor at the Site and shall disclose any such background information to the ADOC and the Authority pertaining to outstanding warrants, parole or probation status, or prior felony convictions or arrests. The DB Contractor shall not permit any person who the DB Contractor knows (or reasonably should have known, pursuant to a background check as required by this Section) to be subject to an outstanding felony warrant to perform Work on behalf of the DB Contractor at the Site.

EXHIBIT H
SUBCONTRACTOR DIVERSITY POLICY

It is the intent of the Authority, in accordance with Act 2021-546 and other applicable Law, to encourage participation by minority businesses in the construction of the Project. Accordingly, the Authority will adopt a plan, and the DB Contractor shall be required to participate in the Authority's plan, to achieve to the greatest extent possible a level of participation by minority businesses, with a focus on ethnic minority businesses, including prevailing ethnic minority businesses. Failure by the DB Contractor to comply with the requirements of this Exhibit H shall constitute a material breach of this Contract, which may result in termination by the Authority or its exercise of any other remedies available to the Authority under this Contract that the Authority deems appropriate.

1. The Program Manager will administer on the Authority's behalf, and the DB Contractor shall participate in, training programs and other educational activities to enable eligible minority businesses to compete for participation on an equal basis, and shall focus on developing ethnic minority businesses, including prevailing ethnic minority businesses.

2. The Authority is required to monitor the results of minority business participation and report the same to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader. Accordingly, the DB Contractor shall report to the Program Manager and Authority on a quarterly basis, or more frequently as requested by the Authority, on the minority business participation in the Work.

3. The DB Contractor shall document good faith efforts to encourage and facilitate participation by minority businesses (including certified diverse business enterprises, or DBEs). The FGMP Proposal shall include the following, together with accompanying bids and bid tabulations:

- (a) The names and addresses of the DBEs or other minority businesses that will participate in the Work of this Contract (subject to execution of the FGMP Amendment);
- (b) A description of the work each such business will perform;
- (c) The dollar amount of the participation of each such business;
- (d) Written documentation of the DB Contractor's commitment to Subcontract to such business consistent with the foregoing descriptions, and written confirmation from such business that it intends to participate in the Work as described in the DB Contractor's commitment.

4. The DB Contractor will be required to report participation by DBEs in the Work obtained through race-neutral means throughout the performance of the Construction Phase Work.

5. The DB Contractor shall promptly notify the Program Manager and the Authority whenever a previously identified DBE Subcontractor is terminated or fails to complete its work, and shall make good faith efforts to engage another DBE or other minority business as a Subcontractor to perform the same amount of work. The DB Contractor shall not terminate any DBE Subcontractor and Self-Perform the work of such DBE Subcontractor through the DB Contractor's own forces or those of an affiliate without the prior written consent of the Authority.

EXHIBIT I
INSURANCE AND BONDING REQUIREMENTS

ARTICLE 1.
CONTRACTOR'S INSURANCE

1.1 Builder's Risk

1.1.1 Period. The DB Contractor shall obtain the policy prior to the commencement of Construction Phase Work and maintain it until Final Completion.

1.1.2 Insureds. The State-Related Parties, the DB Contractor, and its Subcontractors (all tiers) shall be named insureds.

1.1.3 Loss Payee. The Authority and ADOC shall each be named as loss payee. The proceeds of the policy shall be held by the loss payee and timely applied to reasonable costs incurred to clean-up, repair, and replace the loss or damage the Project.

1.1.4 Minimum Limits. The policy shall provide coverage per occurrence up to the full replacement cost or a loss limit based on a Probable Maximum Loss (PML) study of the covered property loss, but in no event less than \$100,000,000 with no risk of co-insurance penalty. One-year (365 days) delay in startup.

1.1.5 Maximum Deductible / Self-Insured Retention (SIR). Maximum deductibles in the following amounts for claims arising from the following: (i) for earthquake and/or windstorm, *the greater of \$1,000,000 and 5% of insured value at the time of loss*; (ii) for direct damage resulting from flood, water damage and inundation, \$1,000,000; and (iii) for direct damage resulting from all other insured perils, \$1,000,000.

1.1.6 Form and Requirements. The builder's risk insurance policy shall cover "all risk" of direct physical loss or damage (including, but not limited to the perils of terrorism, fire, lightning, explosion, collapse, wind, flood, storm, windstorm, hurricane, tornado, resulting damage from faulty workmanship or design error (LEG3), and earth movement/earthquake) to any portion or elements of the Project. The policy shall be specific to the Project and contain extensions of coverage typical for a project of the nature of the Project. Coverage shall include, on a sub-limited basis, demolition and debris removal, soft costs, property in transit or in storage, temporary works, and costs for building code compliance. Coverage shall also be provided for delay in start-up/loss of revenue including extra expense.

1.2 Commercial General Liability

1.2.1 Period. At all times prior to Final Completion, the DB Contractor and each of its Subcontractors shall obtain and keep in force commercial general liability insurance as specified below.

1.2.2 Insureds. The DB Contractor shall be a named insured and the State-Related Parties shall be additional insureds.

1.2.3 Minimum Limits. The policy shall have limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, aggregate limit applicable on a per project basis. Defense costs shall be in addition to the limit.

1.2.4 Maximum Deductible / SIR. The maximum deductible shall be \$1,000,000.

1.2.5 Form and Requirements. The commercial general liability insurance shall be written on an occurrence basis and include, but not be limited to, coverage for premises and operations, independent contractors, personal injury, products and completed operations, broad form property damage, and contractual liability. The policy need not be project specific. The policy shall not include any endorsement or modification of the commercial general liability insurance coverage limiting the scope of coverage for liability arising from explosion, collapse, and underground property damage or for work within fifty (50) feet of a railroad. The policy shall include a standard separation of insureds/cross-liability clause.

1.3 Commercial Automobile Liability

1.3.1 Form. At all times prior to Final Completion, the DB Contractor and each of its Subcontractors shall obtain and keep in force, or shall cause to be obtained and kept in force, commercial automobile liability insurance as specified below. Such coverage need not be project-specific.

1.3.2 Insureds. The DB Contractor shall be the named insured under its automobile liability policy. The State-Related Parties shall be named as additional insureds on a primary, non-contributory basis.

1.3.3 Minimum Limits. The DB Contractor's policy shall have limits not less than \$1,000,000 each accident. The DB Contractor and Subcontractors shall carry Automobile Liability Insurance with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired or borrowed vehicles on site or off.

1.3.4 Maximum Deductible / SIR. The maximum deductible shall be \$500,000.

1.3.5 Form and Requirements. Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Project, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project. Commercial auto liability insurance is also required for all other consultants, design professionals, contractors, subcontractors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others employed by the DB Contractor, as well as those who merely transport, pickup, deliver, or carry materials, personnel, parts or equipment or any other items or persons to or from the Site.

1.4 Workers' Compensation and Employer's Liability

1.4.1 Period. At all times when work is being performed by any employee of DB Contractor, subcontractors, subconsultants, design engineering firms, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pickup, deliver, or carry materials, personnel, parts or equipment or any other items or persons to or from the Project, the DB Contractor, subcontractors and other parties as noted above, each shall procure and keep in force, or cause to be procured and kept in force, a policy of Workers' Compensation Insurance in conformance with applicable law.

1.4.2 Insureds. The DB Contractor, subcontractors, subconsultants, design engineering firms etc., whichever is the applicable employer, shall be the named insured on these policies. Such coverage need not be project-specific.

1.4.3 Minimum Limits. The policy shall have limits for statutory workers' compensation coverage (Coverage A) and employer's liability coverage (Coverage B) of at least \$1,000,000 for bodily injury by accident, each accident, and \$1,000,000 for bodily injury by disease, each employee.

1.4.4 Maximum Deductible / SIR. The maximum deductible shall be \$1,000,000.

1.4.5 Form and Requirements. The workers' compensation and employer's liability insurance policy shall be kept in force as required by Applicable Law. The policy coverage shall be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act, Federal Employers Liability Act and the Jones Act.

1.5 Umbrella or Excess Liability

1.5.1 Period. At all times prior to Final Completion, the DB Contractor shall obtain and keep in force Umbrella or Excess Liability insurance as specified below.

1.5.2 Insureds. The DB Contractor shall be a named insured and the State-Related Parties shall be additional insureds.

1.5.3 Minimum Limits. The minimum limits shall be \$50,000,000 per occurrence/aggregate.

1.5.4 Maximum Deductible / SIR. The maximum deductible shall be the underlying limits.

1.5.5 Form and Requirements. Such policy or policies shall be excess of and follow form over the general liability, automobile liability and employers liability insurance required above. The policy need not be project-specific.

1.6 Pollution Liability

1.6.1 Period. The DB Contractor and appropriate Subcontractors (based on the scope of such Subcontractors' work) shall obtain the policy prior to the commencement of construction Work (or, in the case of a Subcontractor, prior to commencement of their work) and maintain it until Final Completion. Completed Operations Extension shall continue to be carried for a period of seven (7) years after the Final Completion Date.

1.6.2 Insureds. The DB Contractor shall be the named insured, and the State-Related Parties shall be the additional insureds under such policy. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other insureds. The insured vs. insured exclusion shall not apply to insureds named to the policy.

1.6.3 Minimum Limits. The DB Contractor's policy shall have a limit of at least \$20,000,000 per occurrence and in the aggregate. For any Subcontractor required to carry Pollution Liability coverage, the limit shall be determined by the DB Contractor upon recommendation of its qualified insurance broker or advisor, but such limit shall be subject to reasonable objection by the Authority (without adjustment to the FGMP if already established at the time of the Authority's reasonable objection).

1.6.4 Maximum Deductible / SIR. The policy shall have a maximum deductible of \$100,000.

1.6.5 Form and Requirements. The pollution liability insurance shall at a minimum provide coverage for all Work and other operations at the Site as described under the scope of service of the contract, any transportation and any non-owned, off-site disposal and shall include all claims related to bodily injury (including sickness, disease, mental anguish or shock sustained by any person, including death; and medical monitoring), property damage (including diminution of value and Natural Resource Damages), and clean-up and remediation costs for sudden and non-sudden pollution conditions. There should be no exclusions for asbestos, lead paint, silica, mold, fungus or legionella. The policy needs to be project-specific.

1.7 Professional Liability

1.7.1 Period. The DB Contractor and Design Professionals shall obtain Professional Liability coverage as described herein. The retroactive date under such policy or policies must be equal to or before the date the DB Contractor and/or lead Design Professional began work on the Project. Coverage shall continue for seven (7) years after Final Completion (Alabama Statute of Repose).

1.7.2 Insureds. The DB Contractor and lead Design Professional and shall be named insureds on their respective policy or policies. The State-Related shall be named as indemnified parties on such policies (whether carried by the DB Contractor and/or the lead Design Professional).

1.7.3 Limits. The policy limit shall be (a) for the DB Contractor, \$25,000,000 per claim and aggregate; and (b) for the lead Design Professional, \$10,000,000 per claim and aggregate. For any other Design Professional or Subcontractor providing design or other professional services during the term of this Contract, the limit shall be determined by the DB Contractor upon recommendation of its qualified insurance broker or advisor, but such limit shall be subject to reasonable objection by the Authority. Such coverage need not be project-specific.

1.7.4 Maximum Deductible / SIR. The maximum deductible shall be \$1,000,000.

1.7.5 Form and Requirements. The policy (or policies, if a multiple policy approach is utilized) shall have a retroactive date prior to the start of any design Work on the project.

ARTICLE 2. PAYMENT AND PERFORMANCE BONDS

The DB Contractor shall furnish payment and performance bonds covering faithful performance and completion of this Contract and the payment of all obligations arising hereunder, and shall maintain such bonds in full force and effect until Final Completion. The DB Contractor shall furnish and deliver such bonds to the Authority upon execution of this Agreement. The Contract Sum shall not include, and the Authority shall not otherwise be responsible or liable for, the cost of the premium of any bond unless such bond meets the requirements set forth herein.

2.1 General Requirements for Bonds

2.1.1 As of the Effective Date, the DB Contractor shall have furnished a payment bond and a performance bond, each in an amount equal to the Design Phase Sum. Thereafter, as the DB Contractor is authorized to proceed with Construction Work pursuant to Work Package Authorization or GMP Amendment, the amount of each such bond shall be increased by (or additional bonds shall be issued in) an amount equal to the GMP (or other agreed compensation sum) for such authorized Work. Notwithstanding the foregoing, from and after the FGMP Effective Date until Final Completion, the DB Contractor shall furnish and maintain a payment bond and a performance bond each in an amount (or, in the case of multiple bonds, each in an aggregate amount) at least equal to the FGMP.

2.1.2 Such bonds shall be issued by a surety licensed and authorized to do business in the State. Such surety shall be acceptable to the Authority and shall also hold a certificate of authority from the United States Treasury to qualify as surety on obligations permitted or required under federal Law. The surety shall designate an agent resident in the county in which the Site is located to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

2.1.3 Such bonds shall be in a form and substance satisfactory to the Authority, and shall name the Authority and the ADOC as dual obligees.

2.2 Additional Requirements for Payment Bonds

2.2.1 The payment bond furnished by the DB Contractor hereunder shall satisfy all requirements under Law applicable to the Site.

2.2.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Contract, the DB Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Authority shall furnish information to a payment bond beneficiary as required by applicable Law.

EXHIBIT J
SPECIAL CONDITIONS OF THE PROGRAM MANAGER

[See attached]

EXHIBIT J
SPECIAL CONDITIONS OF THE PROGRAM MANAGER

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SPECIAL CONDITIONS OF THE PROGRAM MANAGER

PART 1. GENERAL

These Special Conditions of the Program Manager ("**Special Conditions**") apply to all Work to be completed by the DB Contractor, including design, engineering, construction, procurement, and other services and items that are necessary or appropriate to design, construct, execute, and complete the Project in accordance with the Contract Documents.

PART 2. PROJECT MANAGEMENT AND COORDINATION

2.1 General. This Part 2 is intended to provide guidelines for project management and coordination between the DB Contractor, the Program Manager, the ADOC, and the Authority during the performance of the Work. All guidelines herein are intended to provide the Authority, ADOC, and Program Manager updates on progress of design and construction and opportunity to review project documentation. However, no review, comment, confirmation, or acceptance of any DB Contractor submittal by the Authority, the ADOC, or their consultants, including the Program Manager, shall be deemed to transfer any design liability from the DB Contractor to the Authority, ADOC, or Program Manager, nor shall it operate to relieve the DB Contractor of its responsibility and liability for performance under the Contract Documents or for the accuracy and adequacy of plans, drawings, and other documents that are the DB Contractor's responsibility under the Contract Documents.

This Part 2 includes administrative provisions for review of documents and interaction between the Authority, the ADOC, the Program Manager, and the DB Contractor during the performance of the Work, including the following:

- (a) Project Management System;
- (b) Administrative and Project Management Documents;
- (c) Project Meetings; and
- (d) Requests for Information (RFIs).

2.2 Project Management System. The DB Contractor shall use the web-based project management system specified by the Authority (the "**Project Management System**") for management, storage, transmission, and receipt of electronic data, files, and communications. The DB Contractor and the Program Manager shall use the Project Management System during all phases of design and construction through Final Completion of the Work.

2.2.1 The purpose of the Project Management System is to (1) improve project work efforts by promoting timely communications between the DB Contractor and the Program Manager, (2) reduce the exchange of paper documents while providing improved recordkeeping by creation of electronic document files readily accessible by the Authority, ADOC, and Program Manager and (3) provide for transparency and accountability in the contract administration process. By specifying the Project Management System, the Authority does not intend to manage the flow of information amongst the DB Contractor and its Design Professionals and Subcontractors, and the Project Management System is not intended to supplant the DB Contractor's own system for managing and communicating with its design and construction Subcontractors and employees.

2.2.2 As of the Effective Date, the Authority has specified Procore as the preferred software solution for the Project Management System. The DB Contractor may propose an alternative software solution for the Project Management System for the Authority's approval, *provided* that such solution provides to the Authority, the ADOC, and the Program Manager ready access and archive of Project Records and is available to the Authority from the date of the initial Notice to Proceed issued by the Authority and continuing throughout the duration of the Contract. Any use of an alternative software solution for the Project Management System shall be subject to the Authority's approval, in its discretion.

2.3 Administrative and Project Management Documents

2.3.1 Schedules and Meeting Documents. In accordance with a schedule agreed by the Parties prior to commencement of Construction Work at the Site, the DB Contractor shall prepare, update, and keep current, and provide to the Program Manager and ADOC for their review, and for review and acceptance by the Authority, the documents listed below, each in a form and with such detail as is reasonably acceptable to the Authority.

- (a) DB Contractor's Schedule for the Project;
- (b) DB Contractor's Submittal Schedule;
- (c) Weekly Coordination Meeting Agendas and Minutes;
- (d) Preconstruction Conference Agenda and Minutes;
- (e) Monthly Project Status Review Meeting Agendas and Minutes; and
- (f) Quarterly Program Status Review Meeting Agendas and Minutes.

2.3.2 Subcontractor/Vendor List. Prior to receiving Notice to Proceed, the DB Contractor shall have provided the ADOC and Program Manager with a complete list of its design Subcontractors at any tier. With or before submission of each GMP Proposal (including the FGMP Proposal), the DB Contractor shall provide a complete list of Subcontractors at any tier for performance of the applicable scope of Work. The DB Contractor shall update the Subcontractor list on a monthly basis (with respect to each Subcontract with a value in excess of \$50,000) until Final Completion.

2.3.3 Closeout and Startup Documents. In accordance with a schedule agreed by the Parties prior to the commencement of such activities, the DB Contractor shall prepare, update, and keep current the below-listed documents during the course of construction completion, commissioning, closeout, and startup, to enable the ADOC and Program Manager to monitor the progress of such activities on behalf of the Authority.

- (a) Closeout inspection and punch list preparation documents;
- (b) Project closeout activities summary; and
- (c) Startup and adjustment of systems summary.

2.3.4 Other Lists, Logs, and Progress Documents. During the progress of the Work, other logs, lists, or other documents may be needed to track project status. The DB Contractor will provide such additional progress documents as are reasonably requested by the Authority or Program Manager to enable the ADOC and Program Manager, on behalf of the Authority, to monitor the overall progress of the Work, delivery of the Project in accordance with the Contract Documents, and achievement of the Project Milestones.

2.3.5 Updates. The DB Contractor shall provide updates of the documents required by this Section 2.3 to the ADOC and Program Manager (a) at least once per month until Final Completion (or more frequently if specified in these Special Conditions or otherwise agreed by the Parties) and (b) reasonably promptly after any material modification.

2.4 Project Meetings. The DB Contractor shall schedule and conduct coordination, safety, training, and progress conferences at the Project Site, unless otherwise agreed by the Parties. The Authority reserve the right to attend, and have its designees attend, any such meeting, including attendance by the ADOC and/or the Program Manager their capacities as the Authority's representative and consultant, respectively. As requested by the Authority, it and its designees, including the ADOC and Program Manager, shall be provided, for their reference only, associated meeting materials.

2.4.1 General Requirements

2.4.1.1 Attendees. The DB Contractor shall inform the Design Professionals, other relevant Subcontractors, specific individuals whose presence is required, and others reasonably implicated or impacted by the topic of the meeting, of the date, time, and subject(s) of each meeting. The DB Contractor shall notify the ADOC and Program Manager of all scheduled meeting dates and times.

2.4.1.2 Agenda. The DB Contractor shall prepare the meeting agenda and submit to the ADOC and Program Manager no later than five Business Days prior to each meeting.

2.4.1.3 Minutes. The DB Contractor shall provide minutes of each meeting to the ADOC and Program Manager not later than three Business Days after the date of such meeting. Such minutes shall record significant discussions and agreements reached. The meeting attendees will have the opportunity to respond to the DB Contractor's minutes with any recommended changes.

2.4.2 Weekly Coordination Meetings. The DB Contractor is expected to schedule and conduct coordination meetings with the Design Professionals and all appropriate Subcontractors at least weekly during design and construction.

2.4.3 Preconstruction Conference. Prior to the start of construction, the DB Contractor will schedule and conduct a **"Preconstruction Conference."** The conference date, time, and location shall be specified by the DB Contractor, providing reasonable accommodation to the Authority, the ADOC, and the Program Manager to facilitate their attendance. The DB Contractor will conduct the meeting to review responsibilities and personnel assignments for Construction Work.

2.4.3.1 Attendees. Authorized representatives of the DB Contractor and the Authority (including the ADOC) and their respective consultants (including the Program Manager), as well as the Design Professionals and representatives of major Subcontractors, shall attend the conference. All participants at the conference shall be familiar with Project and authorized to decide matters relating to the Work.

2.4.3.2 Agenda. Responsible parties shall discuss items of significance that could affect the performance or progress of the Work. Such topics are anticipated to include: (a) the DB Contractor's Schedule for the Project, particularly focusing on the construction schedule, and including preliminary network diagram, critical work sequencing, and long-lead items; (b) Change Order, Excusable Event, and administrative procedures; (c) procedures for processing Subcontractor submittals and for making field decisions; (d) procedures for testing and inspections; (e) preparation of Project Record Documents; (f) the DB Contractor's Safety Plan, first-aid, and Project and site security; (g) the DB Contractor's Quality Control Plan; (h) the DB Contractor's Environmental Protection Plan; and (i) use of the Site, including temporary facilities, work areas, office and storage areas, and parking. To the extent that the foregoing topics are not

discussed at the Preconstruction Conference which is attended by the Authority (or ADOC, as the Authority's representative) and the Program Manager, the DB Contractor shall inform the Authority, ADOC, and Program Manager of the date and time of the meeting(s) at which such topics will be discussed, and the Authority, ADOC, and Program Manager shall have the right to attend any such meeting and shall be provided, for reference only, materials provided in connection with such meeting.

2.4.4 Monthly Project Status Review Meeting. The DB Contractor shall schedule and conduct meetings on a monthly basis during the Improvement Work to provide the ADOC and Program Manager, for their benefit and the benefit of the Authority, comprehensive updates on the progress of the Work. This meeting will be held during the last week of each month, unless otherwise agreed by the Parties. The Parties agree to reserve one full Business Day each month to conduct this meeting with appropriate representatives from each Party.

2.4.4.1 Attendees. The DB Contractor and the ADOC and the Program Manager, as or in addition to representatives of the Authority, and their respective associated consultants, as appropriate given the agenda.

2.4.4.2 Agenda. The DB Contractor shall provide comprehensive review of the status of the Work, project documentation, finances, schedule, and any issues that could affect project quality or time, including timely achievement of Project Milestones. The review shall include the following: (a) sequence of operations; (b) status of submittals and RFIs; (c) status of correction of nonconforming Work or otherwise defective Work or other deficient items; (d) field observations; (e) pending Changes in the Work and status of Change Orders and Change Requests; and (f) pending Claims and disputes. The agenda must be approved in advance by the ADOC and Program Manager, each acting in their respective capacities on behalf of the Authority.

2.4.5 Quarterly Program Status Review Meeting. The Program Manager, acting on behalf of the Authority and ADOC, will schedule and conduct a meeting once per quarter during the Work to provide the Authority, ADOC, and Program Manager comprehensive updates on the Work. This meeting will be held during the last week of each month, unless otherwise agreed by the Parties, and may be held in conjunction with the monthly project status review meeting. The DB Contractor shall reserve two to three Business Days to conduct this meeting.

2.4.5.1 Attendees. The DB Contractor, the Authority, the ADOC, and the Program Manager, their associated respective consultants, and any other designees of the Authority whose attendance the Authority deems appropriate, given the agenda.

2.4.5.2 Agenda. Responsible parties shall discuss items of significance that could affect the performance and progress of the Work and timely completion and delivery of the Project to the Authority, including: (a) the DB Contractor's Schedule and the projected Final Completion Date; (b) the DB Contractor's schedules for plan review, inspections, and commissioning; (c) the DB Contractor's Quality Control Plan; (d) Project and site safety and security; (e) Project risks and mitigation efforts; (f) the ADOC's plans and schedule for transition of operations to the Facility; (g) FF&E procurement and operations plans; and (h) public relations and media communications. The agenda must be approved in advance by the Authority and ADOC.

2.5 Requests for Information. The DB Contractor will provide to the ADOC and Program Manager, for their information only, copies of Subcontractor requests for information ("**RFIs**"). If an RFI requires response or action from the Authority or the ADOC, the DB Contractor will submit such RFI to the ADOC and Program Manager (via the Project Management System) with sufficient supporting documentation to enable the

Authority or ADOC, as applicable, to respond appropriately, including a description of any expected change in the Design or Construction Documents or other impact to the Contract Documents.

2.6 Pre-Installation Conferences. The DB Contractor shall conduct a pre-installation conference at the Site before each construction activity that requires coordination with other construction.

2.6.1 Attendees. The installer and representatives of manufacturers and fabricators involved in or affected by the installation, and its coordination or integration with other materials and installations that have preceded or will follow, shall attend the meeting. The DB Contractor shall notify the ADOC and Program Manager sufficiently in advance of scheduled meeting dates to allow their attendance at such meetings.

2.6.2 Agenda. Notification of conference and agenda shall be distributed 10 days in advance of meeting date. Participants will review progress of other construction activities and preparations for the particular activity under consideration. The agenda must be approved in advance by the ADOC and Program Manager.

2.7 Temporary Utilities

2.7.1 Construction Power and Water. The DB Contractor shall be responsible for furnishing and installing all materials, equipment, and incidentals necessary to expand, connect to and extend temporary power and water service from the connection point(s) provided by Enabling Works Contractor(s) to the buildings as necessary to complete the Work. The DB Contractor shall coordinate with the Enabling Works Designer(s) and Contractor(s) on the performance of their respective scopes of work to minimize interference and ensure the completion of the Project in accordance with the Schedule. The DB Contractor shall be responsible for all temporary construction power and water consumption charges until Final Completion, including providing and paying for the DB Contractor's own job trailer power and water.

2.7.2 Temporary Field Offices. The DB Contractor shall be responsible for establishing, providing and paying for all utility services and bills required to run the temporary field offices described in Section 7.15.6 of the Agreement (*Use of Site*), including power, water, phone/internet, gas, and sanitary sewer.

2.8 Site Security and Management Program. By execution of the Contract, the Parties agree that a Site Security and Management Program (SSMP) will be incorporated as part of the Work. Site access will be controlled via the SSMP, and the DB Contractor's workers will be required to log "in" and "out" as they enter and exit the site at the defined terminal location(s) established by Site Logistics Plan submitted by the DB Contractor and approved by the Program Manager and the ADOC (acting on its own behalf and as representative of the Authority). The Authority has specified SiteTraxx as the preferred software solution for the SSMP.

PART 3. SAFETY DOCUMENTATION

3.1 General. The DB Contractor shall be fully and solely responsible for all safety at the Site prior to the Final Completion Date and at all times during performance of the Work, including responsibility for initiating and executing all safety plans and precautions in connection with the DB Contractor's construction of the Project in accordance with applicable Law, the requirements of the Contract Documents, and good industry practice (including, as applicable, the Professional Standard). The inclusion of this Part 3 in these Special Conditions is intended only to encourage safety in the Work performed prior to the Final Completion Date and does not relieve the DB Contractor of its responsibility for safety on site and for compliance with applicable safety Laws. It is acknowledged that the requirements of this Part 3 are in no way comprehensive

of the DB Contractor's obligations with respect to safety on the Project. Prior to the Final Completion Date, during which period the DB Contractor is in care, custody, and control of the Site, none of the State Parties, nor the Program Manager, assumes any responsibility or liability for the safety or security of the Site or any improvements thereon. None of the State Parties nor the Program Manager shall have control over or charge of safety plans and precautions undertaken in connection with the Construction Work. Furthermore, none of the State Parties nor the Program Manager assume any responsibility or liability with respect to initiation, implementation, and enforcement of the DB Contractor's safety plans and practices, and in no event shall any possession, review, comment, or acceptance by any State Party or the Program Manager of any of the DB Contractor's safety plans or submittals be construed to create such a responsibility or liability on any State Party or the Program Manager, nor shall any such possession, review, comment, acceptance, or approval operate to relieve the DB Contractor of its responsibility and liability for safety hereunder.

3.2 Project Safety. The DB Contractor shall supervise and direct the Work. The DB Contractor shall be solely responsible for, and shall have control over, all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work in accordance with the Contract Documents. None of the State Parties nor the Program Manager shall have control over or charge of, and none of them shall be responsible for, construction means, methods, techniques, sequences, or procedures in connection with the Work.

3.2.1 Safety. The DB Contractor and all Subcontractors working at the Site shall be responsible for implementing and maintaining their own Safety and Health Program in accordance with Occupational Safety and Health Act (OSHA) and applicable State and local Laws.

3.2.2 Implementation. The DB Contractor shall be responsible for initiating the safety program, ensuring that jobsite safety requirements and procedures are being executed, conducting safety inspections of work being performed, conducting (at a minimum) a weekly safety meeting with trade Subcontractors and employees, and compiling a weekly report documenting safety activities. The DB Contractor will also be responsible for a continuing survey of its operations, to ensure that the probable causes of injury or accident are controlled, and that operating equipment, tools, and facilities are used, inspected, and maintained as required by applicable Laws as they pertain to public or worker health and safety, safety programs, and the prevention of accidents.

3.2.3 Reports. The DB Contractor will provide to the ADOC (as the Authority's representative) and the Program Manager, within 24 hours, a copy of all reports relating to any jobsite accident or injury during the DB Contractor's performance of the Work that the DB Contractor has provided to Governmental Authorities having jurisdiction over the Project or to insurance companies in respect of applicable insurance policies required to be maintained by the DB Contractor pursuant to the Contract Documents.

3.2.4 Hazardous Materials. The DB Contractor shall comply with and give notices required by applicable Law (including under OSHA) with respect to Hazardous Materials.

3.2.5 OSHA Permits and Programs. The DB Contractor shall initiate and maintain such permits and programs as may be necessary to comply with requirements under OSHA and other similar applicable Laws. A copy of all such permits shall be provided to the ADOC (as the Authority's representative) and Program Manager promptly upon receipt.

3.3 Construction Safety. The DB Contractor shall provide, institute, and implement the following:

3.3.1 Security Program. The DB Contractor is responsible for the security of its workers, tools, materials, and equipment on (and to and from) the jobsite prior to the Final Completion Date. During the course of any Work performed while any State-Related Party is onsite for inspection and commissioning

activities, all small tools and construction equipment belonging to the DB Contractor should be clearly identified as such. Tools, including personal tools, are subject to inspection by the Authority, the ADOC, and/or the Program Manager during the Work. Except to the extent expressly provided otherwise in the Contract Documents with respect to the acts and omissions of the Parties, the State Parties and the Program Manager disclaim any and all responsibility for the security of the DB Contractor's tools, materials, and equipment on (and to and from) the jobsite.

3.3.2 Construction Area Limits. The DB Contractor will designate the boundary limits of access roads, parking areas, storage areas, and construction areas.

3.3.3 Clean up. The DB Contractor shall provide adequate trash receptacles and shall maintain and keep the areas clean and free of trash and debris (construction or otherwise).

3.4 Crisis Management and Communication Plan. The DB Contractor shall develop and maintain a Crisis Management and Communications Plan with respect to the Work. Such a plan must address at least the following:

- (a) Protection of life and property;
- (b) Damage survey;
- (c) Event responses;
- (d) Emergency communication protocol;
- (e) Media relations in coordination with the ADOC's Public Information Office; and
- (f) Crisis preparedness.

PART 4. QUALITY GUIDELINES

4.1 General. This Part 4 includes administrative and procedural guidelines for quality assurance and quality control for the Work. Specific quality assurance and quality control programs and measures for individual construction activities are the responsibility of the DB Contractor to maintain and administer. The Authority and Program Manager each reserves the right to review, and the Authority reserves the right to have its designees (including the ADOC) review, any documentation thereof, but none of the State Parties nor the Program Manager shall in any way be held responsible or liable for the creation and implementation of said quality measures.

4.2 Quality Control System. The DB Contractor shall establish and maintain a system for documenting, monitoring, inspecting, verifying, and testing of the Work (including work performed by Subcontractors) to ensure that all applicable requirements of the Contract Documents are met. The DB Contractor shall be diligent to ensure that the quality of workmanship is satisfactory, that the installation meets all manufacturer requirements, that dimensional requirements are met, that defective materials are not used, and that all required protection and control and laboratory testing procedures are effected.

4.3 Testing and Inspections. Testing and inspecting services, including review by the State Department of Finance Division of Construction Management, may be required to verify compliance with requirements specified or indicated in the Contract Documents.

4.3.1 Specified Tests and Inspections. Specific test and inspection requirements are not specified in this Part 4, but may be required pursuant to the Project Criteria (as they may be modified in accordance with the Agreement) or Design-Build Documents. Tests, inspections, and related actions

specified in the Contract Documents do not limit the DB Contractor's responsibility for other quality assurance and quality control procedures that facilitate compliance with the requirements of the Contract Documents.

4.3.2 Other Testing. Where specific testing procedures are not stipulated, the DB Contractor shall establish and conduct a test procedure to ensure adherence to specified quality.

4.4 DB Contractor's Quality Control Plan

4.4.1 General. The DB Contractor shall submit to the ADOC (as the Authority's representative) and the Program Manager a quality control plan as described in this Section 4.4 (the "**Quality Control Plan**") not later than 10 days prior to commencement of Construction Work, and not later than five days prior to the scheduled date of the Preconstruction Conference. Such plan shall identify personnel, procedures, controls, instructions, tests, records, and forms to be used to carry out the DB Contractor's quality assurance and quality control responsibilities. The DB Contractor's Quality Control Plan shall be coordinated with the DB Contractor's Schedule.

4.4.2 Testing and Inspection. In the Quality Control Plan, the DB Contractor shall include a comprehensive schedule of Construction Work requiring testing or inspection, including the following:

4.4.2.1 Tests and inspections to be performed or furnished by the DB Contractor, including Subcontractor-performed tests and inspections. The plan shall identify both required and DB Contractor-elected tests and inspections.

4.4.2.2 Special inspections required by Governmental Authorities having jurisdiction over the Work.

4.4.3 Monitoring and Documentation. The DB Contractor shall maintain (and the DB Contractor's Quality Control Plan shall include requirements for) testing and inspection reports, including a log of approved and rejected results. Such documentation shall indicate corrective actions taken to bring nonconforming Work into compliance with requirements of the Contract Documents. The DB Contractor shall provide copies of such documentation to the ADOC and Program Manager and, as requested by the Authority, any other Authority designee. The DB Contractor's monitoring activities and documentation shall comply with all requirements of Governmental Authorities having jurisdiction over the Work.

4.5 DB Contractor's Responsibility for Quality Control. The DB Contractor shall perform, or cause to be performed, such additional quality control activities as are necessary or appropriate to verify that the Work complies with the requirements in the Contract Documents and of Governmental Authorities having jurisdiction over the Improvement Work.

PART 5. SUBMITTAL PROCEDURES

5.1 General

5.1.1 DB Contractor Submittals. The DB Contractor shall submit to the ADOC (for its review on its own behalf and as representative of the Authority) and Program Manager the design submittals required pursuant to Contract Documents in compliance therewith. In addition, the DB Contractor shall submit to the ADOC and Program Manager the following (including any updates to the same): :

- (a) Project layouts;
- (b) Detail schedules;

- (c) Shop drawings;
- (d) Setting or erection drawings for installation of materials;
- (e) Product data; and
- (f) Testing reports.

5.1.2 Subcontractor Submittals. The DB Contractor shall be responsible to the State Parties and the Program Manager for the accuracy and completeness of submittals prepared by Subcontractors. The DB Contractor shall carefully review and check Subcontractors' shop drawings and other submittals for accuracy, to see that work contiguous with and having bearing on work is properly indicated on shop drawings, and to confirm that such shop drawings are dated, numbered consecutively, show working and erection dimensions and other necessary details, and include complete information for connecting to other Work.

5.2 Review of Informational Submittals.

5.2.1 The State Parties (or other designees of the Authority) may recommend or request corrections or revisions to submittals provided only for information or review, and the DB Contractor may elect to provide in its submittal schedule for additional time to incorporate corrections or revisions that are agreed by the DB Contractor or required for conformance with the requirements of the Contract Documents. In the event that the DB Contractor needs to present a submittal that requires action from the Authority or another State Party, such submittal shall be expressly labeled as such and shall be separately submitted to the ADOC (as representative of the Authority) and the Program Manager, accompanied by documentation explaining the requested action.

5.2.2 The DB Contractor at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents. None of the State Parties nor the Program Manager are responsible to review submittals for accuracy or field measurement verification, completeness, compliance, or otherwise. No review or comment by any State Party or the Program Manager, or lack thereof, shall relieve the DB Contractor of such responsibility, nor shall it operate to waive any right or remedy the Authority (or any other State Party, as beneficiary as expressly provided in the Contract) may have under the Contract Documents, at Law, or in equity, for nonconforming or defective Work or otherwise.

5.2.3 No review, comment, confirmation, acceptance, or approval by the Authority or the ADOC shall be construed as review, comment, confirmation, or approval by any Governmental Authority (other than the Authority or the ADOC, as applicable) having jurisdiction over the Project. Commentary and input on submittals by the State Department of Finance Division of Construction Management may be provided by the Authority or the ADOC or Program Manager (as the Authority's representatives) to the DB Contractor.

5.3 Submittal Process

5.3.1 Submittal Schedule. The DB Contractor shall submit to the ADOC (as representative of the Authority) and the Program Manager a schedule of submittals (both design submittals pursuant to Article 7 of the Agreement and other submittals as required pursuant to Section 5.1 hereof), arranged in chronological order by the relevant dates in the DB Contractor's Schedule, and coordinated with its construction schedule and Subcontracts. Such schedule, in establishing submittal dates, shall include time required for any DB Contractor internal review (e.g., with respect to a Subcontractor submittal) and the time required or allowed under the Contract Documents (depending on whether the submittal is for approval/acceptance or for review only) for review by or on behalf of the Authority (including by any other State Party or the Program Manager), as well as any time necessary for ordering, manufacturing, fabrication,

and delivery in relation to the submittal. The submittal schedule shall be submitted to the ADOC (as representative of the Authority) and the Program Manager as follows:

5.3.1.1 Initial Draft Construction Phase Submittal Schedule. Submit concurrently with startup construction schedule prior to the start of construction activities. Include submittals required during the first 60 days of construction. List those submittals required to maintain orderly progress of the Construction Work and those required early because of long lead time for manufacture or fabrication.

5.3.1.2 Final Construction Phase Submittal Schedule. Submit concurrently with the first complete submittal of the DB Contractor's construction schedule (as a detailed component of the Schedule).

5.3.1.3 Submittal Schedule Revisions. Submit a revised submittal schedule periodically, no less frequently than monthly, to reflect changes in current status and timing for submittals.

5.3.1.4 Format. Arrange the following information in a tabular format:

- (a) Scheduled date for first submittal;
- (b) Specification Section number and title;
- (c) Submittal category: Action; informational;
- (d) Name of Subcontractor;
- (e) Description of the work covered;
- (f) Scheduled date for any State Party action required or requested by the DB Contractor;
- (g) Scheduled date of fabrication;
- (h) Scheduled dates for purchasing;
- (i) Scheduled dates for installation; and
- (j) Activity or event number.

5.3.2 Electronic Submittals. All electronic submittals shall be provided to the ADOC (as representative of the Authority) and the Program Manager through the Project Management System. Each electronic submittal file shall comply with the following requirements:

5.3.2.1 Assemble each complete submittal package into a single, indexed file incorporating the submittal requirements of each applicable specification and any applicable transmittal form, with links enabling navigation to each item.

5.3.2.2 Name file with submittal number or other unique identifier, including revision identifier.

PART 6. PROGRESS DOCUMENTATION

6.1 General. This Part 6 includes administrative and procedural requirements for documenting the progress of the Initial Improvement Work, which shall include weekly and monthly progress reports and scheduling.

6.2 Weekly and Monthly Progress Reports. The DB Contractor shall provide weekly and monthly progress reports, each in a form reasonably acceptable to the DB Contractor and the Authority (including as directed by the ADOC or the Program Manager, acting on behalf of the Authority), covering or including the following: (a) risk management; (b) achievements; (c) progress photos; (d) quality reports; (e) progress schedule updates; and (f) other topics as may be reasonably requested by the Authority, ADOC, or Program Manager. Weekly reports shall be provided by noon on each Thursday. Monthly reports shall be provided for each month on or before close of business on the fifth day of the following month.

6.3 DB Contractor Progress Schedules

6.3.1 Project Schedule Development

6.3.1.1 The DB Contractor shall plan and schedule the Work and report progress to the Authority (via its representative, the ADOC) and the Program Manager using a Schedule covering design, construction, procurement, commissioning, closeout, and turnover activities. The Project Schedule shall use the critical path method and shall provide a practicable baseline informing the State Parties and Program Manager of the order in which the DB Contractor plans to carry out the Work in order to achieve the Project Milestones. The DB Contractor's initial Schedules for the Design and Construction Phases are set forth in Exhibit D to the Agreement.

6.3.1.2 The DB Contractor shall periodically submit updates to the Schedule in accordance with Section 3.4 of the Agreement. Action or comment by the Authority, ADOC, or Program Manager on updates to the Schedule is not required for continuation of performance of the Work but shall be primarily for the purpose of confirming that Final Completion can be achieved by the Final Completion Deadline, reviewing the Critical Path analysis, and evaluating whether the Schedule provides an appropriate baseline for monitoring the progress of the Work and a reasonable path to the achievement of interim milestones (including the Project Milestones) on the Critical Path. Review of or comment on the DB Contractor's Schedule by a State Party or the Program Manager shall not be construed as a representation of the Authority's approval or acceptance of any schedule (whether initial, baseline, update, or revised), and approval or acceptance by the Authority (or its representatives) of the Schedule shall not, by itself and in the absence of a Change Order, modify the requirements of the Contract Documents, including the schedule commitments therein, or constitute an endorsement or validation by any State Party or the Program Manager of the DB Contractor's schedule logic, activity durations, or assumptions in creating the schedule. If a State Party or the Program Manager promptly reports to the DB Contractor, or a State Party or the Program Manager otherwise discovers and the DB Contractor is notified of, errors in the Schedule after the schedule has been reviewed by the Program Manager and the ADOC and/or accepted or approved by the Authority, the DB Contractor shall correct the error in the next Schedule update. The Authority, upon review of any schedules submitted by the DB Contractor, reserve the right to request (and the ADOC, as representative, and the Program Manager, as consultant advisor, may request on the Authority's behalf) that additional activities, events, detail, or information to be included in future schedule updates.

6.3.2 General Schedule Requirements

6.3.2.1 The Schedule, and each update thereto, shall be submitted to the ADOC (as representative of the Authority) and the Program Manager both electronically in P6 format and in hardcopy.

6.3.2.2 The Schedule shall show all activities required by all parties to complete the Work prior to Final Completion, including design, construction, procurement (including FF&E procurement), commissioning, closeout, turnover, etc. The DB Contractor shall use activity descriptions that ensure the work is easily identifiable. Activities shall be broken down in enough detail to facilitate monitoring of the

schedule on a weekly basis. This information shall include activity durations, manpower/crew size, material lead time, and key predecessors for each activity.

6.3.2.3 The Schedule shall include subcontracted work, delivery dates for critical material, submittal and review periods, Permits and approvals required from Governmental Authorities, milestone requirements, utility work by others, and any no-work periods.

6.3.2.4 Format. The Schedule shall be a detailed Critical Path Method (CPM) schedule with both tabular and graphic activity information shown side-by-side. The DB Contractor shall show all activities necessary for the completion of the project broken down by building, area, floor, and trade. The Schedule shall graphically indicate both activity bars and target bars for all activities. The Schedule shall indicate all of the following:

- (a) Activity Number
- (b) Activity Description
- (c) Target Activity Duration
- (d) Actual Activity Duration
- (e) Remaining Activity Duration
- (f) Percentage Complete
- (g) Early Start
- (h) Early Finish
- (i) Late Start
- (j) Late Finish
- (k) Target Start
- (l) Target Finish
- (m) Actual Start
- (n) Actual Finish
- (o) Milestones

6.3.2.5 Float. Float time is not for the exclusive use or benefit of either the Authority or the DB Contractor, but is a jointly owned, expiring Project resource available to both Parties as needed to meet Project Milestones. Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity. Total float is the measure of leeway in starting or completing an activity without adversely affecting the Final Completion date.

6.3.3 Project Schedule Updates

6.3.3.1 The DB Contractor shall update the Schedule on a regular basis as required pursuant to Section 3.4 of the Agreement and provide a copy of updates to the ADOC and Program Manager.

6.3.3.2 The DB Contractor will update the schedule with remaining durations, actual start and finish dates, future planned work, and any other information necessary to accurately reflect Work already completed and Work remaining.

6.3.4 Recovery Schedule. In updating process the Project Schedule, if the DB Contractor is behind on critical path activities that could materially impact the overall completion of the Work and achievement of agreed schedule commitments, including Final Completion, the DB Contractor shall, in accordance with Section 3.5 of the Agreement, prepare and submit to the ADOC (as representative of the Authority) and the Program Manager, for the ADOC's and Program Manager's review and the Authority's acceptance, a recovery schedule and recovery plan outlining the efforts that the DB Contractor will employ (e.g., additional shifts and/or manpower, overtime) to overcome the delays and bring the Work back on

schedule to achieve the Final Completion Date and any other Project Milestone by the deadline(s) for the same.

PART 7. PROJECT RECORD DOCUMENTS

7.1 General. This Part 7 includes administrative and procedural requirements for Project closeout and the “**Project Record Documents**” to include the following:

- (a) Record Drawings;
- (b) Record Specifications;
- (c) Record BIM model; and
- (d) Miscellaneous record submittals.

7.2 Submittals

7.2.1 Record Drawings. The DB Contractor shall prepare and submit to the Program Manager, who will in turn review and transmit to the Authority and ADOC: (a) three hardcopy sets of marked-up, as-built record prints and (b) three hardcopies and annotated PDF electronic files of complete record Drawings for the Project.

7.2.2 Record Specifications. The DB Contractor shall submit to the Program Manager, who will in turn review and transmit to the Authority and ADOC, three hardcopies and annotated PDF electronic files of the final record Specifications for the Project, including any addenda and modifications thereto.

7.2.3 Record Product Data. The DB Contractor shall submit to the Program Manager, who will in turn review and transmit to the Authority and ADOC, three hardcopies and annotated PDF electronic files and directories of each record product data submittal.

7.2.4 Reports. From and after the start of construction until Final Completion, on a weekly basis, the DB Contractor shall submit to the ADOC (as representative of the Authority) and Program Manager a written report indicating those items incorporated into Project Record Documents concurrent with progress of the Work, including revisions, concealed conditions, field changes, product selections, and other notations incorporated.

7.3 Record Drawings/Prints. The DB Contractor shall maintain one set of marked-up paper copies of the 100% complete Construction Documents, including record Drawings, Shop Drawings, and as-built plans, incorporating new and revised drawings as modifications are issued. Record prints shall be marked to show the actual installation where installation varies from that shown originally. The DB Contractor shall require the person who obtained the record data (including all applicable Subcontractors) to provide information for preparation of corresponding marked-up record prints.

7.4 Record Specifications. Specifications shall be marked to indicate the actual product installation where installation varies from that indicated in the specifications (including any addenda or modifications thereto).

7.5 Record BIM Model. The DB Contractor shall maintain a current as-built BIM model using a Level of Development (LOD) that is mutually agreed upon by the parties, which incorporates new and revised drawings as modifications are issued.

7.5.1 Preparation. The model shall be updated as appropriate to show the actual installation where installation varies from that shown originally. The DB Contractor shall require the person who obtained record data (including all applicable Subcontractors) to provide information for preparation of corresponding updates.

7.5.2 Content. Types of items required to be included and updated include:

- (a) Dimensional changes to drawings;
- (b) Revisions to details shown on drawings;
- (c) Depths of foundations below first floor;
- (d) Locations and depths of underground utilities;
- (e) Revisions to routing of piping and conduits;
- (f) Revisions to electrical circuitry;
- (g) Actual equipment locations;
- (h) Duct size and routing;
- (i) Locations of concealed internal utilities;
- (j) Field records for variable and concealed conditions; and
- (k) Record information on the Project that is shown only schematically.

7.5.3 Equipment. The DB Contractor shall input all equipment into a BIM model that is compatible with software and nomenclature used to produce the design BIM model and interface with the Computerized Maintenance Management System (CMMS). Upon completing input of all equipment nameplate data in a manner acceptable to the Authority (or its designee), the DB Contractor shall download the information into an Excel spreadsheet format acceptable to the Authority and ADOC and compatible with the CMMS.

7.5.4 Revisions. Modifications and additions to the Work shall be incorporated into a revised record BIM model promptly upon the completion of said modification or addition (but in any event no later than 30 days after completion). The revised record BIM model will be submitted to the ADOC and Program Manager promptly after incorporation of any modifications or additions.

7.6 Miscellaneous Record Submittals. The DB Contractor shall prepare and assemble such miscellaneous records as may be required by the Specifications or other Contract Documents for miscellaneous record keeping and submittal in connection with actual performance of the Improvement Work. Miscellaneous record submittals shall also be submitted to the ADOC and Program Manager as PDF electronic files, unless otherwise required the DB Contractor shall file miscellaneous records in the Project Management System and identify each, so that such records are readily available for continued use and reference.

7.7 Record Document Directory. In filing the various record drawings, specifications, model, and other miscellaneous record submittals, the DB Contractor shall prepare and provide to the Authority, ADOC, and Program Manager a directory of all Project Record Documents, organized by Specifications section number and title (or other appropriate cross-reference). Such directory shall provide electronic links enabling navigation to each record document item.

PART 8. COMMISSIONING

8.1 General. This Part 8 includes general requirements that apply to implementation of commissioning without regard to systems, sub-systems, and equipment being commissioned and is intended to form the basis for the DB Contractor's involvement in construction phase commissioning processes and procedures. The commissioning activities described in this Part 8 have been developed to support delivery of the Project and achievement of performance requirements in accordance with the Project Criteria, and elsewhere in the Contract Documents. For the avoidance of doubt, the Commissioning Agent will be a Separate Contractor contracted directly by the Authority.

8.2 Commissioning Description

8.2.1 Where individual testing, adjusting, or related services are required in the Design-Build Documents and not specifically required by this Part 8, the specified services shall be provided by the DB Contractor, and copies of documentation, as required by those Design-Build Documents, shall be submitted to the ADOC (as representative of the Authority) and Program Manager to be indexed for future reference.

8.2.2 Where training or educational services for the ADOC are required and specified in the Specifications or elsewhere in the Contract Documents, these services are intended to be provided in addition to the training and educational services specified herein.

8.2.3 Commissioning is a systematic process of verifying that the building systems perform interactively according to the 100% Construction Documents and the ADOC's operational needs. The commissioning process shall encompass and coordinate the system documentation, equipment startup, control system calibration, testing and balancing, performance testing and training. Commissioning during the construction, acceptance, and warranty phases is intended to achieve the following specific objectives according to the Contract Documents:

8.2.3.1 Verify that the applicable equipment and systems are installed in accordance with the Contract Documents and according to the manufacturer's recommendations;

8.2.3.2 Verify and document proper integrated performance of equipment and systems;

8.2.3.3 Verify that operation and maintenance documentation is complete;

8.2.3.4 Verify that all components requiring servicing can be accessed, serviced and removed without disturbing nearby components including ducts, piping, cabling, or wiring;

8.2.3.5 Verify that the ADOC's operating personnel are adequately trained; and

8.2.3.6 Document the successful achievement of the commissioning objectives listed above.

8.2.4 The commissioning process does not take away from or reduce the responsibility of the DB Contractor to provide a finished and fully functioning product.

8.3 Systems to be Commissioned

8.3.1 Commissioning of a system or systems specified for this Project is part of the construction process and will be the responsibility of the Commissioning Agent. The Commissioning Agent will provide

for documentation and testing of these systems in cooperation with the DB Contractor and ADOC. The DB Contractor shall be responsible for the training of the ADOC's personnel.

8.3.2 At a minimum, the following systems will be commissioned as part of the Project, *provided* that these systems are included in the DB Contractor's final design of the Project as memorialized in the 100% complete Construction Documents approved by the Authority in accordance with Article 7 of the Agreement.

Table 8-1

Commissioned Systems	
System	Equipment/Sub-Systems
Plumbing Systems	
Domestic To Water System	Domestic Water Heaters and Recirculation Pumps
	Instantaneous Hot Water Heaters
HVAC Systems	
Direct Digital Control Systems	Direct-Digital Control Systems Operators' Workstations
	Operating Sequences
	Alarms and Trending
	Software
	Graphics
	DDC Control Panels
Chilled Water Systems	Building Interconnection to Facility Chilled Water System
Heating Hot Water Systems	Building Interconnection to Facility Heating Hot Water System
HVAC Air Distribution	Indoor Air Handling Units
	Energy Recovery Air Handling Units
	Supply/Return Fans
	Hot-Water/Chilled-Water Coils
	Air Filtration
	Humidifiers
	Associated Variable Frequency Drives
	Associated Controls
Air Terminal Units	Variable Air Volume Terminal Units
	Associated Controls
Decentralized HVAC Systems	Fan Coil Units
	Building Exhaust Fans
	Computer Room Air Conditioners
	Associated Variable Frequency Drives

Commissioned Systems	
System	Equipment/Sub-Systems
	Associated Controls
Electrical Systems	
Lighting & Controls	Occupancy Sensor Systems
	Daylight Control Systems
	Interior Lighting
	Exterior Lighting
	Conference Room / Auditorium Lighting Controls (including Interface with Audio-Visual Systems)
	Architectural Dimming Systems
Security Systems	
Fire Alarm System	
Computerized Maintenance Management System (CMMS)	

8.4 Final Commissioning Report Submittal. The Authority will submit two hard copies and two electronic copies of the final commissioning report to the DB Contractor (by way of the Program Manager) for the DB Contractor's review and information.

8.5 Coordination and Scheduling. The DB Contractor shall work with the State Parties, the Program Manager, and the Commissioning Agent (and/or any other applicable Separate Contractor(s) designated by the Authority) to schedule the commissioning activities, providing the ADOC and Program Manager notice of such activities with sufficient advance notice to reasonably enable the Authority, the ADOC, and Program Manager, and any other party reasonably designated by the Authority, to observe or participate in such activities as appropriate. The DB Contractor shall integrate all commissioning activities into the Schedule. All parties will address scheduling problems and make necessary notifications in a timely manner in order to expedite the commissioning process.

PART 9. COMPLETION AND CLOSEOUT PROCEDURES

9.1 General. This Part 9 includes administrative and procedural requirements for construction closeout and achievement of Final Completion including:

- (a) Completion review procedures;
- (b) Punch list; and
- (c) Warranties.

9.2 Submittals. Submittals required for construction closeout include:

- (a) Certificates of release or equivalent from governmental authorities having jurisdiction; and
- (b) Field reports, for pest control inspection.

9.3 Completion Review Procedures

9.3.1 Punch List. Prior to Preliminary Completion, the Authority, in conjunction with the DB Contractor, and assisted by the ADOC and Program Manager, shall prepare and submit a Punch List of items to be completed and corrected prior to Final Completion. (See Punch List requirements in Section 14.1 of the Agreement and in Section 9.4 below).

9.3.2 Preliminary Completion Review Submittals. Prior to Preliminary Completion, the DB Contractor shall prepare a list of those items below that are incomplete. Submission of all required closeout documentation (including documentation required pursuant to the Agreement) shall be a condition of achieving Final Completion, unless the Authority agrees to the contrary in its discretion. The DB Contractor shall prepare or obtain and submit to the ADOC and Program Manager:

9.3.2.1 Certificates of release from Governmental Authorities having jurisdiction over the Project that will permit the State Parties to occupy and use the Work (or relevant portion thereof) for its intended use and purpose (such certificates include occupancy permits, operating certificates, and similar releases where applicable and obtainable);

9.3.2.2 Closeout submittals required pursuant to these Special Conditions, including Project Record Documents, operation and maintenance manuals, final completion construction photographic documentation, damage or settlement surveys, property surveys, as-built drawings and BIM models, and similar final record information;

9.3.2.3 Any closeout submittals specified in individual Specifications or other parts of the Contract Documents, including any specific warranties, maintenance service agreements, final certifications, and similar documents; and

9.3.2.4 Test/adjust/balance records.

9.3.3 Procedures Prior to Preliminary Completion. The DB Contractor shall complete the below procedures a minimum of 10 days prior to requesting inspection for determining Preliminary Completion. In the DB Contractor's request for inspection, the DB Contractor shall list any items below that are incomplete at time of the DB Contractor's request:

9.3.3.1 Completion of startup and testing of systems and equipment;

9.3.3.2 Instruction of the ADOC's personnel in operation, adjustment, and maintenance of products, equipment, and systems, and submission of demonstration and training video recordings; and

9.3.3.3 Completion of any inspection or walkthrough required by local governmental authorities, with the Authority, the ADOC, and the Program Manager each provided reasonable opportunity to be present during any such inspection or walkthrough.

9.4 Punch List. The DB Contractor's Punch List shall include the name and identification of each space and area affected by construction operations for incomplete items and items needing correction, including, if necessary, areas disturbed by the DB Contractor that are outside the limits of construction. The Punch List shall conform to the following requirements:

9.4.1 The list of relevant spaces is organized in sequential order; and

9.4.2 Punch List items applying to each space are organized by major element, including categories for ceiling, individual walls, floors, equipment, and building systems.

9.5 Submittal of Project Warranties. Manufacturer and other warranties required pursuant to the Contract Documents shall be collected, retained, organized by the DB Contractor into an orderly sequence acceptable to the Authority and ADOC. Complete warranty and bond submittal packages shall be assembled into a single indexed electronic PDF file, including a bookmarked table of contents, with links enabling navigation to each individual warranty and bond, and uploaded to the Project Management System. The DB Contractor shall provide also additional copies of each warranty to include in operation and maintenance manuals as requested by the Authority, ADOC, or Program Manager.

PART 10. CHANGES IN THE WORK

10.1 General. This Part 10 includes administrative and procedural requirements for handling and processing changes in the Work, and potential modifications to the requirements of the Contract Documents in relation to such changes, by Change Order.

10.2 Authority-Initiated Change Orders. In accordance with Article 13 of the Agreement, the Authority may propose a Change in the Work (a "**Change Proposal**") and request from the DB Contractor its good faith assessment of the impact, if any, on the Project (including any proposed change in the GMP(s) and Contract Time) (a "**Change Assessment**"). The Authority's request may include, or request proposals for, supplemental or revised Drawings and Specifications.

10.2.1 Change Proposals issued by the Authority are not instructions either to stop work in progress or to execute the proposed change.

10.2.2 Within the timeframe set forth in the Change Proposal (or, if no timeframe is specified therein, within 14 days after the DB Contractor's receipt of a Change Request), the DB Contractor shall submit to the ADOC (as the Authority's representative) and the Program Manager a Change Assessment as described in Section 13.3 of the Agreement and in this Section 10.2. Such Change Assessment shall, if applicable, include a quotation estimating the Cost of the Work and the cost of design and other professional services necessary to execute the proposed change, to include the following:

- (a) A list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made (the DB Contractor shall furnish survey data to substantiate quantities if so requested);
- (b) Costs of labor and supervision (including for General Conditions Items in accordance with the General Conditions Schedule) directly attributable to the change;
- (c) Additional details associated with the change in the Work; and
- (d) A proposed revised Schedule that indicates the effect of the change, including changes in activity duration, start and finish times, and activity relationship.

10.2.3 Without limiting the Authority's rights under Article 13 of the Agreement to issue Construction Change Directives, if the DB Contractor does not submit a detailed written objection to the Change Proposal within 14 days after the DB Contractor's receipt of the Change Proposal, or does not submit a Change Assessment within the time required pursuant to Section 10.2.2 above, the Authority may direct that its proposed Changes in the Work be performed as set forth in the Authority's initial Change Proposal with any available State Contingency funds, at such cost and with such other modifications to the requirements of the Contract Documents, if any, as the Authority may reasonably determine (which such costs shall be determined in accordance with Section 13.4.3 of the Agreement). The Authority reserves the

right to extend or waive the deadline for the DB Contractor's Change Assessment, or may otherwise adjust such deadline with the agreement of the DB Contractor.

10.2.4 If the Authority does not agree with the DB Contractor's submitted Change Assessment, the Authority reserves the right to reject it and decline to pursue the change, to continue to negotiate the Change Assessment with the DB Contractor, or to issue a Construction Change Directive in accordance with Section 13.7 of the Agreement.

10.3 DB Contractor-Initiated Proposals

10.3.1 If the DB Contractor wishes to request a Change in the Work and related modifications to the Contract Documents, the DB Contractor may initiate a proposal by submitting a request for a change to the Authority (a "**Change Request**") as follows:

- (a) Include a statement outlining reasons for the proposed change and the effect of the change on the Project and Work. Provide a complete description of the proposed change. Indicate the effect of the proposed change on the Contract Documents.
- (b) Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.
- (c) Include any cost impacts, schedule risks, or other factors that differ from the underlying assumptions or otherwise change the original intent of the Contract Documents.
- (d) Include an updated Schedule that indicates the effect of the proposed change, including changes in activity duration, start and finish times, and activity relationship.

10.3.2 If the Authority does not agree with the DB Contractor's Change Request, the Authority reserves the right to reject such Change Request or negotiate a mutually agreeable Change in the Work with the DB Contractor.

EXHIBIT K
AUTHORIZED REPRESENTATIVES OF STATE-RELATED PARTIES

1. Authority Representative(s)

As of the Effective Date, the Authority designates the following individual(s) to serve as the Authority Representative(s):

Secretary of the Authority:
Bill Poole, Finance Director, Alabama Department of Finance

President of the Authority:
Kay Ivey, Governor, State of Alabama

Where the ADOC is acting on behalf of the Authority with respect to the Project pursuant to the delegation of authority to the ADOC by the Authority (see Section 1.1 (Key Terms) of the Agreement), the authorized representatives of the ADOC identified below (as the same may be changed from time to time by ADOC upon written notice to the Authority and DB Contractor) shall also be Authority Representatives.

2. ADOC Representative(s)

As of the Effective Date, the ADOC designates the following individual(s) to serve as its representative(s) when the ADOC is acting on its own behalf or on behalf of the Authority (each, an “**ADOC Representative**”) for the purposes outlined below:

John Q. Hamm, Commissioner
Authorized signatory

Jenny Abbott, Director of Facilities Management
Authorized signatory with respect to Design Packages and other submittals, Notices to Proceed, and Applications for Payment

3. Program Manager

As of the Effective Date, the Program Manager designates the following individual(s) to serve as its representative(s):

Michael Lamb, Senior Program Manager
2 Metroplex Drive Suite 300
Birmingham, AL 35209
Phone: (205) 503-3843
Email: MLamb@HPMLeadership.com

EXHIBIT L
STATE OF ALABAMA DISCLOSURE STATEMENT

[See attached]



State of Alabama Disclosure Statement

(Required by Act 2001-955)

ENTITY COMPLETING FORM

Caddell Construction Co. (DE), LLC

ADDRESS

445 Dexter Avenue, Suite 11000

CITY, STATE, ZIP

Montgomery, AL 36104

TELEPHONE NUMBER

(334) 272-7723

STATE AGENCY/DEPARTMENT THAT WILL RECEIVE GOODS, SERVICES, OR IS RESPONSIBLE FOR GRANT AWARD

Alabama Department of Corrections

ADDRESS

301 Ripley Street

CITY, STATE, ZIP

Montgomery, AL 36104

TELEPHONE NUMBER

(334) 353-3883

This form is provided with:

☐

Contract

☒

Proposal

☐

Request for Proposal

☐

Invitation to Bid

☐

Grant Proposal

Have you or any of your partners, divisions, or any related business units previously performed work or provided goods to any State Agency/Department in the current or last fiscal year?

☐

Yes

☒

No

If yes, identify below the State Agency/Department that received the goods or services, the type(s) of goods or services previously provided, and the amount received for the provision of such goods or services.

STATE AGENCY/DEPARTMENT	TYPE OF GOODS/SERVICES	AMOUNT RECEIVED

Have you or any of your partners, divisions, or any related business units previously applied and received any grants from any State Agency/Department in the current or last fiscal year?

☐

Yes

☒

No

If yes, identify the State Agency/Department that awarded the grant, the date such grant was awarded, and the amount of the grant.

STATE AGENCY/DEPARTMENT	DATE GRANT AWARDED	AMOUNT OF GRANT

1. List below the name(s) and address(es) of all public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF PUBLIC OFFICIAL/EMPLOYEE	ADDRESS	STATE DEPARTMENT/AGENCY

OVER

2. List below the name(s) and address(es) of all family members of public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the public officials/public employees and State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF FAMILY MEMBER	ADDRESS	NAME OF PUBLIC OFFICIAL/ PUBLIC EMPLOYEE	STATE DEPARTMENT/ AGENCY WHERE EMPLOYED
-----------------------	---------	---	--

If you identified individuals in items one and/or two above, describe in detail below the direct financial benefit to be gained by the public officials, public employees, and/or their family members as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

Describe in detail below any indirect financial benefits to be gained by any public official, public employee, and/or family members of the public official or public employee as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

List below the name(s) and address(es) of all paid consultants and/or lobbyists utilized to obtain the contract, proposal, request for proposal, invitation to bid, or grant proposal:


NAME OF PAID CONSULTANT/LOBBYIST	ADDRESS
----------------------------------	---------

By signing below, I certify under oath and penalty of perjury that all statements on or attached to this form are true and correct to the best of my knowledge. I further understand that a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00, is applied for knowingly providing incorrect or misleading information.


Signature

1/20/22
Date




Notary's Signature

1/20/22
Date

10/18/2022
Date Notary Expires

Act 2001-955 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000.

EXHIBIT M
FORM OF APPLICATION FOR PAYMENT

[See attached]

AIA Document G742 - 2015

Application and Certificate for Payment for a Design-Build Project

TO AUTHORITY:	PROJECT:	APPLICATION NO: 001	Distribution to:
			AUTHORITY :
			GN PROFESSIONAL :
			DB CONTRACTOR :
			FIELD :
			PROGRAM MANAGER :
			OTHER :
FROM DB CONTRACTOR:	STAARS #:	PERIOD TO:	
		CONTRACT FOR:	
		CONTRACT DATE:	
		PROJECT NOS:	/

DB CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.

AIA Document G743, Continuation Sheet for a Design-Build Project, is attached.

1. ORIGINAL GUARANTEED MAXIMUM PRICE	\$0.00
2. NET CHANGE BY CHANGE ORDERS	\$0.00
3. GUARANTEED MAXIMUM PRICE TO DATE (Line 1 ± 2)	\$0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G743)	\$0.00
5. RETAINAGE:	
a. 0 % of Completed Work	
(Column D + E on G743: 0.00) =	0.00
b. 0 % of Stored Material	
(Column F on G743: 0.00) =	0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G743)	\$0.00
6. TOTAL EARNED LESS RETAINAGE	\$0.00
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$0.00
(Line 6 from prior certificate)	
8. CURRENT PAYMENT DUE	\$0.00
9. GUARANTEED MAXIMUM PRICE BALANCE, INCLUDING RETAINAGE	
(Line 3 Less Line 6)	\$0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

DB CONTRACTOR:

The undersigned DB Contractor certifies that to the best of the DB Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Design-Build Documents, that all amounts have been paid by the DB Contractor for Work for which previous Certificates for Payment were issued and payments received from the Authority, and that current payment shown herein is now due.

By: _____ Date: _____

State of: _____
County of: _____
Subscribed and sworn to before
me this _____ day of _____
Notary Public: _____
My Commission expires: _____

DESIGN PROFESSIONAL:

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Design Professional certifies to the Authority that to the best of the Design Professional's knowledge, information, and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the DB Contractor is entitled to payment of the Amount Due.

By: _____ Date: _____

CERTIFICATE FOR PAYMENT

In accordance with the Design-Build Documents, based on the Authority's and Program Manager's review of the Work and the data comprising this application, and the Program Manager's recommendation, the Authority determines the following amount is properly due and owing to the DB Contractor.

AMOUNT DUE.....\$0.00

(Attach explanation if amount due differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount due.)

AUTHORITY:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the DB Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Authority or DB Contractor under this Contract.

AIA Document G743 - 2015

Continuation Sheet for a Design-Build Project

AIA Document G472, Application and Certification for Payment, containing Design-Builder's signed certification is attached.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:

APPLICATION DATE:

PERIOD TO:

PROJECT:

[illegible]

EXHIBIT N
FORMS OF LIEN WAIVER

[See attached]

EXHIBIT N-1

DB CONTRACTOR'S WAIVER AND RELEASE OF LIEN

(To Accompany Each Application For Progress Payment)

(address)

TO: _____ (“AUTHORITY”)

FROM: _____ (“DB CONTRACTOR”)

RE: _____ (“PROJECT”)

PROPERTY
ADDRESS : _____

DB Contract Date: _____

Application for Payment # _____

Period: _____ to _____ (“Period Ending Date”)

Original GMP Amount: \$ _____

Plus (Less) Approved Change Orders: \$ _____

Adjusted GMP Amount: \$ _____

Cost of the Work to Date: \$ _____

Less: Retainage: \$ _____

Less: Total Payments Received to Date: \$ _____

Net Amount Due: \$ _____

Capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Design-Build Contract, made as of _____, 2022, by and between the Authority and the DB Contractor (the “Design-Build Contract”).

For and in consideration of payments made to it by the Authority, the undersigned hereby certifies as follows:

1. The undersigned hereby acknowledges receipt of the Total Payments Received to Date (as set forth herein) as payment in full, excluding the retainage, for all labor employed and all materials furnished or stored in connection with the construction of the Project through the last day of the previous

payment period, and hereby now and forever waives, releases and quitclaims all claims and rights to claim against the Authority, the Lender (if any) or the land upon which the Project is situated with respect to the Project, except for any claims and rights to claim identified below. The undersigned hereby affirms that there are no outstanding claims against the Authority, the DB Contractor and/or DB Contractor's sureties in connection with the Project through said date, except as identified below.

2. Upon receipt of the sum of the Net Amount Due (as set forth herein), the undersigned acknowledges and agrees that it will have received payment in full, excluding the retainage, for all labor employed and all materials furnished or stored in connection with the construction of the Project through the Period Ending Date, and hereby now and forever waives, releases and quitclaims all claims and rights to claim against the Authority, the Lender (if any) or the land upon which the Project is situated with respect to the Project, except for the retainage and the claims and rights to claim identified below. Except for receipt of said payment, and as an inducement to the Authority and Lender (if any) to make the same, the undersigned hereby affirms that there are no outstanding claims against the Authority, the DB Contractor and/or DB Contractor's sureties in connection with the Project through said date, except as identified below.

3. Contingent upon the receipt of the sum of the Net Amount Due, and except for any unpaid retainage, the undersigned does hereby as of the date hereof, forever waive, release and quitclaim in favor of the Authority, Lender (if any), each and every party acquiring title to and/or making a loan on the Project, and the title company or companies examining and/or insuring title to the Project and any and all of their successors and assignees, all rights that presently exist to any and all types and forms of contractor's, mechanics' and/or materialmen's lien and other liens, including, without limitation, any liens or preliminary notice of lien which might otherwise have been filed pursuant to the State of Alabama's mechanics lien law, except for the claims and rights to claim identified below. The undersigned further warrants that all applicable taxes, fees and benefits relating directly or indirectly to the undersigned's work have been paid in full.

4. The undersigned further states on oath that all laborers and Subcontractors employed by it, and all suppliers or materialmen from which it has acquired materials incorporated into the Project and any lien or bond claimant relating to the undersigned's work has been paid their respective portion of prior payments for all work, labor, materials, machinery, equipment and supplies provided, or to be provided, in connection with the Project, other than retainage and the claims and rights to claim identified below, and that no laborers, Subcontractors, suppliers or materialmen have any claim or lien, either actual or inchoate, against the Work, Project, the Authority or Lender (if any) by virtue of their having furnished labor or material going into or towards the Work, except as identified below.

5. No security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures or furnishings placed upon or installed in the Project.

6. The undersigned hereby certifies that the amounts set forth above are true and correct and acknowledges that there are no additional costs or claims for any extras or additions for labor and/or material on the Project, except as listed below:

[TBA, as necessary]

7. The undersigned has not assigned any lien or right to perfect a lien against the Project, and the undersigned has the right, power and authority to execute this document.

Duly sworn upon oath, executed and delivered by the undersigned this _____ day of _____, 20____.

WITNESS:

BY: [Entity Name]

NAME:

TITLE:

Sworn to and subscribed before me

this _____ day of _____, 20____.

Notary Public

My commission expires:

(SEAL)

EXHIBIT N-2

**DB CONTRACTOR'S FINAL AFFIDAVIT AND RELEASE OF CLAIMS
(TO ACCOMPANY APPLICATION FOR FINAL PAYMENT)**

(address)

TO: _____ (“AUTHORITY”)
FROM: _____ (“DB CONTRACTOR”)
RE: _____ (“PROJECT”)

PROPERTY
ADDRESS:

DB Contract Date: _____

Original GMP Amount: \$ _____

Plus (Less) Approved Change Orders: \$ _____

Adjusted GMP Amount: \$ _____

Final Cost of the Work \$ _____

Less: Total Payments Received to Date: \$ _____

Equals: Balance Due: \$ _____

Equals: Final Payment \$ _____

Capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Design-Build Contract, made as of _____, 2022, by and between the Authority and the DB Contractor (the “Design-Build Contract”).

For and in consideration of payments made to it by the Authority, the undersigned hereby certifies as follows:

1. The undersigned hereby acknowledges receipt of the Total Payments Received to Date (as set forth herein) as payment in full, including the retainage, for all labor employed and all materials furnished or stored in connection with the construction of the Project through the last day of the previous payment period, and hereby now and forever waives, releases and quitclaims all claims and rights to claim against the Authority, the Lender (if any) or the land upon which the Project is situated with respect to the Project, except for claims and rights to claim identified below. The undersigned hereby affirms that there are no outstanding claims against the Authority, the DB Contractor and/or DB Contractor's sureties in connection with the Project through said date, except as identified below.

2. Upon receipt of the final payment, as described in Section 5.8 of the Design-Build Contract, as set forth herein, the undersigned acknowledges and agrees that it will have received payment in full for all labor employed and all materials furnished in connection with the construction of the Project, and hereby now and forever waives, releases and quitclaims all claims and rights to claim against the Authority, the Lender (if any) or the land upon which the Project is situated with respect to the Project, except for the claims and rights to claim identified below, and as an inducement to Lender (if any) to make the same, the undersigned hereby affirms that there are no outstanding claims against the Authority, the DB Contractor and/or DB Contractor's sureties in connection with the Project, except as identified below.

3. Contingent upon the receipt of the final payment, as described in Section 5.8 of the Design-Build Contract, the undersigned does hereby forever waive, release and quitclaim in favor of the Authority, Lender (if any), each and every party acquiring title to and/or making a loan on the Project, and the title company or companies examining and/or insuring title to the Project and any and all of their successors and assignees, all rights that presently exist to any and all types and forms of contractor's, mechanics' and materialmen's lien and other liens (including, without limitation, any liens or preliminary notice of lien which might otherwise have been filed pursuant to the State of Alabama's mechanics lien law, except for the claims and the rights to claim identified below. The undersigned further warrants that all applicable taxes, fees and benefits relating directly or indirectly to the undersigned's work have been paid in full.

4. The undersigned further states on oath that all laborers and Subcontractors employed by it, and all suppliers or materialmen from which it has acquired materials incorporated into the Project and any lien or bond claimant relating to the undersigned's work has been paid their respective portion of prior payments for all work, labor, materials, machinery, equipment and supplies provided, or to be provided, in connection with the Project except for the claims and rights to claim identified below, and that no laborers, Subcontractors, suppliers or materialmen have any claim or lien, either actual or inchoate, against the Work, Project, the Authority or Lender (if any) by virtue of their having furnished labor or material going into or towards the Work, except as identified below.

5. No security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures or furnishings placed upon or installed in the Project.

6. The undersigned hereby certifies that the amounts set forth above are true and correct and acknowledges that there are no additional costs or claims for any extras or additions for labor and/or material on the Project, except as identified below:

[TBA, as necessary]

7. The undersigned has not assigned any lien or right to perfect a lien against the Project, and the undersigned has the right, power and authority to execute this document.

8. The undersigned does hereby forever release, waive and discharge the Authority and Lender (if any) from (and quitclaim to them) any and all claims on, against, related to, arising out of, connected with, and/or on account of the above-described Design-Build Contract or Project, whether known or unknown, and whether presently ascertainable or not, which the undersigned or its successors and/or assignees ever had, now have, or ever will have against the Authority, Lender (if any) or Project, except as listed above.

Duly sworn upon oath, executed and delivered by the undersigned this _____ day of _____, 20____.

WITNESS:

BY: [Entity Name]

NAME:

TITLE:

Sworn to and subscribed before me

this _____ day of _____, 20____.

Notary Public

My commission expires:

(SEAL)

EXHIBIT N-3

SUBCONTRACTOR'S PARTIAL WAIVER AND RELEASE OF LIEN

(To accompany Each Application for Progress Payment)

TO: _____ (“DB CONTRACTOR”)

FROM: _____ (“SUBCONTRACTOR”)

RE: _____ (“PROJECT”)

PROPERTY

ADDRESS: _____

DB Contract Date: _____

Application for Payment No.: _____

Period : _____ to _____ (“Period Ending Date”)

Original Subcontract Amount \$ _____

Plus (Less) Approved Change Orders: \$ _____

Adjusted Subcontract Amount: \$ _____

Cost of Work to Date: \$ _____

Less: Retainage: \$ _____

Less: Total Payments Received to Date: \$ _____

Net Amount Due: \$ _____

Capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Design-Build Contract, made as of _____, 2022, by and between the Authority and the DB Contractor (the “Design-Build Contract”).

For and in consideration of the payments made to it by the DB Contractor, the undersigned hereby certifies as follows:

1. The undersigned hereby acknowledges receipt of the Total Payments Received to Date stated above as payment in full, excluding the retainage stated above, for all labor, services and materials

furnished or stored and reimbursed, in connection with the construction of the Project through the last day of the previous payment period, and hereby now and forever waives, releases and quitclaims all claims, liens, and right to claim a lien against the DB Contractor, the Authority, the Lenders or the land upon which the Project is situated with respect to the Project except for any claims and rights to claim identified below.

2. The undersigned, for and in consideration of the receipt of the current payments made to it by the DB Contractor, hereby waives and releases all claims, its lien and right to claim a lien against the DB Contractor, the Authority, the Lenders or the land upon which the Project is situated, for labor, services or materials furnished through the Period Ending Date to the DB Contractor on the Project. This waiver and release does not cover any retainage held by the Authority, labor, services or materials furnished after the Period Ending Date specified, or claims identified below.

3. The undersigned hereby affirms that, other than those set out below, there are no outstanding claims against either the Authority, the Authority's agents or the DB Contractor and/or its sureties in connection with the Project through said Period Ending Date.

4. The undersigned further states on oath that all laborers and Subcontractors employed by it, and all suppliers or materialmen from which it has acquired materials incorporated into the Project and any lien or bond claimant relating to the undersigned's work has been paid their respective portion of prior payment received for all work, labor, materials, machinery, equipment and supplies provided in connection with the Project, other than retainage, and the claims and rights to claim identified below, and that no laborers, Subcontractors, suppliers or materialmen have any claim, either actual or inchoate, against the Work, Project, the Authority or Lenders by virtue of their having furnished labor or material going into or towards the Work, except as identified below.

5. No security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures, or furnishings placed upon or installed in the Project prior to the Period Ending Date.

6. The undersigned hereby certifies that the amounts set forth above are true and correct and acknowledges that there are no additional costs or claims for any extras or additions for labor and/or material on the Project except as listed below:

[TBA, as necessary]

7. The undersigned has not assigned any lien or right to perfect a lien against the Project and the undersigned has the right, power and authority to execute this document.

Duly sworn upon oath, executed and delivered by the undersigned this _____ day of _____, 20__.

WITNESS:

BY: [Entity Name]

NAME:

TITLE:

Sworn to and subscribed before me

this _____ day of _____, 20__.

Notary Public

My commission expires:

(SEAL)

EXHIBIT N-4

SUBCONTRACTOR'S FINAL AFFIDAVIT AND RELEASE OF CLAIMS

(To accompany Application for Final Progress Payment)

TO: _____ (“DB CONTRACTOR”)

FROM: _____ (“SUBCONTRACTOR”)

RE: _____ (“PROJECT”)

PROPERTY
ADDRESS:

DB Contract Date: _____

Application for Payment No.: _____

Period : _____ to _____ (“Period Ending Date”)

Original Subcontract Amount \$ _____

Plus (Less) Approved Change Orders: \$ _____

Adjusted Subcontract Amount: \$ _____

Less: Retainage: \$ _____

Less: Total Payments Received to Date: \$ _____

Equals Final Payment: \$ _____

Capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Design-Build Contract, made as of _____, 2022, by and between the Authority and the DB Contractor (the “Design-Build Contract”).

For and in consideration of the payments made to it by the Authority, the undersigned hereby certifies as follows:

1. The undersigned hereby acknowledges receipt of the Total Payments Received to Date stated above as payment in full, excluding the retainage stated above, for all labor, services and materials furnished or stored and reimbursed, in connection with the construction of the Project through the last day of the previous payment period, and hereby now and forever waives, releases and quitclaims all claims its lien and right to claim a lien against the Authority, the Lenders or the land upon which the Project is situated with respect to the Project except for claims and rights to claim identified below.

2. The undersigned lienor, for and in consideration of the receipt of the final payment, as described in Section 5.8 of the Design-Build Contract, as set forth herein, made to it by the Authority, hereby acknowledges and agrees that it will have received final payment in full for all labor employed and all materials furnished in connection with the construction of the Project, and hereby now and forever waives and releases all claims, its lien and right to claim a lien against the Authority, the Lenders or the

land upon which the Project is situated, for labor, services or materials furnished at any time on the Project, except for the claims and rights to claim identified below.

3. The undersigned hereby affirms that there are no outstanding claims against the Authority or the Authority's agents in connection with the Project except for those claims identified below. The undersigned hereby certifies that the amounts set forth above are true and correct and acknowledges that there are no additional costs or claims for any extras or additions for labor and/or material on the Project other than as set forth above other than those claims identified below.

4. The undersigned further states on oath that all laborers and Subcontractors employed by it, and all suppliers or materialmen from which it has acquired materials incorporated into the Project and any lien or bond claimant relating to the undersigned's work has been paid their respective portion of all payment received including the final payment, as described in Section 5.8 of the Design-Build Contract, for all work, labor, materials, machinery, equipment and supplies provided in connection with the Project, except for the claims and rights to claim identified below, and that no laborers, Subcontractors, suppliers or materialmen have any claim, either actual or inchoate, against the Work, Project, the Authority or Lenders by virtue of their having furnished labor or material going into or towards the Work.

5. No security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures, or furnishings placed upon or installed in the Project prior to the Period Ending Date.

6. The undersigned has not assigned any lien or right to perfect a lien against the Project and the undersigned has the right, power and authority to execute this document.

7. The undersigned hereby certifies that the amounts set forth above are true and correct and acknowledges that there are no additional costs or claims for any extras or additions for labor and/or material on the Project, except as identified below:

[TBA, as necessary]

8. The undersigned does hereby forever release, waive and discharge the Authority and Lenders from any and all claims on, against, related to, arising out of, connected with, and/or on account of the above-described Subcontract, Design-Build Contract or Project, whether known or unknown, and whether presently ascertainable or not, which the undersigned or its successors and/or assignees ever had, now have, or ever will have against the Authority, Lenders or Project, except as listed above.

Duly sworn upon oath, executed and delivered by the undersigned this _____ day of _____, 20____.

WITNESS:

Sworn to and subscribed before me

this _____ day of _____, 20____.

Notary Public

My commission expires:

(SEAL)

BY: [Entity Name]

NAME:

TITLE:

EXHIBIT O
FORM OF CHANGE ORDER

[See attached]

**CHANGE ORDER [●]
TO DESIGN-BUILD CONTRACT
Specialized Men's Prison Facility**

This Change Order to Design-Build Contract (this “**Change Order**”) is entered into by and between the Alabama Corrections Institution Finance Authority (the “**Authority**”) and Caddell Construction Co. (DE), LLC (the “**DB Contractor**”), effective as of [●].

A. The Authority and DB Contractor entered into that certain Design-Build Contract, dated as of _____, 2022, (as it may be amended from time to time, the “**Agreement**”) for the design and construction of a new Specialized Men's Prison Facility. All capitalized terms used but not defined in this Change Order shall have the meanings set forth in the Agreement.

B. Following the Effective Date, the Authority and DB Contractor have agreed to the following Work Package Authorizations and GMP Amendments which have not been superseded by subsequent Modification:

No.	Title/Description	Effective Date
[●]	[●]	[●]
[●]	[●]	[●]

C. The Authority and DB Contractor now desire, pursuant to this Change Order, to change the Work and/or the terms applicable thereto as described herein.

D. **The Agreement is changed as follows:**
(Include, where applicable, any undisputed amount attributable to previously executed Change Directives.)

Description of Change	Adjustment to Contract Time (days)	Adjustment to Contract Sum/GMP (\$)
[●]	[●]	[●]
[●]	[●]	[●]
Totals	[●]	[●]

Exhibits:

Exhibit [●] – Contract Sum Recapitulation

Exhibit [●]

The original Contract Sum was	\$	[●]
The net change by previously authorized Change Orders	\$	[●]
The Contract Sum prior to this Change Order was	\$	[●]
The Contract Sum will be <i>unchanged</i> by this Change Order in the amount of	\$	[●]
The new Contract Sum ¹ including this Change Order will be	\$	[●]

¹ **Note:** Attach exhibit with recap of new Contract Sum as of each Change Order.

The Contract Time will be *unchanged* by [●] calendar days.

The date of Final Completion as of the date of this Change Order therefore is [●].

Note: This Change Order does not include changes in the DB Contractor's compensation, Contract Sum, Contract Time, or Guaranteed Maximum Price which have been authorized by Change Directive until the cost and time have been agreed upon by both the Authority and DB Contractor, in which case a Change Order is executed to supersede the Change Directive.

E. When executing this Change Order, the DB Contractor represents that all changes to Project design implemented by this Change Order have been reviewed and approved in writing by the Design Professional or other licensed design professional(s) of record for the Project.

F. This Change Order documents the mutual agreement of the Authority and the DB Contractor with respect to the subject matter hereof. By executing this Change Order, except to the extent expressly reserved by the DB Contractor in this Change Order, the DB Contractor hereafter waives the right to assert any further claim for an increase in any GMP or an extension of the Contract Time based on the subject matter of, or the Claim addressed by, this Change Order; it being acknowledged and agreed by the DB Contractor that this Change Order shall completely address any cost or schedule impact associated with the subject matter of, or the Claim addressed by, this Change Order, except as expressly set forth in this Change Order.

G. All terms and conditions of the Agreement not expressly modified herein shall remain in full force and effect as presently written and shall apply to this Change Order. The rights, duties, liabilities, and obligations of the parties shall continue in full force and effect as set forth in the Agreement, except as modified hereby.

H. This Change Order may be executed in one or more counterparts, each of which when executed by a party and delivered to the counterparty (including by email of an executed PDF counterpart) is an original, but all of which together shall constitute one instrument.

[Remainder of page intentionally left blank. Signature page follows.]

This Change Order is entered into by the Authority and the DB Contractor by their respective duly authorized representatives as of the date set forth on page 1.

THE AUTHORITY:

DB CONTRACTOR:

CADDELL CONSTRUCTION CO. (DE), LLC

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

**EXHIBIT [●]
CONTRACT SUM RECAPITULATION**

Items		Original	Net Change Prior Change Orders	Change this Change Order	New Including this Change Order
Design Fee	\$	[●]	[●]	[●]	[●]
Preconstruction Services Fee	\$	[●]	[●]	[●]	[●]
Cost of the Work (excluding Work Package GMPs)	\$	[●]	[●]	[●]	[●]
Work Package GMPs	\$	[●]	[●]	[●]	[●]
DB Contractor's Fee	\$	[●]	[●]	[●]	[●]
Contractor Contingency	\$	[●]	[●]	[●]	[●]
State Contingency	\$	[●]	[●]	[●]	[●]
Contract Sum	\$	[●]	[●]	[●]	[●]

EXHIBIT P
FINANCING-RELATED CONDITIONS

None as of the Effective Date; to be populated by Amendment agreed by the parties, based on the Authority's financing of the Project.

EXHIBIT Q
APPLICABLE FACILITY LEASE PROVISIONS

None as of the Effective Date; to be populated by an Amendment agreed by the parties.