

SUPPLEMENTARY CONDITIONS TO AIA C132-2019

These Supplementary Conditions dated _____ modify that certain AIA Document C132 Standard Form of Agreement Between Owner and Construction Manager as Adviser (the “Agreement”), by and between _____ (“Construction Manager”) and _____ (“Owner”) for the _____ (project).

1. Section 1.2 – Strike the last sentence.
2. Section 2.8 – Strike the second sentence.
3. Section 2.8 – Sections 2.8.1, 2.8.2, 2.8.4 and 2.8.5 – Strike in their entirety and replace with the following:

The Construction Manager must carry coverage listed in 2.8.1 and at least one of the coverages listed in 2.8.2 or 2.8.3 or 2.8.4, depending on the type of service or product being delivered.

2.8.1 Comprehensive General Liability: \$1,000,000 per occurrence and \$3,000,000 per aggregate and, at least, one of the next three:

2.8.2 Medical/Professional Liability: \$1,000,000 per occurrence and \$3,000,000 per aggregate or

2.8.3 Misc. Errors or Omissions: \$1,000,000 per occurrence and \$3,000,000 per aggregate or

2.8.4 Product Liability: \$1,000,000 per occurrence and \$3,000,000 per aggregate.

2.8.5 If the contractual service requires the transportation of State of Delaware employees, including school districts, agency clients or staff, the Construction Manger shall, in addition to the above coverage, secure at its own expense the following coverage:

- a. Automotive Liability (Bodily Injury): \$100,000/\$300,000
- b. Automotive Property Damage (to others): \$25,000

Section 2.8.6 – Strike in its entirety and replace with the following:

“The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.8.1 and 2.8.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The

excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.”

Section 2.8.7 – Strike in its entirety and replace with the following:

“2.8.7 The Construction Manager shall provide a Certificate of Insurance as proof that the Construction Manager has the required insurance. The certificate shall identify the Department and the Division associated with this contract as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.”

4. Section 3.2.5 - Add the following at the end:

Construction Manager’s review of the design documents is for the purpose of advising the Owner and Architect as to constructability matters and not specifically for the purpose of ascertaining that the design documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, or discovering errors.

5. Section 3.2.20 – Strike in its entirety and replaced with the following:

“Upon request of the Owner, the Construction Manager shall advise on the development of a commissioning plan.”

6. Section 3.3.1 – Insert the following at the end:

All modifications to the General Conditions found in AIA A232 – General Conditions will be listed in the Supplementary Conditions to that document.

7. Section 3.3.31 – Insert new Section 3.3.31 “Upon request of the Owner, the Construction Manager shall advise on the development of a commissioning plan.”

8. Section 4.1.1.4 – Add “This does not include providing advice on the development of a commission plan.”

9. Section 4.1.1.12 – Strike in its entirety, as this is considered a Basic Service.

10. Section 4.1.1.13 – Strike in its entirety, as this is considered a Basic Service.

11. Section 5.2 – Strike second sentence.

12. Section 5.14 - Insert the following at the end:

All modifications to the General Conditions found in AIA A232 – General Conditions will be listed in the Supplementary Conditions to that document.

13. Section 5.18 – insert “business” between “15” and “days.”

14. Section 5.19 – Add a new section §5.19 to read as follows:

Construction Manager is entitled to rely on the accuracy and completeness of any information provided by Owner or Architect.

15. Section 6.6 – Strike “obtain additional bids.” and replace with “assist as needed in a further procurement.”
16. Section 8.1.1 – In the first sentence, strike the word “binding” and add “or litigation” after “dispute resolution”. Strike the last sentence in its entirety.
17. Section 8.1.2 – Strike in its entirety.
18. Section 8.1.3 – Strike the last two sentences.
19. Section 8.1.4 – Strike in its entirety.
20. Section 8.2.1 – Strike all language after “a condition precedent to” and inserting “any other legal proceeding.” Strike the second sentence in its entirety.
21. Section 8.2.2 – Strike in its entirety and replace with the following:

The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation, unless the parties mutually agree otherwise. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with any other legal proceedings but, in such event, mediation shall proceed in advance of any other legal 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 by court order. If an arbitration proceeding 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.
22. Section 8.2.3 – Strike “and any filing fees”.
23. Section 8.2.4 – Strike in its entirety.
24. Section 8.3 – Strike in its entirety including all subsections.
25. Section 9.1 - Strike §9.1 in its entirety and replace with the following:

Construction Manager may suspend performance under this Agreement if at any time any payment, reimbursement or costs are due and outstanding for a period of more than forty-five (45) calendar days from the date of any application for payment, such failure of payment shall represent material nonperformance by the Owner and cause for termination of the Agreement, or, at the Construction Manager's option, cause for suspension of performance of all services under the Agreement. If the Construction Manager elects to suspend services, Construction Manager shall give seven (7) calendar days written notice to the Owner before suspending services. In the event of a suspension, and prior to Construction Manager resuming performance, Owner shall pay the Construction Manager all undisputed sums due prior to suspension, and for increases in the cost of performance and expenses incurred by Construction Manager in demobilization and remobilization, if any. In the event of any suspension hereunder, the Construction Manager shall have no liability to the Owner for delay, damages or increases in the cost of the Work resulting from such suspension. The Contract Time and Construction Manager's fee for the remaining services shall be equitably adjusted by change order. If Construction Manager elects to terminate the Agreement, Construction Manager shall provide the Owner with notice pursuant to §9.4 of the Agreement.

26. Section 9.2 – At the end of the first sentence insert “for undisputed fees.”
27. Section 9.6 – Strike “and costs attributable to termination, including the cost attributable to the Construction Manager's termination of consultant agreements.” Insert “and” between “termination,” and “Reimbursable Expenses”.
28. Section 9.7 – Strike in its entirety.
29. Section 9.9 – Add new Section 9.8 which reads as follows:
§9.9 If the continuation of this Agreement is contingent upon the appropriation of adequate state, or federal funds, this Agreement may be terminated on the date beginning on the first fiscal year for which funds are not appropriated or at the exhaustion of the appropriation. The Owner may terminate this Agreement by providing written notice to the parties of such non-appropriation. All payment obligations of the Owner will cease upon the date of termination. Notwithstanding the foregoing, the Owner agrees that it will use its best efforts to obtain approval of necessary funds to continue the Agreement by taking appropriate action to request adequate funds to continue the Agreement. Termination based on a lack of appropriations will not be considered a termination for convenience for this Agreement.
30. Section 10.1 - Strike §10.1 in its entirety and replace with the following:

This Agreement shall be governed by the law for the State of Delaware without regarding to conflicts of law. Owner agrees to personal jurisdiction in the State of Delaware for all proceedings under the Agreement.

31. Section 10.2 - Insert the following at the end:

All modifications to the General Conditions found in AIA A232 – General Conditions will be listed in the Supplementary Conditions to that document.

32. Section 10.4 - Add the following at the end:

Construction Manager shall not be required to execute consents to facilitate assignment to a lender unless Construction Manager has been paid in full for all undisputed amounts due through the date of the assignment as required under this Contract.

33. Section 10.5 – Strike in its entirety.

34. Section 11.6 Compensation for Reimbursable Expenses – Strike this section in its entirety.

35. Section 11.7 – Strike in its entirety.

36. Section 11.8.2.1 – Strike the second sentence and replaced with:

“Amounts unpaid (30) days after the receipt of the invoice at the rate entered below.”

Insert “12% per annum”.

37. Section 11.8.2.2 – Strike “in a binding dispute resolution proceeding.”

38. Section 12.1 - Add a new §12.1:

The terms of these Supplementary Conditions take priority over any conflicting terms on the Agreement or any other Contract Document.

39. Section 12.2 - Add a new §12.2:

Both Owner and Construction Manager will have access to and may acquire and/or generate confidential information, including without limitation, proprietary processes, trade secrets and financial data, belonging to the other party or that the other party holds under obligation of confidentiality to a third party. Unless required by law, including but not limited to the Delaware Freedom of Information Act, Owner, Construction Manager and their respective consultants, contractors, subcontractors, employees, agents or other persons to whom Owner or Construction Manager provide access to confidential information, shall keep all confidential information supplied by or on behalf of the party in the strictest of confidence by suing at least the same degree of control and care as a reasonably prudent person would exercise with respect to its

similar property under similar circumstances. In particular, either party shall not, without the prior written express consent of the other party disclose to anyone or permit its subcontractors, employees, agents or any other person under its or their control to disclose to anyone, other than persons with a bona fide need to know, any confidential information provided directly and indirectly pursuant to the Agreement. This obligation of confidentiality and restriction on use shall survive any termination or expiration of the Agreement and shall continue until such time as the particular information involved can be shown to no longer be considered confidential.

40. Section 13.2.4 – Add to this section - Supplementary Conditions for the AIA C132-2019
41. Section 13.2.5 – A232 – 2019 General Conditions
42. Section 13.2.6 – Supplementary Condition for the AIA A232 – 2019.