**CONSTRUCTION CONTRACT SAMPLE TERMS**

1. **­­­SCOPE**- NOTE: This is the most heavily litigated part of any contract. It’s therefore extremely important to be specific about what you’re doing and what you’re not doing as part of your work. You should also reference any documents such as proposals, drawings, specifications, etc that the scope of work entails.

**Intent of Agreement.** The intent of this Agreement is to Include in the Contractor's duties the obligation to perform and provide the Work, including all labor, supervision, materials, supplies, insurance, tools, equipment, taxes, transportation, and other items required in connection with the satisfactory performance, execution and final completion of the Work in accordance with the Contract Documents except for those items specifically not included; outline the Client’s duties and obligations as necessary to facilitate Contractor’s performance including but not limited to payment, compliance with any and all information requests, and authorizations as may be required by Owner or Owner’s Agents.

**Contract Documents and Scope:** This Agreement consists of the following Contract Documents, which are incorporated herein and made a material part hereof: ***List Documents Here.*** The Project includes all work described in **Schedule A** and the remainder of this Agreement, and all work reasonably inferable there from, as is reasonably necessary to complete the work of the Contractor.

**Conflict in Documents.** In the event of a conflict between any of the Contract Documents, Contractor is not obligated to perform the more costly installation. In the event Owner opts to direct Contractor to provide a more costly installation, Owner will be responsible for extra costs incurred.

**Extra-Work.** Any deviation from approved architectural drawings, specifications or documents will be strictly construed as work outside the Scope of this Agreement and at Contractor’s discretion will be subject to additional costs and charges to the Owner to be agreed upon by both parties to this Agreement consistent with the Proposal.

**Change of Scope of Work.** The Contractor shall be compensated for a change in the Scope of the Work as is consistent with this Agreement. The Owner shall be entitled to a reduction in the overall contract price for any deletion, or removal of any item from the scope of work. However Owner shall remain liable for any preparatory work or costs actually incurred prior to the removal or deletion of said item of work.

1. **REPRESENTATIONS** – NOTE: Purpose of having a representations section is to allocate risk between the parties. Owners are making certain specific representations and therefore is assuming the risks associated with those representations. Contractor is also making certain representations and is assuming the risks associated with those representations.

**Owner’s Representations.** Owner warrants that all pertinent Contract Documents have been provided to Contractor prior to execution of this Agreement. Owner further understands that only said documents were considered in Contractor’s proposal and in further executing this Agreement.

**Disclosed Conditions.** The Contractor accepts responsibility only for those conditions disclosed to Contractor by Owner or Owner’s Agents and within all pertinent documents drawings and specifications as provided to Contractor by Owner and Owner’s Agents.

**Contractor’s Representations.** The Contractor shall arrange for or perform, coordinate and supervise all Work described in the Contract documents, necessary to complete the construction of the Project in accordance with the Contract Documents, including all labor necessary to complete such construction, all materials, facilities, and tools necessary to complete the Work.

**Negligence**. Contractor will not absorb additional costs due to Owner’s intentional or negligent conduct.

**Verification and Coordination**. The Contractor shall not perform any portion of the Work covered or affected by shop drawings, specifications, details or documents until they have been reviewed by Owner and/or Owner’s Agents, approved and returned to the Contractor for construction.

1. **PERFORMANCE – NOTE: the following provisions pertain to your ability to perform your work and any key assumptions for the performance of your work such as required access, tests and inspections, situations that may warrant stopping work, etc.**

**Owner’s Agents** are limited to: ***List Owner’s Agents Here***

**Stop Work Notices**. In the event payment is not received as set forth in this “subsection f”, Contractor may elect to notify Owner with a “3-Day Stop Work Notice”, which shall give Owner 3 days from the date of receipt of said notice to remit payment in full. Failure to make a payment after receipt of a 3-Day Stop Work Notice will be deemed a material breach of this Agreement and Contractor may elect to enforce this Agreement in its entirety (including consequential, incidental and foreseeable damages) or cease performance until payment is remitted.

**Suspension or Termination.** The Contract or any portion of the Contract may be suspended or terminated by the Owner on written notice to the Contractor by Certified Mail. If the Project is suspended or terminated, the Contractor shall cease activity under this Agreement to the extent required, and the Owner shall pay the Contractor in accordance with a Final Progress Payment Billing to be submitted within 10 business days from the date of suspension or termination plus any foreseeable, consequential and incidental damages that may result from Owner’s termination or suspension of the Work unless otherwise stipulated by the parties herein.

**Tests and Inspections.** All inspections, tests and approval of any methods or means of construction or material or workmanship required by the Contract Documents or by applicable legal requirements shall be performed by independent agencies at such times as the approved by both Owner and Contractor.

**Access to Work.** The Owner, its agents and all inspectors conducting tests or inspections shall at all times have access to the Work wherever it is being carried out.

1. **TIMING**

**Date of Commencement.** This Agreement shall be deemed executed, and all of its terms and conditions in full-force and effect on the date first set forth above or the date Contractor commences Work, whichever is sooner. The Contractor shall commence effective on-site work in accordance with the direction to proceed from the Owner or Owner’s Agents.

**Delays.** As delays may arise during the course of construction that were not reasonably foreseeable at the commencement of the project, Contractor shall notify Owner or Owner’s Agents in writing via facsimile or electronic mail the existence of these potential delays as they may arise. Owner shall be responsible for the costs associated with any delays for which Owner is on Notice thereof to the extent that Owner’s authorization or action is necessary to remediate or rectify the cause of said delays.

**Owner’s Delays.** Contractor shall be entitled to any additional compensation or damages, whether direct, indirect, consequential, incidental or otherwise, by reason of any delay caused by Owner or Owner’s Agents should those delays material alter the scope or time of performance.

If the Contractor is delayed at any time in the commencement or progress of the work by changes ordered in the work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, discovery of hazardous materials, or other causes beyond the Contractor’s control, the Contract Time shall be subject to equitable adjustment

1. **PRICE- NOTE: the following are key provisions pertaining to the price. It addresses some basis issues such as what the contract price is, what**

**Contract Price.** In full consideration for the Work to be performed hereunder, the Owner shall pay the Contractor the fixed (lump-sum) contract price of Sixty Eight Thousand, Two Hundred Sixty Two Dollars and Zero Cents ($68,262.00) (the "Contract Price") which shall be disbursed in accordance with the terms and conditions as set forth in this Article 4.

**Down-Payment**. Owner agrees to pay Contractor one third (1/3) upon signing this Contract, equivalent to Twenty-Two Thousand, Seven Hundred Fifty-Four Dollars and Zero Cents ($ 22,754.00).

**Additional Considerations.** The Contract Price includes all applicable sales taxes, labor, materials, equipment, overhead, profits, employee benefits, administrative, clerical and other costs necessarily incurred in the performance of the Work, and shall not be increased without express, written agreement of the parties herein or as otherwise permitted by this Agreement. Contract Price is based upon all documents, drawings and specifications as provided by Owner or Owner’s Agents as defined in this Agreement.

**Exclusions**. The Contract Price does not include any items of work that are not reasonably foreseeable in completing the contracted for work including but not limited to (a) latent conditions that exist at the subject premises (b) additional Work resulting from changed conditions or conditions that substantially deviate from those assumed conditions in the initial proposal as determined by Owner or Owner’s Agents’ representations, specifications, drawings or documents (c) conditions not readily apparent or reasonably discoverable upon the initial inspection (d) conditions that are only know by Owner or Owners’ Agents that have not been disclosed prior to executing this Agreement (e) conditions that may exist behind walls, below floors and above ceilings. Contract Price includes construction permits and filing fees as required.

**Final Payment.** (i)Final payment constituting the entire unpaid balance of the Contract Price including retainer, shall be made by the Owner to the Contractor when a Certificate for Final Payment has been issued by the Contractor; (ii) Upon receipt of the Final Payment the Contractor will simultaneously provide the Owner with a waiver and release of lien; (iii) Owner’s final payment to the Contract must be made within 15 calendar days after the issuance of the Contractor’s Certificate for Final Payment; (iv) Payments received after 15 calendar days may be subject to interest and any foreseeable, consequential, or incidental damages.

**Payments to Subcontractors and Other Trades.** Promptly upon receipt of each payment from the Owner, the Contractor shall make payments to each laborer, contractor, subcontractor and material man for whose services, labor or materials an application was submitted and payment advanced by the Owner. The Contractor acknowledges that all moneys received from the Owner for payment to laborers, Contractors, subcontractors and material men are trust funds held for such purpose under the New York lien Law.

**Owner Not Entitled to Withhold Payments.** Owner does not have a right to withhold payments without good cause. Where Owner withholds payments in violation of this Agreement Owner may be subject to consequential, incidental, and foreseeable damages including interest and reasonable attorney’s fees in collecting monies due and owing.

**Unauthorized Changes Prohibited.** The Contractor shall perform the Work in strict accordance with the Contract Documents, provided that the scope of the Work as defined in the Contract Documents or the Contractor’s time of performance may be changed only by written Notice by the Owner. Any changes in scope or time of performance will subject the Contract Price to adjustment consistent with \_\_\_\_\_\_\_\_.

**Change Orders**. (i) The Owner may from time to time, change the scope of the Contractor's Work by written Change Order to the Contractor specifying the change. Any adjustment to the Contract Price resulting from such change shall be determined by mutual agreement of both parties to this Agreement prior to commencing Work under said Change Order. Adjustments in Contract Price shall be consistent with this Agreement and subject to the terms and conditions of this Agreement. (ii) The Owner may, from time to time, request the Contractor to furnish the Owner with an estimate of the change in the Contract Price and the change in the Contactor’s time for performance that would result from a contemplated change in the scope of the Work. Within five (5) days after receipt of such a request, the Contractor shall deliver to the Owner a statement of the amount of the change in its Contract Price and change in its time for performance, if any, that would result from the change, if effected. In no event shall such a request constitute an authorization to the Contactor to proceed with the work described therein.

**Field Changes.** In order to deal with unforeseen field conditions, to expedite the progress of the Work, to coordinate the Work among the various trades or otherwise for the mutual convenience of the Owner and the Contractor, the Owner hereby authorizes minor departures from the scope of the Work as defined in the Drawings and Specifications that do not (a) result in any change in the Contract Price, (b) result in any extension in the Contractor's time for performance or (c) give rise to any other claim by the Contactor.

**Overtime.** The Contractor shall not be entitled to additional compensation for Work performed outside normal working hours unless agreed to in writing, in advance by both parties to this Agreement, or pursuant to a substantially changed condition in access to the Subject Premises.

**Storage of Completed Materials.** The risk of loss of completed materials prepared solely for the subject premises shall be with the Owner regardless of whether said materials are stored on the subject premises or off-site at Contractor’s facilities, until their installation at the subject premises.

1. **DISPUTE RESOLUTION**

**Dispute Resolution.** In the event of a dispute between the Owner and the Contractor or between the Contractor and any other person with respect to the Work, the Project or this Agreement the Owner and the Contractor shall continue to perform their respective obligations under this Agreement without interruption or delay, pending the resolution or settlement of such dispute; the Contactor shall not directly or indirectly stop or delay the performance of the Work, including the delivery of materials to the Site; the Owner shall pay for all items not in dispute.

Any unresolved dispute or difference arising under this Agreement or any related agreement or Contract document shall be resolved by the parties’ good faith effort.

In respect of any unresolved dispute, difference or controversy arising under this Agreement or any related agreement or contract document, the parties shall first submit to non-binding mediation, provided that neither party shall be obligated to mediate any dispute if any party herein is unwilling to join the mediation. If non-binding mediation does not settle the matter within 30 days of selection of the mediator,

In respect of any unresolved dispute, difference or controversy arising under this Agreement or any related agreement or contract document, the parties shall submit to binding arbitration by the American Arbitration Association (“AAA”) in accordance with the AAA’s then current Commercial Arbitration Rules for a single Arbitrator. The decision or award of the Arbitrator shall be final and binding and judgment thereon may be entitled in any court within the State of New York to whose jurisdiction all Parties hereby consent. The prevailing party in any arbitration shall be entitled to its costs and expenses (including reasonable attorney’s fees) incurred in connection with the arbitration from the other party.

**Claims for Damages,** No action or proceeding shall lie or be maintained by Owner against Contractor upon any claim arising out of or based upon the Contract Documents or by reason of any act or omission or any requirements relating to the giving of notices or information, unless such action or proceeding shall be commenced within one (1) year after the Substantial Completion of the Work or, if this Agreement is earlier terminated, within one (1) year following the date of such earlier termination.

1. **MISCELLANEOUS**- NOTE: These are common boilerplate provisions for most any contract.

**Savings Clause.** If any provision, clause or article of this Agreement conflicts with the purpose or remainder of this Agreement, said conflicting article shall be stricken from the Agreement and the remainder of the Agreement shall be deemed enforceable.

**Applicable Law.** This Agreement shall be governed by the Laws of the State of New York, both as to interpretation and performance. The Owner and contractor hereby irrevocably consent to the jurisdiction of the courts located in the State of New York, City of New York in connection with any action or proceeding arising from or relating to this Agreement. Nothing in the contract documents shall be construed to permit deviation from the governing law specified in this section.

**Assignability.** The Contractor shall not assign or transfer this Agreement or any interest herein nor shall the Contractor assign any moneys due or to become due to it under this Agreement.

**No Prior Agreements.** This Agreement supersedes and replaces any prior agreements, representations or Communications between the parties relating to the subject matter hereof except those documents attached hereto as Exhibits, Riders, Schedules or Addendums, and constitutes the entire understanding of the parties and may not be changed, modified or discharged except in writing, duly executed by each party.

**Waiver.** No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in a writing denominated as such, signed by the Contractor and identifying the specific provision waived. In no event shall such writing constitute a general waiver of the Agreement or of any of its other terms and conditions.