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**Subcontract Firm Name**  
**Subcontract #:**

## **Appendix F - Subcontract Terms and Conditions**

### **ARTICLE 1 - SUBCONTRACTOR'S WORK AND SCHEDULE**

**1.1 WORK:** Subcontractor agrees to furnish all supervision, labor, materials, tools, equipment, services, storage, and whatever else is required to perform the Work in strict accordance with the Contract Documents, in the best manner possible and in conformity with the best standard practice. All materials used in the Subcontractor's work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work, and shall be new except as may be expressly provided in the Contract Documents to be otherwise. Subcontractor, certifies, agrees and acknowledges that he has examined and read the Contract Documents, and that he and his subcontractors will comply with any and all parts of the Contract Documents insofar as they relate in any way to Work undertaken herein. The Subcontractor shall be bound to the Contractor by the terms of the Contract Documents, and assumes toward the Contractor all of the obligations and responsibilities of the Contractor, by those documents, assumed toward the Owner, as applicable to this Subcontract, and agrees that it has had an opportunity to review the Agreement between Owner and Contractor. To the extent there is any conflict within the terms of the Contract Documents, this Subcontract shall take precedence. The Subcontractor acknowledges that he has physically visited the project site and is familiar with the conditions under which the Work is to be performed pursuant to this Subcontract. Subcontractor agrees to perform its work under the general direction of the Contractor and subject to final approval of the Architect, Owner or Owner's authorized agent.

**1.2 SCHEDULE OF WORK:** Time is of the essence of this Agreement. Subcontractor agrees to immediately begin its work when directed by the Contractor and to prosecute its work diligently to completion, and coordinate its work with other work being performed on the project so as not to delay the progress of other trades. The Contractor shall have the right to decide the time, duration, sequences, and priorities in which the various portions of the Work shall be performed and have the right to develop critical path method (CPM) schedule(s) that describe the Contractor's plan to perform the Work. Contractor reserves the right to update and modify the schedule(s) during the project. Contractor also reserves the right to utilize any float in the CPM schedule at its sole discretion, to the extent this right is not reserved by the Owner. Subcontractor agrees to cooperate and assist in Contractor's preparation of the schedule, by providing information pertaining to manpower levels, material deliveries, etc., upon request. Subcontractor specifically agrees to maintain the schedule(s) issued by Contractor as pertains to the Work of this Agreement.

### **ARTICLE 2 - PAYMENT**

**2.1 PURCHASE PRICE:** Contractor agrees to pay, or cause to be paid, Subcontractor as consideration for the performance of its work, the Purchase Price stated on the Cover Page, Page 1, of this Subcontract Agreement, subject to additions and deductions for changes in the Work as provided for in the Contract Documents. Unless otherwise stipulated in this Agreement, the purchase price shall be firm and not subject to escalation for the duration of this project.

**2.2 PROGRESS PAYMENTS:** Payment shall be made in installments as the Work progresses and as requested by the Subcontractor. Payments shall be conditioned on Subcontractor's submission of its request on "Monthly Payment Application" form, as provided by the Contractor, to be completed in all respects including the partial lien and claim waiver in the form required by Contractor or Owner to document that all accounts pertaining to the Project have been paid in full. Subcontractor shall complete the Contractor's form, "List of Lower Tier Subcontractors and Suppliers" to this Subcontract Agreement in its entirety, identifying all of Subcontractor's lower tier subcontractors and suppliers that it intends to use on the Project. Subcontractor shall immediately notify Contractor in writing if Subcontractor adds to or changes any lower tier subcontractors or suppliers for the Project. Subcontractor agrees that it shall require that all lower tier subcontractors and suppliers be bound to Subcontractor and to assume toward Subcontractor all of the obligations and responsibilities that Subcontractor has assumed toward Contractor. Subcontractor also agrees that it shall require all lower tier subcontractors and suppliers to notify Contractor in writing if at any point their payment from Subcontractor is greater than thirty (30) days past due. Subcontractor may be required to demonstrate their agreement with any lower tier subcontractor or supplier includes the provisions noted in this article. Approval of a lower tier subcontractor will not imply that Contractor assumes any responsibility for such lower tier subcontractor or that lower tier subcontractor is relieved of any responsibility with respect to the Sublet Work. Subcontractor shall provide lien waivers from all lower tier subcontractors and vendors of any tier who are providing goods and services for the Project in an aggregate value in excess of \$25,000. Lien waivers from all lower tier subcontractors and suppliers of any tier that meet this requirement shall be provided before Contractor will approve the first application for payment in which the aggregate "completed and stored to date" amount exceeds fifty percent (50%) of this Subcontract amount and before Contractor will approve any request for retainage reduction or final payment. Lien waivers from other lower tier subcontractors and suppliers of any tier shall be provided if requested by the Contractor. All required documentation shall be in original form. If Subcontractor does not provide lien waivers in accordance with this Agreement, or if Contractor otherwise reasonably determines that Subcontractor is not timely paying its subcontractors and suppliers, then Contractor shall have the right to require monthly lower tier lien waivers, issue joint checks, make payments directly to Subcontractor's subcontractors or suppliers, or to take other reasonable actions in connection with payment, in order to reasonably protect Contractor's interest. All payments made by Contractor by joint check or directly to Subcontractor's subcontractors or suppliers shall reduce the amounts due Subcontractor under this Subcontract Agreement. It is agreed that no payment hereunder shall be made to Subcontractor, except at Contractor's option, until and unless lien waivers have been provided in accordance with this Agreement. Payment by the Owner to Contractor is also a specific condition precedent to any claim for payment by Subcontractor against the Payment Bond of Contractor and Contractor's Surety is entitled to rely upon that condition precedent.

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The Subcontractor shall provide a schedule of values acceptable to the Contractor and Owner, which shall be incorporated as a part of the monthly payment applications. No payments will be disbursed until all payment requirements are met, including complete execution of the Subcontract Agreement and any applicable Change Orders, provision of valid Certificates of Insurance, provision of bonds, letter of credit or certified payrolls (if required) or any other requirements by the Owner. Progress payments to the Subcontractor shall be made within seven (7) days after receipt by the Contractor of payment by the Owner for the period in which Subcontractor's work was performed, unless specifically agreed in writing as an amendment to this subcontract. From each payment, an amount equal in percentage, to that which is deducted and retained from the Contractor's progress payments by the Owner unless otherwise stipulated, shall be deducted and retained by the Contractor until completion of this Agreement and final payment is due. Subcontractor agrees to accept the risk of nonpayment if Contractor is not paid progress payments, retainage and/or final payment from Owner for any reason. Subcontractor further agrees that Owner's payment to Contractor of all progress payments, retainage, and final payment for any work performed by Subcontractor, other subcontractors and Contractor, shall be an express condition precedent to any obligation of Contractor to make any progress payments, retainage or final payment to Subcontractor.

**2.3 FINAL PAYMENT:** Final payment shall be made following completion of all Subcontractor's work and requirements in accordance with the terms of this Agreement and shall normally be due and payable not later than seven (7) days after Contractor's receipt of final payment from the Owner and following Subcontractor's completing the following: (a) Final Lien and Claim waiver in such form as may be required by Contractor and Owner, (b) Consent of Surety to final payment, if required, and (c) satisfactory provision of all close-out procedures. Contractor, however, reserves the right to advance the dates of final payment or any progress payments under this Agreement, if in its sole judgement, if it becomes desirable to do so. Payment by the Owner to Contractor is also a specific condition precedent to any claim for payment by Subcontractor against the Payment Bond of Contractor.

**2.4 TIME OF APPLICATION:** Subcontractor shall submit progress payment applications to the Contractor on or before the 20th day of each month, supported by such data as the Contractor may require. Each application shall indicate the value of work installed to date. The value of materials stored at the Project site or other approved location, may be included only on condition the Contract Documents provide for payments to the Contractor for such stored materials and Subcontractor complies with all requirements of the Contract Documents (special insurance, bill of sale, etc.) relating to same.

**2.5 PAYMENT CONDITIONS:** Subcontractor shall make prompt payment to all parties providing labor, material, equipment, etc. in connection with this Agreement and shall furnish satisfactory evidence, when requested by the Contractor to verify compliance. Subcontractor agrees that no payment made by Contractor shall be used to satisfy any obligation not incurred in connection with this Agreement. Subcontractor shall, as often as required by Contractor, furnish such information and substantiation as Contractor may require with respect to the extent and value of current progress of work and the nature and extent of all obligations incurred by Subcontractor. Contractor shall have the right to contact Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by Subcontractor in accordance with this Agreement. Contractor reserves the right to withhold from any payments due Subcontractor, without limiting its rights and remedies, an amount deemed sufficient to (a) defend, satisfy and discharge any asserted claim that Subcontractor (or its subcontractors) has failed to make prompt payment for any obligation incurred in connection with this Agreement or has caused damage to the Work or the Project or (b) remedy any other default by Subcontractor or (c) satisfy any applicable or pending liquidated or consequential damages. In the event Subcontractor has performed, is now performing, or in the future undertakes to perform any "other work" for Contractor under any other subcontract or Agreement (whether written, oral, or implied), it is expressly understood and agreed that Contractor shall have the right to apply monies earned or owed by Subcontractor under this Subcontract Agreement to the payment of any amounts and/or damages due to Contractor under such other subcontracts or agreements, or by reason of Subcontractor. Equally, Contractor shall have the right to apply monies earned or owed by Subcontractor under other subcontracts or agreements to the payment of any amounts and/or damages due to Contractor under this Subcontract Agreement. Payment by the Owner to Contractor is also a specific condition precedent to any claim for payment by Subcontractor against the Payment Bond of Contractor and Contractor's Surety is entitled to rely upon that condition precedent.

**2.6 PAYMENT NOT ACCEPTANCE:** No payment to Subcontractor shall constitute acceptance of performance or progress of the Work not in conformance with the Contract documents or acceptance of faulty or defective work or materials.

### **ARTICLE 3 - SUBCONTRACTOR'S OBLIGATIONS**

**3.1 METHOD OF PROCEDURE:** Subcontractor shall immediately (1) order all materials and equipment necessary to perform the Work; (2) obtain all drawings and information necessary to fulfill all work and conditions contemplated by this Agreement; (3) submit for approval to Contractor, or as directed, all submittals which may be required. If drawings or full information have not been furnished, Subcontractor shall keep Contractor informed as to what drawings or information may still be required to complete the Work contemplated by this Agreement so as not to delay the progress and completion of work performed by other trades or the completion of the Contract between Owner and Contractor. Subcontractor shall immediately notify Contractor in writing of any delays in delivery of materials which might affect its performance of the Work. Any discrepancy in the drawings or information by Subcontractor shall be immediately referred to Contractor and without its written approval no modification or correction shall be made except at the risk and expense of Subcontractor. In event of any question over the scope of the Work, Subcontractor shall nevertheless promptly complete the Work as directed by Contractor. Subcontractor shall notify and obtain approval of the Contractor before arrival of its forces or delivery of equipment and materials, before any substantial change in its forces and before vacating the jobsite for any reason.

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**3.2 LAYOUT RESPONSIBILITY:** The Contractor shall establish principal axis lines of the building and site upon which the Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to lay out or perform its work correctly.

**3.3 AUTHORIZED REPRESENTATIVES:** Subcontractor shall designate one (1) person who shall be the Subcontractor's authorized representative at the jobsite and one (1) representative at the office responsible for the project, to whom the Contractor can issue instructions, orders, changes or directions, except in case of emergency. These authorized representatives cannot be changed for the length of the Subcontract without written notification to the Contractor's designated representative and approval given by the Contractor. Subcontractor shall at all times supervise the Work in a manner satisfactory to Contractor and shall enforce strict discipline and good order among its employees.

**3.4 INSPECTION:** Upon request by Contractor, Subcontractor shall furnish full and accurate reports of the progress of Work, regardless of the location of such work. Subcontractor shall turn in progress reports daily at project site on forms provided by Contractor. Contractor shall be accorded full and free access to the place(s) of business of Subcontractor and its suppliers in order to inform itself of the general condition and progress of work. Contractor shall have the right to inspect the Work and to reject any portion not in accordance with the Contract Documents, and Subcontractor shall promptly replace rejected portions of the Work in a manner satisfactory to Contractor. Should Contractor believe that Subcontractor's work may be in non-conformance with the Contract Documents, the Contractor may obtain the services of an independent testing/inspection consultant to review and inspect the Work at the project site or other location, and provide a report/recommendation as to the conformance of the Work. Should the independent testing/inspection consultant determine the Work to be in non-conformance, then Subcontractor shall indemnify Contractor for the cost of the testing/inspection as well as the cost of remedying the Work determined to be in non-conformance.

**3.5 SAFETY:** Subcontractor represents that it is knowledgeable and familiar with all local, state, federal and OSHA safety laws and regulations governing its work, and shall fully comply with those laws and regulations, as well as any reasonable safety directives of the Contractor and/or Owner. Subcontractor further represents that it shall take all necessary precautions while performing its work to ensure the safety of its employees, and the employees of others working within the project premises. Subcontractor shall review with his on-site personnel the Safety Requirements prior to commencement of any on-site activities. Subcontractor agrees that it shall be liable for any violation of applicable safety requirements by any of its employees, subcontractors, or agents.

**3.6 CLEAN-UP:** Subcontractor shall comply with all clean-up directives of the Contractor and shall at all times keep the building and premises free from debris and unsafe conditions resulting from Subcontractor's work. On a continuing and regular basis, Subcontractor shall remove all trash and debris generated by its work from the Project Site. If Subcontractor does not comply with its clean up obligations, Contractor may, after giving 48 hours prior written notice and upon failure of the Subcontractor to comply with its clean up obligations in such 48 hour period, have Subcontractor's clean-up obligations performed by others, and charge the reasonable cost thereof to Subcontractor. If Contractor is unable to determine which Subcontractor is responsible for the clean-up of any specific area, Contractor may equitably apportion the cost of such clean-up between Subcontractors in such manner as it determines to be proper. So long as Contractor expresses a reasonable basis for its equitable apportionment of clean-up costs, Contractor's determination of the apportionment of clean-up costs among subcontractors shall be conclusive on Subcontractor.

**3.7 COORDINATION:** Subcontractor shall be responsible for all receiving, unloading, hoisting, safe storage, and movement of materials, within the project site. Storage of materials on-site must be coordinated with Contractor's superintendent prior to the arrival of those materials. Subcontractor shall inspect all surfaces or elements of the Work of other trades prior to applying or attaching any parts of his work and advise the Contractor in writing of any deficiencies that may impact upon his work. Failure of the Subcontractor to so notify the Contractor will be considered as acceptance of those surfaces or elements for Subcontractor's use and the cost of any remedial work required will be the Subcontractor's responsibility. Subcontractor shall coordinate his work with the Work of other trades and shall assume responsibility for any re-work required should he fail to do so.

**3.8 PROTECTION OF THE WORK:** Subcontractor shall take necessary precautions to properly protect his work and the work of others from damage caused by Subcontractor's operations. Should the Subcontractor cause damage to the work or property of the Owner, Contractor, or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor and/or damaged party, or the Contractor may so remedy such conditions at the cost of the Subcontractor. Subcontractor shall be responsible for care and protection of his work until final acceptance by the Owner.

**3.9 PRIVACY:** Subcontractor shall not assign this Agreement in whole or in part or any amounts due or to become due there under to any third party, including Employee Leasing Companies, without written approval of the Contractor. Subcontractor agrees not to perform any work directly for the Owner or communicate directly with the Owner or Owner's representatives on any matter in connection with the project, for the duration of the project without written consent of the Contractor.

**3.10 SUBMITTAL COMPLIANCE:** Subcontractor shall be responsible for complete, correct, and timely submission of required submittal information in sufficient quantities in accordance with Contract Documents. Submittal includes product literature, shop drawings, samples, calculations, data or other information required for the Owner/Architect review. Subcontractor shall have sole

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responsibility for submittal and materials to comply fully with the Contract Documents regardless of any review, stamp or approval that the Contractor independently applies to Subcontractor's submittal.

**3.11 SUBSTITUTIONS/DEVIATIONS:** No substitutions or deviations shall be made in the Subcontractor's Work unless permitted in the Contract Documents and only then upon the Subcontractor first receiving all approvals required under the Contract Documents. Any desired or proposed Substitutions or Deviations from the Contract Documents must be specifically and separately requested in writing no later than the time of original submission to the Contractor for approval. The Subcontractor shall indemnify the Contractor for any increased costs incurred by the Contractor as a result of such substitutions, whether or not the Subcontractor has obtained approval thereof.

**3.12 TAXES, LICENSES & REGULATIONS:** Subcontractor shall pay any and all taxes including sales, use and excise taxes, federal, state or otherwise, which accrue in performance of this Agreement. Subcontractor will furnish evidence, if requested by Contractor, showing that all such required payments have been made. Subcontractor shall comply with all local, state and federal laws, regulations, ordinances, licensing requirements, and directives, to which it or Contractor may be subject during the course of this Agreement and Contractor's contract with the Owner. Subcontractor shall comply with all such requirements at no extra cost to Contractor. Subcontractor agrees to furnish a copy of their state contractor's license prior to Agreement execution and to maintain the required license in the correct specialty according to state regulations to perform the Work of this Agreement through the completion of the project. If for any reason Subcontractor's licensing status should change during the course of the project, Subcontractor shall immediately notify Contractor in writing. Subcontractor is also responsible to ensure lower tier subcontractors are licensed as required in the correct specialty according to state regulations. Subcontractor must collect and have available upon request, a copy of the required contractor's license for any lower tier subcontractors.

**3.13 PERMITS & BONDS:** Subcontractor shall obtain and pay for all fees, permits, bonds, etc. required for the Work covered by this Agreement. At the Contractor's discretion, the Subcontractor may be enrolled in Subcontractor Default Insurance (SDI) program that is controlled and provided by the Contractor or Subcontractor shall provide the attached payment and performance bond on the surety letterhead, in the amount of one hundred percent (100%) of this Subcontract Agreement, written by a recognized bonding company acceptable to Contractor. The bond shall incorporate this Subcontract Agreement by reference and any provision contrary to a provision in this Subcontract Agreement or any provision which attempts to limit Contractor's right to file suit to a period less than the statutory limitation for breach of Contract shall be void. Subcontractor shall be enrolled in SDI or shall provide applicable fees, permits, bonds, etc. in a timely manner so as not to delay the Work of the Subcontractor or Contractor.

**3.14 WARRANTY:** Subcontractor warrants its Work against all deficiencies and defects in materials and/or workmanship and as called for in the Contract Documents. Upon written notice by Contractor, Subcontractor shall promptly repair and make good in a manner satisfactory to the Contractor and Owner (or Owner's authorized agent), any defect that may appear with respect to any specific aspect of the Subcontractor's work within the stipulated warranty period. Subcontractor further agrees to execute any special guarantees or warranties that shall be required by the Contract Documents for the Subcontractor's work prior to final payment. If no guarantee or warranty period is stipulated in the Contract Documents, then the Subcontractor shall guarantee or warranty its Work as described above for the period of one year from the date of final payment by the Contractor.

**3.15 WAGE RATES:** Subcontractor shall comply with minimum wages required by Federal and/or State law and as stipulated by the Contract. Subcontractor shall submit certified labor payrolls if required or requested to do so. Contractor reserves the right to deduct from any payments due Subcontractor any amounts that may be withheld by the Owner until Subcontractor's violations of this provision are remedied.

### **ARTICLE 4 - CONTRACTOR'S OBLIGATIONS**

**4.1 AUTHORIZED REPRESENTATIVE:** The Contractor shall designate one or more persons who shall be the Contractor's authorized representative(s) (a) on site and (b) off site. Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency. Contractor's representatives shall transmit, with all reasonable promptness, all submittal, approvals, clarifications and directions relating to the Subcontractor's work. No Superintendent, foreman, or other field employee of Contractor has authority to incur any debts in connection with the Work.

**4.2 TEMPORARY SERVICES:** Contractor shall furnish to Subcontractor at the jobsite all water for performance of the Work, temporary electricity for operation of tools and equipment and temporary toilet facilities, unless noted otherwise. Contractor will also furnish temporary lighting and heating as it deems necessary for general performance of the work of all trades. Subcontractor shall provide any supplemental task lighting or heating as it deems necessary to complete its work.

### **ARTICLE 5 - CHANGES IN THE WORK AND CLAIM PROCEDURES**

**5.1 CHANGES:** Contractor may, at any time during the progress of the Work, modify, change, add to, or delete from the Subcontractor's work by written directive. In such event, without notice to any surety and without invalidating this Subcontract Agreement, the parties may make adjustments by a written Change Order signed by those designated in accordance with Appendix A – Signature Authorization Form, modifying the subcontract price. No such modification, change, deletion or addition to the Work

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performed by the Subcontractor shall be the responsibility of the Contractor, unless authorized in accordance with the foregoing provisions. Should the Contractor and Subcontractor disagree as to the cost of any change in the Work, the Subcontractor shall nevertheless proceed without delay to complete the changed work, if so authorized in writing by the Contractor and then follow the claim procedures as provided for herein.

**5.2 NOTICE:** Notice for any and all claims by Subcontractor shall be made in writing immediately upon Subcontractor's first knowledge of the claim condition or first event giving rise to such claim, and under no condition shall such claim be provided to Contractor later than seven (7) Calendar days after the event's occurrence. Should the claim involve the correlative rights of the Owner, then the notice shall be made in such time as to provide Contractor a minimum of two days to similarly notify Owner, before the time stipulations under the Contract expire for presenting such claim. Subcontractor shall provide the following information in writing at the time of its notice: a) a determination of whether or not its claim and/or dispute involves the correlative rights and duties of the Owner, b) the specific event, action, or condition causing the claim including the date and time of occurrence, c) a cost estimate and itemized list of materials, equipment, and labor for which additional compensation will be claimed, d) those sections of the Contract or Subcontract under which Subcontractor believes it is entitled to such claim, e) a specific reference to this article, f) estimate of the time impact on Subcontractor's performance of its work, and g) any other items required by the Contract Documents. Failure to provide notice in such manner and time frame shall be deemed to be a waiver of the claim. Notice, as stipulated above, must be made prior to proceeding with any Work in question.

**5.3 CHANGE PROPOSALS:** If the Contractor requests a proposal from Subcontractor for modification to this Agreement, Subcontractor shall respond to Contractor in writing within the time period stipulated in the change proposal request. Failure of the Subcontractor to respond in writing within the stipulated time period shall be deemed by Contractor to mean that the proposed modification has no impact on the cost or time of performance of Subcontractor. Subcontractor shall not provide responses regarding proposed changes directly to the Owner. Any such change proposal requests will be subject to Contractor's review, and if applicable, the Owner's review, and acceptance or rejection. Change proposal requests shall be in a format acceptable to Contractor and the Owner (if applicable). Contractor and/or Owner may request revisions to Subcontractor's change proposal requests. Any request for an extension of time for modifications to this Agreement must be requested at the same time of Subcontractor's submission of its change proposal request to Contractor.

**5.4 CLAIMS PROCESS:** In the event of any claim and/or dispute between Subcontractor and Contractor arising under or relating to this Agreement, or the breach thereof, which involves the correlative rights and duties of the Owner, the resolution shall be determined in accordance with the Contract Documents, and Subcontractor and its Sureties shall be bound to Contractor to the same extent as Contractor is bound to the Owner by the terms of the Contract Documents. Subcontractor agrees to be bound by the final decisions and/or determinations rendered by any authorized person, board, court, or other tribunal and subsequently waives its rights to further action against Contractor. Contractor shall have the right to review, approve, negotiate, or reject any claim and/or dispute instigated by Subcontractor, prior to its submission to the Owner. Subcontractor shall be offered a reasonable opportunity to present information or testimony involving its rights and shall have the obligation to cooperate fully with Contractor in the advancement of, or defense against, any claim and/or dispute. For those claims which involve the correlative rights and duties of the Owner, Subcontractor's recourse against Contractor will be limited solely to awards from Owner to Contractor for such claims of Subcontractor, less Contractor's expenses, including attorney's fees, incurred in presenting and advancing claims on behalf of Subcontractor against the Owner.

**5.4(a)** In the event of any claim and/or dispute between Subcontractor and Contractor (which does not involve the correlative rights and duties of the Owner) for which the Subcontractor and Contractor cannot agree on the value, Subcontractor shall submit its claim and/or dispute to Contractor for review as provided for in 5.2 herein. For such Claims and/or disputes, the maximum amount of damages which the Subcontractor (and any of its subcontractors and suppliers) shall be entitled to is the actual direct cost of the Work, plus 10% to cover all overhead, profit, and indirect costs. The actual direct cost of the Work shall be determined in accordance with AIA Document A102 2007 Edition), Articles 7, 8, and 9. Subcontractor shall be required to submit to Contractor all necessary daily reports, material invoices, daily payrolls, and other information necessary to conclusively document its actual direct costs. Should the Contractor determine that no extra compensation is due, such decision shall be final. Following Contractor's notice of its final decision relating to a claim of Subcontractor, Subcontractor may then further pursue such claim in accordance with Article 5.4b. However, in such case, Subcontractor's maximum entitlement shall be as stipulated above, and Subcontractor hereby waives its rights to assert any claim for any other damages, including but not limited to, claims for disruption, delay and extended overhead, total cost claims or modified total cost claims.

**5.4(b)** Claims and/or disputes between Contractor and Subcontractor, not otherwise resolved under the Contract Documents or through negotiations, shall be resolved, at Contractor's option by: (1) litigation in a) the Circuit Court of City of Roanoke, Virginia, b) any other venue as may be acceptable to Contractor, or by (2) arbitration as per the section entitled Agreement to Arbitrate. If a claim and/or dispute is to be resolved by litigation, Contractor and Subcontractor hereby waive their rights to demand a trial by jury and the outcome shall be determined by a judge of the court of competent jurisdiction of the acceptable venue.

**5.4(c)** Contractor shall not be liable to Subcontractor for any claim and/or dispute that is not timely, or properly, presented by Subcontractor.

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**5.4(d)** The pending submission or resolution of a claim or dispute shall not interfere with, or cause delay to, the progress of Subcontractor's work, nor shall limit the right of Contractor to proceed to cure an actual, or alleged, default of Subcontractor.

**5.5 DELAYS:** In the event Subcontractor's progress of Work is delayed or impacted for causes attributable to the Owner, then Subcontractor may present its claim for additional time and/or compensation in accordance with Article 5.4, having first provided Notice in accordance Article 5.2. Contractor may be liable to Subcontractor for damages, including additional compensation, arising from delays for causes attributable to the Owner, but Subcontractor's recourse against Contractor will be limited solely to awards from Owner to Contractor for such claims of Subcontractor, less Contractor's expenses, including attorneys' fees, incurred in presenting and advancing claims on behalf of Subcontractor against the Owner. Contractor agrees to cooperate with Subcontractor in presenting and advancing all such claims, subject to Contractor's review and approval of the claim itself and all supporting documentation in furtherance of the claim. To the extent there is no award against the Owner for such Contractor's claim, Contractor shall not be liable to Subcontractor for any other reason for damages or additional compensation arising from delays, acceleration, inefficiency or other causes. No delays shall relieve Subcontractor from its obligation to perform the subcontract Work and meet the Contract completion requirements. In no other event shall Contractor be liable to Subcontractor for damages or additional compensation arising from delays, acceleration, inefficiencies, or other causes, in Subcontractor's performance of its Work. Subcontractor specifically agrees that an extension of time will be its sole and exclusive remedy for such matters. Contractor shall not be liable to the Subcontractor for damages, delays, acceleration, inefficiencies, or other problems to Subcontractor's Work caused by any Acts of God, or any other cause, beyond Contractor's control, or on account of any circumstances caused or contributed to by the Subcontractor or Owner.

**5.6 DAMAGES AND AWARDS:** Subcontractor shall be bound to Contractor by the same damage and award provisions (including liquidated damages, actual damages, other damages, or other) to which Contractor is bound to the Owner. Subcontractor's liability for damages is to be based on its proportional responsibility for those damages as determined by Contractor. In the event Subcontractor, through Contractor presents, advances, or defends a claim and/or dispute for such damages against the Owner (or any other third party) arising under, or relating to, this Agreement, Subcontractor agrees to bear the proportional expenses or costs, including reasonable attorneys' fees, to the extent of Subcontractor's interest or liability in the claim and/or dispute. This provision does not preclude any rights or remedies Contractor, or Subcontractor, may be afforded under state or federal law.

**5.7 ACTION AGAINST SURETY:** If Contractor has furnished payment and performance bonds for the project, Subcontractor expressly agrees to stay any action/claim/dispute against Contractor and/or Contractor's Surety, arising out of this Agreement, pending the complete and final resolution of all claims and/or disputes involving Subcontractor submitted claims pursuant to the claims and/or disputes procedures required by the Owner. The resolution shall include any arbitration, court action, and appeal until it is finally decided. This Agreement to stay action does not relieve Subcontractor in any way from the notice provision of this Agreement nor from its obligations under this Contract. Subcontractor shall not take separate actions against Contractor and its Surety. Such actions shall be combined within one single action. The venue for this combined single action shall be a) the Circuit Court of City of Roanoke, Virginia, b) any other venue as may be acceptable to Contractor.

**5.8 AGREEMENT TO ARBITRATE:** Unresolved claims, disputes and matters in question arising out of, or relating to, this Agreement or the breach thereof, which are to be decided by Arbitration in accordance with 5.4b, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. This arbitration agreement shall be governed by the Federal Arbitration Act ("FAA"). In the event that Subcontractor refuses to go forward with arbitration, then Contractor reserves the right to proceed with arbitration, and Subcontractor specifically acknowledges the applicability of the FAA allowing the aggrieved party to petition an appropriate court for enforcement of the arbitration agreement and to obtain a stay of any other proceeding. Submission of any dispute under this Agreement to arbitration may only be avoided as specifically allowed by the FAA. To the extent that the FAA does not apply, then the Virginia Uniform Arbitration Act shall apply. To the extent permitted by applicable law, Subcontractor acknowledges that if it refuses to go forward with arbitration, then the arbitrators shall go forward with the arbitration hearing and render a binding decision without the participation of the Subcontractor despite its absence at the arbitration hearing. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand for Arbitration shall be made with-in thirty (30) days after written notice of the claim dispute or other matter in question has been given. The location of the arbitration proceedings shall be the city of the Contractor's headquarters unless otherwise mutually agreed by the parties. To the extent not prohibited by their contracts with others, the claims and disputes of the Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrators(s) in a single consolidated proceeding. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

Unless otherwise agreed in writing, the Subcontractor shall carry on the Work and maintain the Schedule of Work pending arbitration, and, if so, the Contractor shall continue to make payments in accordance with this Agreement.

**5.9 PAYMENT OF FEES, COSTS AND EXPENSES:** In the event any claims are brought herein by either party, either in litigation or arbitration, the parties agree that the non-prevailing party in that litigation or arbitration shall be responsible to pay all fees, costs and expenses incurred by the prevailing party.

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**5.10 ACTS OF GOD:** Contractor shall not be liable to the Subcontractor for damages, delays, acceleration, inefficiencies, or other problems to Subcontractor's Work caused by any Act of God, or any other cause, beyond Contractor's control, or on account of any circumstances caused or contributed to by the Subcontractor. In any event, if there is any relief to be afforded to Subcontractor under this subparagraph, it shall be exclusively through an extension of time and Contractor shall not be liable to Subcontractor for any additional payments resulting from these occurrences.

### **ARTICLE 6 - RECOURSE BY CONTRACTOR**

**6.1 DEFAULT:** Any of the following items may constitute a default under this Agreement by Subcontractor:

- (a) Failure of Subcontractor to perform the Work or comply with any covenant, requirement, condition, or term in accordance with the Contract Documents.
- (b) Performance of Work or provision of material(s), that is determined by the Owner, Architect or Contractor to be inadequate, defective, or in non-conformance with the Contract Documents.
- (c) Contractor's reasonable belief that Subcontractor is financially incapable of performing the Work and covenants of this Agreement or non-payment by Subcontractor to any parties who have provided material, labor, or services to the project.
- (d) Change in the management or control of Subcontractor
- (e) Use by Subcontractor of workmen who are unqualified, unable or unwilling either to work or to work in harmony with other workmen on the job.
- (f) Use by Subcontractor of workmen who are under the influence of alcohol or illegal drugs or who are impaired in their ability to perform work safely because of any health condition.
- (g) Subcontractor's creating or contributing to unsafe work conditions.

**6.2 RIGHT TO CURE:** Upon the occurrence of any of the events described above, Contractor shall give written notice of default and 48 hours to cure, or commence and diligently prosecute to completion a mutually agreed plan to cure. Should the default involve safety, illegal activity, property damage, imminent Contract deadlines or situations deemed an emergency by Contractor, no notice period shall be required by Contractor to exercise rights to cure. Following this initial 48 hour cure period, if Subcontractor has not cured the default, or is not actively proceeding to complete a mutually agreed plan to cure the default, Contractor shall have the right to exercise one or more of the following remedies:

- (1) Require that Subcontractor, at its own expense, cure the default and the consequences of the default. These actions may include replacement of defective/non-conforming work, use of overtime, extended work hours, or extra shifts, adding or replacing personnel, or whatever else is required to cure the default.
- (2) Remedy the default by whatever means Contractor deems necessary or appropriate, including, but not limited to, furnishing, performing, or otherwise completing the Subcontractor's work or any part thereof relating to the default, directly or through third parties. Contractor may utilize where appropriate any materials or equipment previously purchased for that purpose by Subcontractor. Contractor shall be entitled to make reasonable payments to third parties involved in testing, inspecting, or completing Subcontractor's work. These direct costs and third party costs (along with a charge of 10% to cover administrative burden) will be deducted from any amounts due, or to be become due, to Subcontractor under this Agreement. Should expenses incurred by Contractor to remedy the default and/or complete Subcontractor's work exceed the unpaid balance owed Subcontractor, Subcontractor shall pay the difference to Contractor upon written demand.
- (3) After giving Subcontractor an additional 48 hours' notice (at any time following the expiration of the initial 48 hours' notice and curative period) terminate this Subcontract in writing, without thereby waiving or releasing any obligations of Subcontractor or rights or remedies against Subcontractor or its Sureties, and by itself or through others, take possession of all materials, equipment, facilities, tools, scaffolds, and appliances of Subcontractor (excluding rental items) relating to the Work for the purposes of completing the Work and securing to Contractor the payment of its costs (plus an allowance for administrative burden equal to 10% of such costs) and other damages for the breach of this Agreement; it being intended that Contractor shall, for the stated purposes, be the assignee of and have a security interest in the property described above to the extent located on the Project site. No additional payments to Subcontractor will be due after termination until final acceptance and payment by Owner. Termination under this article is not a waiver of any other rights or remedies at law or equity which Contractor may have against Subcontractor for breach of this Subcontract Agreement.
- (4) Pay unpaid suppliers, subcontractors or workmen that have performed work on the Project on behalf of Subcontractor, and deduct payments from amounts then owed Subcontractor.
- (5) Recover from Subcontractor all losses, damages, penalties and fines whether actual or liquidated, direct or consequential; and all reasonable attorney's fees suffered or incurred by Contractor by reason of or as a result of Subcontractor's default, plus interest at the rate of 1% per month.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents or now or hereafter existing at law or in equity. After completion of the work related to the default by exercise of one or more of the above remedies (other than termination), and acceptance and payment by Owner for the completed work, Contractor shall promptly pay any remaining amounts then due Subcontractor.

**6.3 TERMINATION BY OWNER:** If Owner terminates the Contract or stops the Work for any reason other than the default of Contractor, Contractor may terminate this Agreement or stop the Work for the same reason, and Subcontractor's rights and remedies, including the basis for compensation, shall be limited to the corresponding rights and remedies available to Contractor under the Contract Documents.

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**6.4 TERMINATION FOR CONTRACTOR'S CONVENIENCE:** Contractor, by written notice, shall have the right to terminate and cancel this Subcontract Agreement or any portion thereof, without Subcontractor being at fault, for any cause or for its own convenience, and require Subcontractor to immediately stop working. In such event, Contractor shall pay Subcontractor for the actual quantity of Work completed on a unit-price basis, and, to the extent it is based upon a lump-sum, only to the percentage of work actually completed by Subcontractor. Contractor shall not be liable to Subcontractor for any other costs, including anticipated profits on Work not performed. Should Contractor's termination notice to Subcontractor result from Owner's termination of Contractor for convenience, Contractor's final payment to Subcontractor shall be conditioned on approval by Owner of Subcontractor's request under the terms of the Contract Documents.

### **ARTICLE 7 - INDEMNIFICATION**

#### **7.1 HOLD HARMLESS:**

To the fullest extent allowed by law, Subcontractor and its Surety shall:

**7.1.1** Indemnify and hold harmless the Owner, Contractor, and Contractor's Surety, 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, 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), but only to the extent caused by the negligent acts or omissions of the Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this section.

**7.1.2** As to claims other than the types provided for in subparagraph 7.1.1,

**7.1.2.1** defend, indemnify, save and hold harmless, without limit, the Owner, Contractor, and their Sureties, whether brought separately or jointly from and against all claims, suits, liabilities, demands, damages, losses, fines, criminal penalties, penalties, corrective measures, remedial measures, costs and expenses including reasonable attorney's fees arising from Subcontractor's involvement in this project, and for which Subcontractor or its lower tier subcontractors or vendors may have been responsible in whole or in part for all acts and including the following: a) violation of any local, state, or federal law, regulation, code, policy or governing statute, claims by vendors, lower tier subcontractors, and workmen for any Work or material provided to the project.

**7.1.2.2** defend, indemnify, save and hold harmless, Contractor and its Sureties from all actions by the Owner, including the specific items stated above and against all damages, losses, penalties, liquidated or actual damages, disincentives, lost or reduced incentives, costs and expenses including reasonable attorneys' fees, arising from Subcontractor's involvement in this project and for which Subcontractor or its lower tier subcontractors or vendors may have been responsible in whole or in part for the following: a) non-conforming, or defective Work or materials, b) substitutions and alternates, whether or not approved by Contractor and/or owner's representative, c) improper design by subcontractor or its agents for part of the Work, d) Work performed in an untimely manner, e) non-performance of the Work, f) any legal actions by the Owner against Contractor.

**7.1.3** Until all such claims, demands, suits or actions are finally disposed of, Contractor may retain all or any part of any sums due, or to become due Subcontractor and apply the same or so much thereof as may be necessary to satisfy any such claims, demands or judgments. In any and all such claims for which Subcontractor may be liable, the indemnification obligation shall not be limited in any way by limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under worker's compensation acts, disability benefit acts or other employee benefits act.

**7.1.4** This indemnification obligation shall survive completion of the project and/or Subcontractor's termination under this Agreement and be enforceable as a separate Subcontract.

**7.2 PATENTS:** Subcontractor agrees to indemnify and save harmless the Contractor from any and all claims or suits for infringement of patents, or violation of patent rights by Subcontractor in connection with this Agreement, and further agrees to pay all loss and expense incurred by the Contractor by reason of any such claims or suits, including all associated legal fees.

**7.3 LIENS:** Subcontractor shall turn said Work over to Contractor in good condition and free and clear from all claims, encumbrances, and liens for labor, services, materials, or equipment and shall protect and save harmless Contractor and Owner from all claims, encumbrances, and liens growing out of the performance of this Agreement and all maintenance or service required under the Contract Documents. In the event suit is filed against Owner, Contractor, or its bonding company by any person, firm or corporation asserting a claim or lien for labor, services, equipment, or materials used or purchased for use in the Work of this Agreement, Subcontractor will, at its own cost and expense, including legal fees, defend such suit and pay any judgment rendered thereon. Upon request of Contractor, Subcontractor shall, before each payment, furnish an affidavit setting forth the names of and amounts due to all persons furnishing materials, labor, and equipment. Subcontractor gives to Contractor the right to pay any and all such persons directly or to retain a sufficient sum of amounts due to Subcontractor to protect Contractor against any such indebtedness. Prior to final payment and



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subsequent to the Subcontractor's work having been performed, Subcontractor agrees to sign and deliver to Contractor a waiver of lien as to this job or such other documents as may be required by the Owner in the aforesaid Contract and included Agreements.

**7.4 NONDISCRIMINATION AND EQUAL EMPLOYMENT:** In the performance of this Agreement, Subcontractor shall comply with all Federal, State and Local laws and regulations regarding nondiscrimination and equal employment opportunity. Subcontractor must comply with the requirements of Executive Order 11246 as amended, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26, and 27, and 23 CFR Parts 200, 230, and 633, where CFR refers to the Code of Federal Regulations and USC refers to United States Code. The Subcontractor must comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on race, sex, color, religion, national origin, **sexual orientation, gender identity, political affiliation**, age, disability, status as a Vietnam era, special disabled or other covered or newly separated veteran, Armed Forces Service Medal veteran, or any other status or condition protected by law. Moreover, these regulations require that covered subcontractors and vendors take affirmative action to employ and advance in employment individuals without regard to race, sex, color, religion, national origin, **sexual orientation, gender identity, political affiliation**, age, disability, status as a Vietnam era, special disabled or other covered or newly separated veteran, Armed Forces Service Medal veteran, or any other status or condition protected by law.

Additionally, these regulations address pay transparency and prohibit the Subcontractor from discharging or in any other manner discriminating against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. Subcontractor employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the Subcontractor's legal duty to furnish information.

Unless exempted, the terms of 29 CFR Part 471, Appendix A to Subpart A, Definitions, Requirements for Employee Notice, and Exceptions and Exemptions are incorporated herein. Subcontractor, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, will state that Subcontractor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section. Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and is further obligated to furnish all required information and reports and include all requirements hereunder in any subcontract written by Subcontractor in association with this Agreement.

**7.5 COMPLIANCE WITH FEDERAL AND STATE WORK LAWS:** By signing this Agreement, Subcontractor certifies that it does not and will not during the performance of this Subcontract Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens. **Pursuant to House Bill 1859, Subcontractor also certifies that it has registered and participates in the federal E-Verify program if it has more than an average of 50 employees working in the state of Virginia for the previous 12 months. House Bill 1859 obliges affected employers to use the E-Verify system to verify the identity and work authorization of newly hired employees.**

Subcontractor agrees to indemnify, defend and hold the Contractor harmless for any damages, losses and liabilities arising out of claims that Subcontractor's employees are not authorized to work in the United States and/or any other claims based upon alleged IRCA violations **or failure to comply with Virginia's E-Verify requirements** by the Subcontractor.

**7.6 INDEPENDENT CONTRACTOR:** The Subcontractor agrees that it is not an employee of Contractor, is an independent contractor, complies with all laws and regulations pertaining to subcontractor employees and its own subcontractors, does not want nor is entitled to receive any compensation or benefits other than specifically stated in this agreement.

### **ARTICLE 8 - INSURANCE**

**8.1 SUBCONTRACTOR'S INSURANCE:** Subcontractor shall procure and maintain for the duration of the project and a minimum 3 years following completion of project, with an insurance carrier acceptable to the Contractor, the following insurance coverage: Commercial General Liability including Per Project General Aggregate, Contractual Liability, Broad Form Liability, Bodily Injury, Property Damage, Personal Injury, Independent Contractors, Explosion/Collapse/Underground, on an occurrence basis; Automobile Liability, including Hired-Auto and Non-Owned Auto; Worker's Compensation and Employer's Liability that complies with the state statutes in which the Work will be performed and that applies to all employees and does not exclude proprietors, partners, executives, officers, or members with appropriate stop gap liability, broad form employers liability, USL&H, Jones Act and any other federal or state required coverages where applicable; and other insurance specifically required by the Contract Documents or by law. All coverage shall be at the limits stipulated in the Contract Documents and/or as set out below, whichever is greatest. Limits for the above coverage are as follows:

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General liability, including Contractual Liability -  
\$1,000,000 each occurrence  
\$ 100,000 Damage to Rented Premises (Fire Damage)  
\$1,000,000 Personal and Adv Injury  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate

Automobile Liability, including Hired Auto and Non-owned Auto - \$1,000,000 Combined Single Limit

Workers Compensation & Employers Liability Insurance that complies with the state statutes in which the Work will be performed -  
\$1,000,000 each accident  
\$1,000,000 each occurrence by disease  
\$1,000,000 by disease - policy limit

Umbrella Policy-  
\$3,000,000 Each Occurrence

An Excess Liability policy of more than \$3,000,000 on an umbrella form can be used to satisfy the above limits.

If providing professional services, Subcontractor or Consultant shall provide and maintain throughout the project, Professional Liability Insurance for itself and for any of its lower tier subcontractors or lower tier consultants providing professional services for the project. Such coverage shall include negligent acts, and errors and omissions coverage, and include defense costs. The coverage for the Subcontractor or Consultant and each lower tier subcontractor or lower tier consultant shall provide for \$1,000,000 coverage per occurrence and in the aggregate. Any deductible for this coverage shall not exceed \$100,000, which deductible shall be the responsibility of the Subcontractor or Consultant. The insurance incorporating these requirements shall be maintained for a minimum of two (2) years following Final Completion of the Project. The Subcontractor's or Consultant's and any lower tier subcontractor's or lower tier consultant's insurance policy shall be subject to final approval of Contractor. The Subcontractor's or Consultant's and any lower tier subcontractor's or lower tier consultant's Professional Liability Insurance Policy shall be exclusive to this Project.

Professional Liability Insurance -  
\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

Other coverage required if applicable including but not limited to builders or installation risk, riggers liability, asbestos, aircraft, watercraft, USL&H, Jones Act or railroad protective including amendment of contractual liability on general liability, pollution liability, coverage including contractual liability, completed operations and additional insured.

**8.2 ENDORSEMENTS:** All liability policies except workers compensation shall include Contractor, the Owner, and all of their collective officers, officials, agents, and employees as additional insured. The policy shall provide coverage to the additional insured against any and all claims and demands made by any person or persons whomsoever for property damages or bodily injury (including death) incurred in connection with the services to be provided under this Agreement. This insurance for the additional insured shall be as broad as and at the same limits as that of the insured Subcontractor. Such insurance shall be primary and any insurance maintained by the additional insured shall be excess and non-contributory until all the limits of insurance listed above (including the Umbrella Liability) have been exhausted through the payment of claims. All rights of subrogation are waived for the policies listed above, including workers compensation.

Such policies shall provide for thirty (30) days' advance written notice by certified mail of cancellation, termination or alteration of any policy. Procurement and delivery of such certificates or policies shall in no way limit or relieve Subcontractor's obligation to indemnify Contractor as provided in Section 7 of this Agreement. Subcontractor shall be deemed in default of the Contract if it fails to do any of the following: obtain or maintain the stipulated insurance, furnish the Contractor with satisfactory certificates and endorsements, provide satisfactory renewals, or maintain the Contractor as an additional insured. In the event of default by the Subcontractor, then the Contractor may procure such insurance and the Subcontractor shall pay the Contractor for the premiums. The Contractor may deduct the cost of the premiums from any amount due Subcontractor.

**8.3 PROOF OF INSURANCE:** Subcontractor shall, prior to commencing work under this Agreement, deliver certificates and signed general liability additional insured endorsement to include Completed Operations, worker's compensation waiver of subrogation endorsement, and notice of cancellation for each policy. Acceptable general liability endorsements include the current ISO form CG 2010 with CG 2037 or the Equivalent Blanket Endorsements.

THE FOLLOWING WORDING SHALL APPEAR ON THE INSURANCE CERTIFICATE AND POLICY ENDORSEMENT:

"Contractor, the Owner, and all of their collective officers, officials, agents, and employees are additional insured as respects to general liability, auto and umbrella policies. All rights of subrogation are waived for general liability, auto, umbrella, and workers compensation.

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General Liability coverage for additional insured applies as a primary and non-contributory basis and includes completed operations. Workers Compensation & Employers Liability Insurance complies with the state statutes in which the Work will be performed." The Certificate of Insurance shall include under the description section either the specific Job Name or a reference made to "all jobs/all locations".

Contractor reserves the right to request copies of subcontractors Insurance policies.

**8.4 LOWER TIER INSURANCE REQUIREMENTS:** In the event that the Subcontractor enters into a subcontract with a lower tier subcontractor, the Subcontractor will require the lower tier subcontractor to procure all insurance specified in this Agreement to be carried by the lower tier subcontractor, in like form and amount, and to name the Contractor, Owner, and other parties required to be included as Additional Insured's under the lower tier subcontractor's policies on the same terms and conditions of this Agreement. Subcontractor will require evidence of this insurance and Additional Insured status to be provided by the lower tier subcontractor prior to the lower tier subcontractor beginning work or entering onto the jobsite, and evidence of this shall be provided to the Contractor by the Subcontractor.

### **ARTICLE 9 - CONTRACT INTERPRETATION**

**9.1 ENTIRE AGREEMENT:** The Contract Documents, insofar as they relate in any part or in any way to the Work undertaken herein, constitute the entire Agreement between the parties hereto, and it is expressly understood and agreed that any and all negotiations, promises or other agreements made prior to the date of this Agreement, not included herein, are hereby voided, and that any additions or changes thereto shall be in writing and signed by both parties.

**9.2 FULL FORCE AND EFFECT:** This Subcontract is solely for the benefit of the signatories hereto. Should any term or condition herein be invalidated by operation of law, the remaining terms and conditions herein shall continue in full force and effect.

**9.3 NO WAIVER OF RIGHTS:** No failure of Contractor to exercise any power or right given herein or insist upon strict compliance by Subcontractor with any obligations herein shall constitute a waiver of Contractor's rights to demand complete and full compliance with the terms of this Agreement.

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**End Appendix F – Subcontract Terms and Conditions**

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