

**AGREEMENT** made as of the «» day of «» in the year «»

**BETWEEN** the Owner:

and the Contractor:

*(Name, legal status, address and other information)*

Big Shine Worldwide, Inc.  
300 Corporate Blvd  
Newburgh, NY 12550

for the following Project:

The Owner and Contractor agree as follows.

## **ARTICLE 1 THE CONTRACT DOCUMENTS**

**§ 1.1** The Contract Documents form the Contract for Construction (the “**Contract**” or the “**Contract Documents**”). The Contract represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The term Contract Documents refers to and consists of the following:

- 1) This executed Agreement Between Owner and Contractor (the “**Agreement**”) as well as any subsequently executed Change Orders and approved submittals;
- 2) Contractor’s Proposal with Product Warranty, attached hereto as Exhibit “A”; and
- 3) any documents or portions thereof incorporated by reference or attached as an exhibit to any of the above items.

## **ARTICLE 2 SCOPE OF WORK**

**§ 2.1** The Contractor shall fully execute the Work as described in the Contract Documents, except as specifically indicated to be the responsibility of others. The term “**Work**” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

**§ 2.2** If Owner requests the Contractor to furnish incidental services such as construction consulting, constructability analyses or value engineering, the Owner acknowledges that such services will be rendered on an advisory basis only and are not professional design services. The Owner will, with due diligence, refer such questions, matters, and inquiries to design professionals retained by Owner, and the Contractor shall have no liability to the Owner or its Design professionals for such services requested by the Owner and rendered hereunder.

## **ARTICLE 3 PARTIES**

### **§ 3.1 Owner**

The Owner is the entity identified as such in this Agreement. The Owner designates the following individual as its authorized representative:

### **§ 3.2 Contractor**

The Contractor is the entity identified as such in this Agreement. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor designates the following individual as its authorized representative:

**§ 3.3** Neither the Owner’s nor the Contractor’s representative shall be changed without Ten (10) days’ prior notice to the other party.

## **ARTICLE 4 TIME**

### **§ 4.1 Date of Commencement**

The Date of Commencement shall be the date of this Agreement or as mutually agreed to by the Parties as documented by a Notice to Proceed or other written notice subscribed to by the Parties.

#### § 4.2 Contract Time

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Completion of the entire Work (*choose 1*) (on or before \_\_\_\_\_; or within \_\_\_\_\_ months/days from the Date of Commencement.) The Contract Time shall be measured from the Date of Commencement.

§ 4.3 Any delivery dates, performance deadlines or projected savings set out in the Contract Documents are estimates and shall not be deemed to represent fixed or guaranteed deadlines or savings.

§ 4.4 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the, justify delay, then the Contract Time shall be extended for a reasonable time.

§ 4.5 In the event of delay in the Work beyond the reasonable control of Contractor resulting from (1) conduct or lack of conduct by the Owner or any of its consultants, representatives, officers, agents, or employees; or (2) delay by the Owner in making the site available, or in furnishing any items required to be furnished to the Contractor by Owner pursuant to the Contract Documents, the Contractor shall be entitled to an extension of time commensurate with the delay and to compensation for any and all extra costs of labor, materials, and/or equipment, plus jobsite overhead attributable to such delay, plus profit on those amounts.

#### ARTICLE 5 CONTRACT SUM

##### § 5.1 Contract Sum

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

§ 5.1.2 Unit prices, if any, upon which the Contract Sum is based:

Item	Units and Limitations	Price Per Unit (\$0.00)

§ 5.1.3 Allowances, if any, included in the Contract Sum:

Item	Price

§ 5.1.4 Assumptions, if any, upon which the Contract Sum is based:

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##### § 5.2 Material Escalation

If, during Contractor's performance of the Work, the price of materials or equipment significantly increases, through no fault of Contractor, the original Contract Sum shall be increased by Change Order for the entire increase in the price of such materials or equipment. As used herein, a significant price increase shall mean any increase in price exceeding **Ten (10%) percent**, based on actual costs experienced by Contractor from the Date of Commencement. Such increases in actual costs shall be documented through quotes, invoices, or receipts.

## **ARTICLE 6 COMPLETION AND PAYMENT**

### **§ 6.1 Progress Payments**

Based upon Applications for Payment submitted to Owner by Contractor, Owner shall make Progress payments, on account of the Contract Sum, to the Contractor. Progress Payments shall be due no later than Seven (7) days following Contractor's submission of the related Payment Application.

### **§ 6.2 Completion**

**§ 6.2.1** Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The issuance of a certificate of occupancy is not a prerequisite for Completion if the certificate of occupancy cannot be obtained due to factors beyond Contractor's control.

**§ 6.2.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is complete, the Contractor shall notify the Owner. Within Five (5) days of such notification, Owner and Contractor shall conduct a satisfaction walk-through inspection. So long as the Work meets all requirements of the Contract Documents, the Work shall be deemed satisfactorily completed, and Owner shall notify Contractor of its approval in writing. If the Work is found to be incomplete, the Owner shall have Five (5) days from its inspection to present Contractor with a comprehensive list of items that must be completed before the Work will be considered complete. Absent timely receipt of such notification, the Work will be deemed Complete. Owner's failure to participate in a timely walk-through inspection upon Work Completion shall be deemed a waiver of any objections Owner may have to the satisfactory completion of the Work.

### **§ 6.3 Final Payment**

The Owner shall, within Seven (7) days following Completion of the Work, make payment of the entire balance of the Contract Sum to the Contractor. The making of final payment shall constitute a waiver of claims by the Owner except those arising from terms of special warranties required by the Contract Documents.

**§ 6.4** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the prime rate prevailing at the location of Project.

**§ 6.5** Contractor may, in Contractor's discretion and as a courtesy, assist Owner in completing documentation for available rebates and/or credits. Such assistance shall require Owner's full and timely cooperation with Contractor. However, Contractor does not guarantee Owner's eligibility for rebates or credits and shall not be responsible for processing Owner's rebate or credit applications. There further shall be no offset against the Contract Sum for any potential or anticipated rebates/credits or a failure to secure or realize such rebates or credits.

## **ARTICLE 7 OWNER**

### **§ 7.1 Information and Services Required of the Owner**

**§ 7.1.1** The Owner, in addition to any information and documentation requested by Contractor to perform its energy audit, shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 7.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's

lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

**§ 7.1.3** Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

## **§ 7.2 Permits, Fees, and Approvals**

Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for any and all permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work. The Owner shall further secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

## **ARTICLE 8 CONTRACTOR**

### **§ 8.1 Review of Contract Documents and Field Conditions by Contractor**

**§ 8.1.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site and become generally familiar with local conditions under which the Work is to be performed.

**§ 8.1.2** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor.

### **§ 8.2 Supervision and Construction Procedures**

**§ 8.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters.

**§ 8.2.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

### **§ 8.3 Labor and Materials**

**§ 8.3.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, and other facilities and services necessary for proper execution and completion of the Work.

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

**§ 8.3.3** The Contractor may make a substitution of materials of equivalent quality when necessitated due to material shortages.

#### **§ 8.4 Warranty**

The Contractor warrants to the Owner that covered materials and equipment furnished under the Contract Documents will conform to Contractor's Product Warranty contained within Contractor's Proposal. All products, equipment, systems, and/or materials incorporated into the Work that are not covered by Contractor's Warranty shall be covered exclusively by the warranty of the manufacturer, if any. There are no warranties which extend beyond the description on the face of any such warranties. THERE ARE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, PROVIDED BY CONTRACTOR OTHER THAN THOSE EXPRESSLY SET FORTH OR REFERRED TO IN THIS SECTION. CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABLE QUALITY, FITNESS FOR PURPOSE AND NON-INFRINGEMENT, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. Furthermore, if Owner or any third party alters any installation work performed by Contractor, then all warranties by Contractor shall be null and void.

#### **§ 8.5 Taxes**

Unless stated elsewhere in the Contract Documents, the Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted at the Date of Commencement.

**§ 8.6** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

#### **§ 8.7 Allowances**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

**§ 8.8** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering.

#### **§ 8.9 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

#### **§ 8.10 Cutting and Patching**

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

#### **§ 8.11 Cleaning Up**

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

### **§ 8.12 Access to Work**

The Contractor shall provide the Owner with access to the Work in preparation and progress wherever located.

### **§ 8.13 Indemnity**

**§ 8.13.1** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Contractor, one of its Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

**§ 8.13.2** To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor, its officers, directors, members, consultants, agents, and employees, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, its contractors, or anyone employed directly or indirectly by either, but only to the extent caused by their negligent or intentionally wrongful acts.

## **ARTICLE 9 SUBCONTRACTORS**

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

**§ 9.2** Contracts between the Contractor and Subcontractors shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner.

## **ARTICLE 10 CHANGES IN THE WORK**

**§ 10.1** By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor. Upon issuance of a fully executed Change Order, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order.

**§ 10.2** Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties.

**§ 10.3** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner promptly and before conditions are disturbed.

## **ARTICLE 11 PROTECTION OF PERSONS AND PROPERTY**

### **§ 11.1 Safety Precautions and Programs**

**§ 11.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss.

**§ 11.1.2** Owner is obligated to keep any installation area(s) free from non-stationary objects prior to commencement of Contractor's work. Contractor is not responsible for any damage caused to Contractor's property or the personal property of Owner's personnel that were not removed by Owner pursuant to the foregoing sentence.

### **§ 11.2 Hazardous Materials and Substances**

**§ 11.2.1** The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 11.2.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 11.2.3** If the Contractor is held liable for the cost of remediation of a hazardous material or substance by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

## **ARTICLE 12 INSURANCE AND BONDS**

### **§ 12.1 Contractor's Insurance**

**§ 12.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until Completion of the Work.

**§ 12.1.2** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;



- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property; and
- .4 bodily injury or property damage arising out of completed operations.

**§ 12.1.3** Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than « » (\$ « » ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ 12.1.4** Workers' Compensation at statutory limits and Employers' Liability with policy limits not less than « » (\$ « » ) each accident, « » (\$ « » ) each employee, and « » (\$ « » ) policy limit.

**§ 12.1.5** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section prior to commencement of the Work.

**§ 12.1.6** To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 12.1 to include the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations.

## **§ 12.2 Owner's Insurance**

### **§ 12.2.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### **§ 12.2.2 Property Insurance**

**§ 12.2.2.1** The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until the Work has been completed. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ 12.2.2.2** If the insurance required by this Section 12.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ 12.2.2.3** If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until Completion, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ 12.2.2.4** Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage required under this Section 12.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ 12.2.2.5** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 12.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 12.2.3 Waiver of Subrogation**

**§ 12.2.3.1** The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, 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 required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Article 12 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 12.2.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 12.2.2.6.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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**§ 12.2.3.3** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Contractor its just share of insurance proceeds received by the Owner, and by appropriate agreements, the Contractor shall make payments to its Subcontractors in similar manner.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Assignment of Contract**

Neither party to the Contract shall assign the Contract without written consent of the other, which shall not be unreasonably withheld.

### **§ 13.2 Governing Law**

The Contract shall be governed by the law of the State of New York.

### **§ 13.3 Titles**

Titles of articles, sections, and subsections are for the convenience only and neither limit nor amplify the provisions of this Agreement. The usage of the word "including" following any general statement, term, or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set

forth immediately following such a word or to similar items or matters, whether or not non-limiting language (such words as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that can reasonably fall within the broadest possible scope of such general statement, term, or matter.

**§ 13.4** Wherever possible, each provision of the Contract Documents shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of the Contract Documents, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or effecting the remaining provisions of the Contract Documents or valid portions of such provision, which are hereby deemed severable.

**§ 13.5** The Contract Documents embody the entire agreement of the parties and supersedes all prior and contemporaneous representations, agreements and understandings relating to the subject matter hereof, and any and all such prior and contemporaneous representations, agreements or understandings are deemed to be merged with the Contract Documents.

**§ 13.6. No Oral Wavier**

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by both the Owner and Contractor. No person is authorized on behalf of either party to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the duties or obligations set forth therein. No “constructive” changes shall be allowed.

**§ 13.7 Joint Drafting**

The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate the terms herein and to obtain the assistance of counsel in reviewing these terms prior to execution. Therefore, all terms shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

**§ 13.8** Notwithstanding any other provisions in the Contract Documents, Contractor shall not be liable for any damages or penalties relating to delays occasioned by the COVID-19 pandemic or any similar event, including but not limited to: 1) new measures implemented to limit or contain a pandemic such as voluntary and mandatory quarantines, stay at home orders, or workforce limitation directives issued by local, State or Federal officials or through local, State or Federal Legislation, Executive orders or other laws or ordinances; 2) delays in obtaining governmental approvals, permits and certificates of occupancy; 3) supply chain delays for construction goods and materials; or 4) workforce reductions or restrictions whether resulting from mandates or actual illness (each a “**Pandemic Force Majeure Event**”). In addition, Owner expressly acknowledges that the Completion date may be delayed by a Pandemic Force Majeure Event and such delay shall not be a breach of, or occasion any penalties under, this Agreement.

**ARTICLE 14 TERMINATION OF THE CONTRACT**

**§ 14.1 Termination by Contractor**

**§ 14.1.1** Upon Seven (7) Days’ Written Notice, Contractor may terminate this Agreement if the Work has been stopped for a Thirty (30) Day period through no fault of Contractor for any one of the following reasons: (a) under court order or order of other governmental authorities having jurisdiction; (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of Contractor, materials are not available; or (c) Work is suspended by Owner.

**§ 14.1.2** In addition, upon Seven (7) Days’ written notice to Owner of any of the following defaults, and provided the Owner fails to cure said default(s) within Seven (7) Days of its receipt of such notice, Contractor may terminate this Agreement if Owner: (a) refuses to issue appropriate Change Orders and

such refusal substantially interferes with Contractor's ability to perform the Work; (b) fails to pay Contractor in accordance with this Agreement; (c) fails to provide Contractor with adequate plans and specifications for Contractor to perform the Work in an efficient and workmanlike manner; or (d) otherwise has materially breached a provision of the Contract Documents.

**§ 14.1.3** Upon termination in accordance with this Section 14.1, Contractor is entitled to recover from Owner payment for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all costs and expenses related to demobilization or incurred by Contractor as a result of Owner's default.

#### **§ 14.2 Termination by Owner**

**§ 14.2.1** Upon Seven (7) Days' written notice to Contractor of any of the following defaults, and provided the Contractor fails to cure said default(s) within Seven (7) Days of its receipt of such notice, Owner may terminate this Agreement if the Contractor: (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 Contractor and the Subcontractors; (c) repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or (d) otherwise has materially breached a provision of the Contract Documents.

**§ 14.2.2** Upon termination in accordance with section 14.2, the Owner may terminate the Contract, finish the Work by whatever reasonable method the Owner may deem expedient, and offset the costs of same against the balance of the Contract Sum. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### **§ 15.2 Mediation**

All unresolved claims shall be subject to mandatory mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

#### **§ 15.3 Arbitration**

Any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, and shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators

shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### **§15.4 Venue**

Any negotiation, mediation or arbitration will be held at a location within a thirty (30) mile radius of the Project. Any legal proceeding or action arising out of, or relating to the Contract Documents, shall be commenced in Orange County, Supreme Court, State of New York.

#### **§ 15.5 Waiver of Claims for Consequential Damages**

Excluding losses covered by insurance required by the Contract Documents and Liquidated Damages or the Termination Fee set forth elsewhere in the Contract Documents, the Owner and the Contractor agree to waive all claims against each other for any consequential damages that may arise out of or relate to the Contract Documents, except for those specific items of damages excluded from this waiver as mutually agreed upon in writing by the Parties. The Owner's waiver of damages hereunder includes, but is not limited to, the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. The Contractor's waiver of damages hereunder includes, but is not limited to, loss of business, loss of financing, loss of profits, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this Section shall survive termination.

#### **§ 15.6 Notice**

Where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission.

#### **§ 16. HEFPA**

The Client may have rights under the New York State Home Energy Fair Practices Act (HEFPA). Inquiries about HEFPA may be made with the Department of Public Service.

#### **§ 17. NYS Department of Public Service**

For consumer complaints that cannot be resolved with the company, you may contact the New York State Department of Public Service (DPS). DPS complaints may be directed as follows: Website: [www.dps.ny.gov/complaints](http://www.dps.ny.gov/complaints), Phone: DPS Helpline at 1-800-342-3377 (M-F 8:30a -4:00p), or Mail: Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223

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

« »

**OWNER** (Signature)

« »« »

(Printed name and title)

« »

**CONTRACTOR** (Signature)

« »« »

(Printed name and title)